



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **D**  
BUDGETARY AFFAIRS

Budgets

Budgetary Control



# Financial Rules in the Research Framework Programmes - Streamlining rules for participation in EU research programmes

STUDY





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

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## **Abstract**

The study provides an overview of the financial rules applicable to EU research framework programmes (FP6 and FP7) in order to identify areas of complexity both in the legal framework and in the way the rules are implemented.

Its key findings and recommendations include the following:

- rules should be communicated at the time the calls for proposals are published;
- consistency of interpretation of the rules to be ensured by various means suggested;
- a communication process ensuring consistent and reliable answers to beneficiaries;
- the flat rate percentages should be better adapted to the specific categories of beneficiaries (SMEs, universities, NGOs, etc.);
- the simplification process should result in a substantial reform of the financial rules applicable to research framework programmes, decided after consultation with all parties involved (beneficiaries and their representatives, DGs involved in FPs, DG BUDG, external auditors and the Court of Auditors);
- the evolution of the rules should be smooth, so that the simplification process itself does not create an unnecessary burden.

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## LIST OF ABBREVIATIONS

<b>CFS</b>	Certificate of the Financial Statements
<b>CoM</b>	Certificates on the Methodology for personnel and indirect costs
<b>CoMAv</b>	Certificates on the Methodology for average personnel costs
<b>DG</b>	Directorate General at the European Commission
<b>DG BUDG</b>	Directorate General for Budget
<b>DG INFSO</b>	Directorate General for Information Society
<b>DG RTD</b>	Directorate General for Research and Technological Development
<b>EC</b>	European Commission
<b>ECGA</b>	European Communities model Grant Agreement
<b>Em</b>	Euratom
<b>ERC</b>	European Research Council
<b>EU</b>	European Union
<b>FR</b>	Financial Regulation
<b>FP</b>	Framework Programme (for Research and Technological Development)
<b>G</b>	Guidance documents
<b>GA</b>	Guidelines for applicants
<b>IR</b>	Implementing Rules to the Financial Regulation
<b>JRC</b>	Joint Research Centre
<b>MC</b>	Marie Curie
<b>REA</b>	Research Executive Agency
<b>RfP</b>	Rules for participation
<b>RfS</b>	Rules for submission of proposals, and the related evaluation, selection and award procedures
<b>SME</b>	Small and Medium Enterprise
<b>SP</b>	Specific Programme
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>WP</b>	Work programme

## EXECUTIVE SUMMARY

### **Objectives of the study:**

This study provides an overview of the financial rules applicable to EU research framework programmes (FPs) in order to identify areas of complexity both in the legal framework<sup>1</sup> and in the way the rules are implemented, and to recommend changes to simplify the rules and processes.

### **Scope**

This study focuses on the sixth programming period (FP6, 2003-2006) – for which completed projects were being audited when the study was started - and the seventh (FP7, 2007-2013) - for which projects are ongoing.

### **Methodology**

Our methodology for this study was based on desk research and interviews.

Preliminary desk research was carried out in the first weeks of the study. Interviews with the European Commission and other stakeholders complemented the initial desk research review by helping us identify additional relevant reference documents.

Further, interviews helped us to identify rules that create unnecessary complexity as well as financial risks for applicants and beneficiaries, and to develop recommendations to tackle issues linked to these rules.

Findings from the desk research and interviews were analysed, in order to formulate clear conclusions and recommendations.

### **Key findings and recommendations**

One of the main conclusions of the study is that only a small number of rules are criticised as such by beneficiaries, and that the manner in which the rules are implemented is more problematic than the rules themselves.

- **Issues regarding the rules themselves**

Interest on pre-financing, calculation of eligible costs, and certification procedures (for audit and financial statements and for methodology of cost calculations) are the topics most mentioned as problematic by beneficiaries. The main criticisms concern the fact that these rules are not aligned to the realities research organisations have to face – and sometimes contravene their national legal frameworks - and that the benefit they generate does not justify the burden they create.

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<sup>1</sup> An overview of the legal framework applicable to FP7 is presented in Figure 3

Simplification could be achieved in three ways. *First*, the flat rate percentages should be better adapted to the specific categories of beneficiaries (SMEs, universities, not-for profit organisations, etc.). Beneficiaries should be facilitated by a system which is better adapted to their profile. *Second*, ex-ante certification should be maintained. However, the administrative burden of the procedure - linked to the criteria established for the acceptance of Certificates on the Methodology for average personnel costs (CoMAv) - should be reviewed, in particular in line with the tolerable error rate applied during the audit of the Commission's financial statements. This would comply with the principles of protection of the Union's financial interests and of sound financial management. *Third*, the Commission should not go further requirements from the Financial Regulation in terms of pre-financing on an interest-bearing bank account. This would protect the EU's financial interests when required, but the system would remain adaptable to beneficiaries' legal constraints.

More generally, financial rules applicable to research programmes should continue to be revised in the spirit of simplification introduced in FP6 and FP7. However, the simplification process should result in a substantial reform of the financial rules applicable to research framework programmes, decided after consultation with all parties involved (beneficiaries and their representatives, DGs involved in FPs, DG BUDG, external auditors and the Court of Auditors), in order to facilitate the management of programmes and projects. The evolution of the rules should be smooth, so that the simplification process itself does not create an unnecessary burden.

- **Issues regarding the management and implementation of the rules**

In many ways, the manner in which the rules are implemented is more problematic than the content of the rules themselves. The approach to communication is also often criticised by beneficiaries.

- **Formal communication of the rules**

The detailed rules are not always communicated in a timely manner, thereby creating uncertainty for the beneficiaries.

We therefore recommend that rules should be communicated before or at the time the calls for proposals are published. In case the rules are not finalised in time for the publication of the calls, a transition solution should be foreseen, e.g. an agreement that the new programmes will follow the rules of the previous ones for a transition period. As a minimum, the legal regime applicable to the programmes for this transition period should be clarified and well communicated.

- **Room for interpretation**

Financial rules applicable to FP7 are often subject to interpretation by beneficiaries, project officers and auditors.

Interpretation inevitably leads to a lack of uniformity and is rarely advantageous for beneficiaries, as it often results in legal uncertainty and a proliferation of different procedures in the same programme.

Consistency in the interpretation of the rules should be ensured, inter alia by training of project officers (and internal auditors) on interpretation of the financial rules and by the regular publication of guidelines for both project officers and beneficiaries, giving clarity on ambiguous rules. The guidelines should take the experience of auditors into account. The Commission should also establish a mechanism to ensure that cases of differing interpretation are addressed centrally and that decisions on clarifications are communicated to all project officers, for application thereafter in all cases where the same issue might arise. These decisions should also be taken speedily in order not to hamper the payment process. In order to avoid legality issues, the interpretation should not be applied retroactively<sup>2</sup>.

This process should be designed to:

- provide satisfactory, consistent and reliable answers to beneficiaries;
- enable beneficiaries to respect the regulatory timeframe for submission of proposals or reports to the Commission;
- enable the Commission to create the conditions for payment process acceleration;
- ensure continuous improvement towards consistency in the interpretation and application of the rules; and
- ensure smooth and seamless information circulation among project officers.

- **Commission Audit strategy**

Following comments by the Court of Auditors, the Commission has intensified its programme of auditing projects. The impact of this is significant, both in terms of the public resources mobilised, the financial risk on the beneficiaries and the administrative burden created, while the benefits remain unclear. The Commission should carry out a cost-benefit analysis of the FP6 ex-post audit strategy and assess the total value of financial corrections, both to the benefit of the Commission and of beneficiaries. The analysis should also measure the correlation between the increase in the number of ex-post audits and the reduction of the error rate between Commission audits and the Court of Auditors' controls. Moreover, for the sake of consistency and to avoid uncertainties for beneficiaries, no corrective action against beneficiaries should be taken in case the Court of Auditors notices errors in an audit previously approved by the Commission. Overall, the Commission's strategy should focus on reducing the errors made by beneficiaries rather than on reducing the error rate between its own controls and those of the

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<sup>2</sup> Except for special cases where a beneficiary has a justified reason to appeal

Court of Auditors. This could be prevented primarily by clearer, more transparent and consistent rules. If uncertainty remains, the Commission should foresee an effective accompanying process for beneficiaries at an early stage of the project (ideally before or right after the first interim financial report).

## RÉSUMÉ

### Objectifs de l'étude

La présente étude propose une vue d'ensemble des règles financières applicables aux programmes cadres européens dans le secteur de la recherche, l'objectif étant d'identifier dans quelles règles et modalités de mise en œuvre réside la complexité du système, et de recommander les changements nécessaires à la simplification des règles et de leur processus de mise en œuvre.

### Périmètre de l'étude

L'étude concerne le sixième programme cadre (2003-2006), pour lequel les audits de projets étaient encore en cours quand l'étude a débuté, et le septième programme cadre, programme cadre actuel.

### Méthodologie

Notre méthodologie reposait essentiellement sur une recherche documentaire et des entretiens.

La recherche documentaire préliminaire a été conduite au cours des premières semaines de l'étude. Les entretiens avec la Commission européenne et les autres acteurs nous ont permis d'enrichir la recherche documentaire initiale et d'identifier d'autres documents pertinents.

Des entretiens complémentaires nous ont aidé à identifier les règles qui complexifient inutilement le système et créent une situation d'insécurité juridique pour les candidats et bénéficiaires, ainsi qu'à envisager des solutions pour appréhender les problèmes liés à ces règles.

La recherche documentaire et les entretiens ont été analysés dans l'optique de formuler des conclusions et des recommandations claires.

### Principales conclusions et recommandations

L'une des principales conclusions de cette étude est que peu de règles sont critiquées en tant que telles par les bénéficiaires, et que la façon dont ces règles sont mises en œuvre est plus problématique que leur contenu.

- **Problèmes liés aux règles elles-mêmes**

Les intérêts sur préfinancement, le calcul des coûts éligibles et les procédures de certifications (certificats d'audits et certificats relatif à la méthodologie de calcul des coûts) sont les plus souvent cités comme règles posant problème aux bénéficiaires. La principale critique concerne le fait que ces règles ne sont pas en ligne avec les réalités du monde de la recherche et certaines contraintes juridiques au niveau national, et que la charge administrative créée par ces règles n'est pas justifiée par le bénéfice qui en est tiré.

Le processus de simplification peut être conduit de trois façons. *D'abord*, les pourcentages de coûts fixes devraient être plus adaptés aux différentes catégories de bénéficiaires (PMEs, établissement d'enseignement supérieur, organisations sans but lucratif, etc.). Ces derniers devraient pouvoir bénéficier d'un système mieux adapté à leur profil. *Ensuite*, même si le principe de certification ex-ante est maintenu, sa procédure devrait être révisée, et notamment les critères d'acceptation de la méthodologie du bénéficiaire pour le calcul des coûts moyens de personnel (CoMAv). Cette certification devrait mieux prendre en compte le seuil d'erreur toléré appliqué au cours des audits des rapports financiers de la Commission européenne, en respect du principe de protection des intérêts de l'Union et de bonne gestion financière. *Enfin*, la Commission devrait se limiter à la lettre du Règlement Financier et ne pas ajouter d'exigences supplémentaires, notamment en ce qui concerne les intérêts sur préfinancement. Cela permettrait au système de garantir les intérêts financiers de l'Union tout en restant adapté aux contraintes juridiques auxquelles sont soumis les bénéficiaires.

Plus généralement, les règles financières applicables aux programmes de recherche devraient être révisées dans la continuité de l'esprit de simplification introduit dans les sixième et septième programmes cadre. Le processus de simplification devrait résulter en une réforme substantielle de ces règles, après consultation des parties impliquées (bénéficiaires et leurs représentants, DGs impliquées dans les programmes de recherche, DG Budget, auditeurs externes et Cour des Comptes), en vue de faciliter la gestion à la fois des programmes et des projets. L'évolution des programmes devrait être progressive afin que le processus de simplification lui-même ne soit pas source de lourdeur administrative.

- **Problèmes liés à la gestion des règles et leur mise en œuvre**

La manière dont les règles sont mises en œuvre est souvent plus problématique que leur contenu. La communication relative aux règles est également beaucoup critiquée.

- **Communication formelle des règles**

Le détail des règles n'est pas toujours communiqué en temps voulu aux bénéficiaires, créant une situation d'insécurité juridique pour ces derniers.

Nous recommandons donc que les règles soient communiquées avant ou, au plus tard, au moment de la publication des appels à proposition. Dans le cas où les règles ne seraient pas finalisées au moment de la publication de l'appel, une solution alternative devrait être prévue, par exemple un accord selon lequel les règles de l'appel précédent s'appliqueraient de façon transitoire. En tout état de cause, le régime applicable au programme pendant cette période transitoire devrait être clair et efficacement communiqué.

- **Interprétation des règles**

Les règles financières applicables au septième Programme Cadre sont souvent l'objet d'interprétations par les bénéficiaires, les chargés de projet et les auditeurs.

L'interprétation conduit inévitablement à un manque d'uniformité et avantage rarement les bénéficiaires, dans la mesure où il en résulte souvent une situation d'insécurité juridique et une prolifération de procédures différentes au sein du même programme.

La cohérence dans l'interprétation des règles devrait être assurée, inter alia par la formation des chargés de projets (et auditeurs internes) à l'interprétation des règles et par une publication régulière de documents à destination des chargés de projets et des bénéficiaires, clarifiant l'interprétation des règles ambiguës. Ces documents devraient également tenir compte des remarques des auditeurs.

La Commission devrait également mettre en place un mécanisme qui permettrait de régler de manière centrale les problèmes d'interprétations contradictoires et de faire en sorte que les décisions soient communiquées à tous les chargés de projets afin qu'elles soient appliquées aux cas dans lesquels la même question d'interprétation se poserait. Ces décisions devraient également être prises assez rapidement de manière à ne pas ralentir le processus de paiement. Afin d'éviter les problèmes juridiques, les décisions d'interprétations ne devraient pas être applicables rétroactivement<sup>3</sup>.

Ce processus devrait:

- Fournir aux bénéficiaires des réponses satisfaisantes, cohérentes et fiables;
- Aider les bénéficiaires à respecter le délai de soumission des candidatures et rapports;
- Permettre à la Commission de mettre en place un processus d'accélération des paiements ;
- Assurer la pérennité des avancées vers la cohérence dans l'interprétation et l'application des règles; et
- Assurer une circulation d'information sans heurt entre charges de projets.

- **Stratégie d'audit de la Commission**

Suite aux commentaires de la Cour des Comptes, la Commission a intensifié les audits de projets. Les conséquences sont importantes en termes de ressources mobilisées, de risque financier pour les bénéficiaires et de charge administrative, alors que les bénéfices de cette stratégie d'intensification sont incertains. La Commission devrait également faire une analyse coût-bénéfice de la stratégie d'audit ex-post pour le sixième programme cadre et mesurer la valeur totale des corrections financières effectuées (à l'avantage de la Commission ou des bénéficiaires).

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<sup>3</sup> A l'exception des cas où un bénéficiaire aurait le droit de faire appel de la décision

Cette analyse devrait également mesurer la corrélation entre l'augmentation du nombre d'audits ex-post et la réduction du taux d'erreur entre les audits de la Commission et les contrôles de la Cour des Comptes. Dans un souci de cohérence et sécurité juridique pour les bénéficiaires, aucune mesure corrective ne devrait être prise à l'encontre des bénéficiaires dans les cas où la Cour des Comptes trouverait des erreurs dans un audit préalablement approuvé par la Commission. De manière générale, la stratégie de la Commission devrait être axée sur la réduction des erreurs commises par les bénéficiaires plutôt que sur la réduction du taux d'erreur entre ses propres contrôles et ceux de la Cour des Comptes. Des règles plus claires, plus transparentes et cohérentes permettraient d'éviter ces erreurs. Si certaines erreurs subsistent, la Commission devrait prévoir des mesures permettant d'accompagner les bénéficiaires au début du projet, idéalement avant ou juste après la soumission du premier rapport intermédiaire.

## ZUSAMMENFASSUNG

### **Zielsetzungen der Studie:**

Diese Studie bietet eine Übersicht über die finanziellen Vorschriften, die für EU-Forschungsrahmenprogramme (FPs) gelten, um zu ermitteln, in welchen Bereichen der rechtliche Rahmen und die Art und Weise, in der die Vorschriften umgesetzt werden, zu kompliziert sind, und um Änderungen zur Vereinfachung der Vorschriften und Prozesse zu empfehlen.

### **Geltungsbereich**

Diese Studie konzentriert sich auf die sechste Programmperiode (FP6, 2003-2006) – bei der abgeschlossene Projekte noch in der Wirtschaftsprüfung waren, als die Studie gestartet wurde – und die siebte Periode (FP7, 2007-2013) – bei der Projekte laufen.

### **Methodologie**

Unsere Methodologie für diese Studie basierte auf Sekundärforschung (d.h. anhand schriftlicher Unterlagen) und Interviews.

Die vorbereitende Sekundärforschung wurde in den ersten Wochen der Studie ausgeführt. Interviews mit der Europäischen Kommission und anderen Beteiligten ergänzten die anfängliche Sekundärforschung, indem sie uns geholfen haben, zusätzliche relevante Referenzdokumente zu ermitteln.

Ferner haben die Interviews dabei geholfen, Vorschriften zu identifizieren, die eine unnötige Komplexität und finanzielle Risiken für Antragsteller und Begünstigte schaffen, sowie Empfehlungen zu entwickeln, um die mit diesen Vorschriften verbundenen Problembereiche zu bewältigen.

Erkenntnisse der Sekundärforschung und der Interviews wurden analysiert, um klare Schlussfolgerungen und Empfehlungen zu formulieren.

### **Wichtigste Untersuchungsergebnisse und Empfehlungen**

Eine der wichtigsten Schlussfolgerungen der Studie ist, dass nur eine kleine Anzahl von Vorschriften als solche von Begünstigten kritisiert wird und dass die Art und Weise, in der die Vorschriften umgesetzt werden, problematischer ist als die Vorschriften selbst.

- **Probleme in Bezug auf die Vorschriften selbst**

Zinsen auf Vorfinanzierung, Kalkulation qualifizierter Kosten und Zertifikationsverfahren (für Audit und Bilanzen und für die Methodologie der Kostenkalkulation) sind die Themen, die von den Begünstigten am häufigsten als problematisch bezeichnet wurden. Die Hauptkritik bezieht sich auf die Tatsache, dass diese Vorschriften nicht mit der Realität in Einklang stehen, mit der Forschungsorganisationen konfrontiert werden – und dass sie bisweilen im Widerspruch zu

ihren nationalen Rechtsstrukturen stehen – und dass der Nutzen, den sie schaffen, nicht die Belastung rechtfertigt, die sie erzeugen.

Eine Vereinfachung kann auf drei verschiedene Arten erreicht werden. *Erstens* sollten die pauschalen Prozentsätze besser an die spezifischen Kategorien von Begünstigten (KMUs, Universitäten, gemeinnützige Organisationen usw.) angepasst werden. Begünstigte sollten durch ein System unterstützt werden, das besser an ihr Profil angepasst ist. *Zweitens* sollte die ex-ante Zertifizierung aufrechterhalten werden. Allerdings sollte die Verwaltungslast des Verfahrens – im Zusammenhang mit den für die Akzeptanz von Zertifikaten über die Methodologie für durchschnittliche Personalkosten (CoMAv) etablierten Kriterien – überarbeitet werden, insbesondere im Einklang mit der tolerierbaren Fehlerrate bei der Prüfung der Finanzberichte der Kommission im Sinne der Prinzipien des Schutzes der finanziellen Interessen der Union und der Wirtschaftlichkeit der Haushaltsführung. *Drittens* sollte die Notwendigkeit eines verzinslichen Bankkontos für die Vorfinanzierung nur in dem Maße verpflichtend auferlegt werden, wie es die Haushaltsordnung und deren Durchführungsbestimmungen vorsehen. Dies würde die finanziellen Interessen der EU nötigenfalls schützen, aber das System würde an die rechtlichen Einschränkungen der Begünstigten anpassbar bleiben.

Allgemeiner ausgedrückt sollten für Forschungsprogramme geltende finanzielle Vorschriften weiterhin im Geiste der in FP6 und FP7 eingeführten Vereinfachung überprüft werden. Allerdings sollte der Vereinfachungsprozess zu einer substantiellen Reform der finanziellen Vorschriften für Forschungsrahmenprogramme führen, beschlossen nach einer Konsultation mit allen beteiligten Parteien (Begünstigte und ihre Vertreter, in FPs involvierte Generaldirektionen der Kommission (GDs), GD BUDG, externe Wirtschaftsprüfer und der Rechnungshof), um das Management von Programmen und Projekten zu erleichtern. Die Entwicklung der Vorschriften sollte gleichmäßig erfolgen, sodass der Vereinfachungsprozess selbst keine unnötige Belastung schafft.

- **Probleme in Bezug auf das Management und die Umsetzung der Vorschriften**

In vielerlei Hinsicht ist die Art und Weise, in der die Vorschriften umgesetzt werden, problematischer als der Inhalt der Vorschrift selbst. Die Kommunikationsweise wird ebenso von Begünstigten häufig kritisiert.

- **Formelle Kommunikation der Vorschriften**

Die detaillierten Vorschriften werden nicht immer rechtzeitig mitgeteilt, wodurch Unsicherheit für die Begünstigten entsteht.

Wir empfehlen deshalb, dass die Vorschriften mitgeteilt werden, bevor oder zum Zeitpunkt, an dem die Ausschreibungen veröffentlicht werden. Falls die Vorschriften nicht rechtzeitig für die Veröffentlichung der Aufforderungen fertig sind, könnte eine Übergangslösung vorgesehen werden, z.B. eine Vereinbarung, dass die neuen Programme in einer Übergangsfrist den Vorschriften der früheren Programme entsprechen. Zumindest sollte der für die Programme in dieser Übergangsfrist geltende Rechtsrahmen verdeutlicht und gut kommuniziert werden.

- **Raum für Interpretation**

Für FP7 geltende finanzielle Vorschriften unterliegen häufig einer Interpretation durch Begünstigte, Projektbeauftragte und Wirtschaftsprüfer.

Interpretation führt unvermeidlich zu mangelnder Einheitlichkeit und ist selten vorteilhaft für Begünstigte, da sie häufig zu Rechtsunsicherheit und einer Zunahme der verschiedenen Verfahren im selben Programm führt.

Konsistenz in der Interpretation der Vorschriften sollte gewährleistet sein, unter anderem durch Schulung von Projektbeauftragten (und internen Wirtschaftsprüfern) über die Interpretation der finanziellen Vorschriften und durch die regelmäßige Veröffentlichung von Richtlinien für Projektbeauftragte und Begünstigte, die Klarheit bei mehrdeutigen Vorschriften verschaffen. Diese Richtlinien sollten die Erfahrung von Wirtschaftsprüfern berücksichtigen. Die Kommission sollte auch einen Mechanismus einführen, der gewährleistet, dass Fälle unterschiedlicher Interpretation zentral behandelt werden und dass Entscheidungen über Klarstellungen an alle Projektbeauftragte mitgeteilt werden, um sie dann in allen Fällen anzuwenden, in denen dasselbe Problem möglicherweise entsteht. Diese Entscheidungen sollten auch rasch getroffen werden, um den Zahlungsprozess nicht zu behindern. Um Probleme mit der Rechtmäßigkeit zu vermeiden, sollte die Interpretation nicht rückwirkend angewendet werden<sup>4</sup>.

Dieser Prozess sollte so gestaltet sein, dass er:

- zufriedenstellende, konsistente und zuverlässige Antworten für Begünstigte bringt;
- den Begünstigten ermöglicht, den gesetzlichen Zeitrahmen für die Übermittlung von Angeboten oder Berichten an die Kommission einzuhalten;
- der Kommission ermöglicht, die Bedingungen für eine Beschleunigung des Zahlungsprozesses zu schaffen;
- permanente Verbesserung im Hinblick auf Konsistenz in der Interpretation und Anwendung der Vorschriften gewährleistet, und
- einen reibungslosen und nahtlosen Informationsfluss unter Projektbeauftragten gewährleistet.

- **Auditstrategie der Kommission**

In Folge von Kommentaren des Rechnungshofes hat die Kommission ihr Programm zur Prüfung von Projekten intensiviert. Die Auswirkungen davon sind signifikant, sowohl im Hinblick auf die mobilisierten öffentlichen Ressourcen, als auch auf das finanzielle Risiko der Begünstigten und der geschaffenen Verwaltungslast, während die Vorteile unklar bleiben. Die Kommission

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<sup>4</sup> Außer bei Sonderfällen, bei denen ein Begünstigter einen gerechtfertigten Grund zur Anfechtung hat.

sollte eine Kosten-/Nutzenanalyse der FP6 Ex-post-Auditstrategie durchführen, und den Gesamtwert der finanziellen Korrekturen bewerten, sowohl zugunsten der Kommission als auch der Begünstigten. Die Analyse sollte auch die Korrelation zwischen der Zunahme der Anzahl von Ex-post-Audits und die Reduktion der Fehlerrate zwischen Kommissionsaudits und Rechnungshofkontrollen messen. Darüber hinaus sollten zum Zweck der Konsistenz und zur Vermeidung von Unsicherheiten für Begünstigten keine Korrekturmaßnahmen gegen Begünstigte unternommen werden, falls der Rechnungshof Fehler in einem zuvor von der Kommission genehmigten Audit feststellt. Im Allgemeinen sollte sich die Strategie der Kommission auf die Reduzierung der von Begünstigten begangenen Fehler konzentrieren, und nicht so sehr auf die Reduktion der Fehlerrate zwischen ihren eigenen Kontrollen und den Rechnungshofkontrollen. Dies könnte vornehmlich durch deutlichere, transparentere und konsistentere Vorschriften vermieden werden. Wenn Unsicherheiten bleiben, sollte die Kommission einen effektiven Begleitprozess für Begünstigte in einem frühen Projektstadium vorsehen (idealerweise vor oder kurz nach dem ersten Finanzzwischenbericht).

# 1. INTRODUCTION

## 1.1. Objective

The objective of the study is to identify financial rules and sub-rules that create unnecessary diversity and lead to increased administrative complexity and/or financial risks for applicants and beneficiaries of research framework programmes (hereafter: FPs), and to provide recommendations to tackle issues linked to these rules and propose ideas for simplification where relevant.

## 1.2. Scope

### 1.2.1. Framework Programmes (FPs)

The study focuses on the ongoing Framework Programme (FP7) and the previous one, for which both Commission and beneficiaries are still involved (FP6).

This study focuses on indirect actions<sup>5</sup>. As a consequence, actions carried out by the Joint Research Centre (JRC) will be mentioned, but specific financial rules applicable to these projects are not covered.

### 1.2.2. Expenditure lifecycle

The Study covers the financial rules applicable at all stages of budget implementation and project closure, i.e. calls for proposals, execution of grant agreements and closure activities.

### 1.2.3. Categories of rules to be covered

The study provides an overview of the situation of financial rules in FPs rather than exhaustively describing the details of each specific rule.

The financial rules are assessed in the light of sound financial management<sup>6</sup> principles (with a focus on the balance between flexibility/simplification and control/transparency).

In particular, the study aimed to show whether the administrative burden linked to financial rules in research framework programmes was caused by:

- “Efficient” rules of FP6 not retained in FP7;
- Rules existing in FP7 but not applied;

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<sup>5</sup> See definition in section 2.2.1.2, art. 229 of the Implementing Rules

<sup>6</sup> i.e. Economy, efficiency, effectiveness

- “Efficient” rules of FP6 replaced by a more “burdensome” approach in PF7; and/or
- New “burdensome” rules introduced in FP7.

These selected rules are described, explained and compared with rules in other FPs and analysed in this study.

#### 1.2.4. Specific questions to be covered

The following specific topics are covered, as agreed with Parliament:

- Eligibility/selection/award criteria;
- Terminology;
- Complexity of administrative workflow;
- Evolution of the forms of grants, in particular flat rate versus reimbursement of real costs;
- Retro-activity of rules;
- Errors made (by beneficiaries when declaring their costs, Commission when accepting them and auditors when carrying out their controls) directly deriving from the financial rules;
- Monitoring of project output (reporting/evaluation at different stages of project/grant agreement execution and closure); and
- Auditing rules.

#### 1.2.5. Budget Management type

As agreed with Parliament, the study is limited to rules applicable to Direct Centralised Management only.

#### 1.2.6. Target

The study considers the impact of the rules on both applicants and beneficiaries.

### 1.3. Methodology

The methodology for this study is based on desk research and interviews with the Commission and organisation representing beneficiaries.

Our research methodology, including the list of interviewees and the interview guide, is presented in Annex 1.

## 2. LEGAL BACKGROUND

This chapter describes the legal background of the research FPs, with a focus on FP7, and sets these rules in context with the norm hierarchy.

### 2.1. Treaties

#### 2.1.1. Applicability

The Treaties are the highest ranked piece of EU legislation in the norm hierarchy. This implies that that all other pieces of legislation derive from treaties and have to comply with them.

The first Treaties, signed in the 1950s, have been changed and updated to keep up with developments in society. The Treaty on the Functioning of the European Union (hereafter: the Treaty), introduced with the Treaty of Lisbon, entered into force on 1 December 2009.

#### 2.1.2. Contents

The Treaty foresees provisions for the adoption of Financial Regulations on the one hand and the FPs on the other hand.

##### 2.1.2.1. Financial Regulation in the Treaty

The Treaty foresees the adoption of the Financial Regulations<sup>7</sup> by the European Parliament and the Council after consulting the Court of Auditors.

##### 2.1.2.2. Research policies in the Treaty

Research and technological development and space compose Title XIX of the Treaty on the Functioning of the European Union (Articles 179-190). Article 179<sup>8</sup> states the general objective of the Research Policy at European level.

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<sup>7</sup> Art.322 TFEU (ex Article 279 TEC) : [...] *the European Parliament and the Council [...] shall adopt by means of regulations : (a) the financial rules which determine in particular the procedure to be adopted for [...] implementing the budget [...].*

<sup>8</sup> Art.179(1) TFEU (ex Article 163 TEC) : *The Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Treaties.*

### 2.1.2.3. FPs in the Treaty

The Treaty foresees the adoption of research FPs, specific programmes implementing the FPs, as well as detailed rules for the implementation of the Programmes<sup>9</sup>.

## 2.2. Secondary Legislation

Secondary legislation brings together the legislative instruments adopted by the European institutions pursuant to the provisions of the Treaties<sup>10</sup>. Secondary legislation comprises the binding legal instruments (regulations, directives and decisions) and non-binding instruments (resolutions, opinions) provided for in the EC Treaty.

The relevant pieces of secondary legislation in the context of this study are adopted by Regulation and Decision.

### 2.2.1. EU Financial Regulation and its Implementing Rules

#### 2.2.1.1. Applicability

The Financial Regulation<sup>11</sup> and its Implementing Rules are both adopted by Regulation, as specified in the Treaty on the Functioning of the European Union (see section 2.1.2.1). The Financial Regulation is applicable to the implementation of EU budget, **including the FPs**.

The Rules for Participation in FPs state that FPs are implemented in accordance with the Financial Regulation and its Implementing Rules<sup>12</sup>:

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<sup>9</sup> Art.182 TFEU (ex art.166 TEC) :

1. A **multiannual framework programme**, setting out all the activities of the Union, shall be adopted by the European Parliament and the Council [...]. The framework programme shall :

- establish the scientific and technological objectives to be achieved by the activities provided for in article 180 and fix the relevant priorities,

- [...]

- fix the maximum overall amount and the detailed rules for Union financial participation in the framework programme and the respective shares in each of the activities provided for.

2. The framework programme shall be adapted or supplemented as the situation changes.

3. The framework programme shall be implemented through **specific programmes** developed within each activity. Each specific programme shall define the **detailed rules for implementing it**, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.

4. The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, shall adopt the specific programmes.

5. As a complement to the activities planned in the multiannual framework programme, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the measures necessary for the implementation of the European research area.

<sup>10</sup> Art. 288 ff TFEU (ex art. 249 TEC)

<sup>11</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

*“The Seventh Framework Programme is implemented in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (5), hereinafter ‘the Financial Regulation’, and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation (6), hereinafter ‘the Implementing Rules’.”*

The FPs also refer to the Financial Regulation and stress the importance of compliance with these:

*“It is necessary to ensure compliance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (5), and with the requirements of simplification and better regulation.”<sup>13</sup>*

#### 2.2.1.2. Contents

The Financial Regulation lays down the rules applicable to the establishment and implementation of the general budget of the European Communities. The Financial Regulation is structured with Common and Final provisions.

Common provisions of the Financial Regulation describe the main principles applicable to the budget, the establishment process, structure and implementation of the budget, including rules applicable to procurement and grants.

Budgetary principles<sup>14</sup> have direct impact on FP management. In the context of this study, it is important to note that, while derogations to the Financial Regulation are possible under certain conditions, these derogations shall remain in the limits of the budgetary principles.

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<sup>12</sup> 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), whereas (2), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:391:0001:0018:EN:PDF>; **and** Council Regulation (Euratom) No 1908/2006 of 19 December 2006 laying down the rules for the participation of undertakings, research centres and universities in action under the Seventh Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2007 to 2011), whereas (2), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0001:0059:EN:PDF>.

<sup>13</sup> 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), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:412:0001:0041:EN:PDF>

<sup>14</sup> Unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management, transparency

**Financial Regulation<sup>15</sup> Article 2**

*Any provision concerning the implementation of the revenue and expenditure of the budget, contained in another legislative act, must comply with the budgetary principles set out in Title II.*

**Implementing Rules<sup>16</sup> Article 2**

**Legislative acts concerning the implementation of the budget** (Articles 2 and 49 of the Financial Regulation)

*The Commission shall annually update in the preliminary draft budget the information on the acts referred to in Article 2 of the Financial Regulation.*

*Any proposal or amendment to a proposal submitted to the legislative authority shall clearly indicate the provisions containing derogations from the Financial Regulation or from this Regulation and state the specific reasons justifying such derogations in the relevant Explanatory Memorandum.*

The Financial Regulation also provides information about grants, which is of particular relevance in the context of FPs. Grants are defined as direct financial contributions aiming to “finance an action intended to help achieve an objective forming part of a European Union Policy”<sup>17</sup>, such as the European research Policy. Before 2003<sup>18</sup> grants were not covered by the Financial Regulations. The new Financial Regulation introduced a Title IV section about grants, covering the scope and form within which grants shall operate (Chapter 1), the principles they are subject to (Chapter 2), their award procedure (Chapter 3), their pace of payment and control (Chapter 4) and requirements for their implementation (Chapter 5).

Title III of the Financial Regulation adds Specific Provisions to the Common Provisions. Article 160<sup>19</sup> states that the Common Provisions and Transitional and Final Provisions of the Financial Regulation are in principle applicable to research, but it also clearly states that research activities can be subject to derogations.

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<sup>15</sup> Financial Regulation, Op.cit.

<sup>16</sup> Implementing rules, Op.cit.

<sup>17</sup> Financial Regulation, Op. cit., Article 108

<sup>18</sup> The Financial Regulation entered into force on 1 January 2003

<sup>19</sup> Art. 160a and 161 of the Financial Regulation – as well as Art. 229 and 230 of the Implementing Rules – are also applicable to research FPs. However, we have not identified them as source of administrative burden for beneficiaries. Therefore, they will not be analysed in this study.

**Financial Regulation<sup>20</sup> Article 160**

*1. Parts One [Common Provisions] and Three [Transitional and Final Provisions] shall apply to the research and technological development appropriations save as otherwise provided in this Title.*

*[...]*

However, as stated above, these derogations are limited by respect of the budgetary principles.

Art. 229 of the Implementing Rules also define the types of operations foreseen in the field of research. In particular, this article describes direct actions (directly carried out by the JRC) and indirect actions (contracted to third parties) carried out under the Framework programme for research.

**Implementing Rules<sup>21</sup> Article 229****Types of operations**

*(Article 160 of the Financial Regulation)*

*(...)*

**2. Direct action** shall be carried out by the establishments of the JRC and shall in principle be entirely financed from the budget. It shall consist of:

- (a) research programmes;
- (b) exploratory research activities;
- (c) scientific and technical support activities of an institutional nature.

**3. Indirect action** shall consist of programmes carried out under contracts to be concluded with third parties. The JRC may participate in those activities on the same basis as third parties.(...)

### 2.2.2. Legal Framework of the FPs

The FPs are adopted by Decision of the European Parliament and the Council (ordinary legislative procedure). Specific Programmes within the FPs are also adopted by Council Decision, following a special legislative procedure. While the Decisions remain general and set the objectives and main principles ruling the Programmes, the Rules for Participation, rules for submission of proposals and related evaluation, selection and award procedures explain in further detail how the Programmes will be implemented. Beside these documents, published once and amended when necessary, annual work programmes, calls for proposals and guideline for applicants are published when relevant, generally on an annual basis. These documents are available for the public, in particular applicants and beneficiaries, on the Cordis website<sup>22</sup>.

<sup>20</sup> Financial Regulation, Op.cit.

<sup>21</sup> Implementing Rules, Op.cit.

<sup>22</sup> Documents concerning FP5, FP6 and FP7: [http://cordis.europa.eu/home\\_en.html](http://cordis.europa.eu/home_en.html)

### 2.2.2.1. Decisions adopting the FPs<sup>23</sup> and Specific programmes

Framework Programmes (FPs) are multi-annual research funding programmes adopted by Decision and implemented at EU level. The first FP was adopted in 1983<sup>24</sup> for a three-year period. This Programme was followed from 1987 to 2006 by five four-year FPs. The ongoing FP7, adopted in 2006<sup>25</sup>, has supported research and technological development in Europe since 2007 and will last until 2013, with a total budget of €4 billion.

FP7 contains two Framework programmes, one Programme of the European Community (EC)<sup>26</sup> and the other one for the European Atomic Energy Community (Euratom)<sup>27</sup>.

EC FP7 is divided into four main specific programmes, each of them focusing on a specific objective of the FP:

- **The "Cooperation" programme<sup>28</sup>** provides project funding for collaborative, transnational research. The programme is organised through thematic priorities such as health, energy, transport etc.
- **The "Ideas" programme<sup>29</sup>** provides project funding for individuals and their teams engaged in frontier research. This programme is managed by the **European Research Council (ERC)**.
- **The "People" programme<sup>30</sup>** funds actions to improve the training, career development, and mobility of researchers between sectors and countries world-wide. It is managed under the **Marie Curie** programme.

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<sup>23</sup> For example 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)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:412:0001:0041:EN:PDF>

<sup>24</sup> Council Resolution on 25 July 1983 dealing with framework programmes for Community research, development and demonstration activities and with the first framework programme 1984 to 1987, OJ No C 208, 4. 8. 1983, p. 1

<sup>25</sup> 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 (2007-13)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:412:0001:0041:EN:PDF>

<sup>26</sup> Sources: Cordis website and Second FP7 Monitoring Report (<http://ec.europa.eu/research/index.cfm?pg=reports>)

<sup>27</sup> Council Decision 969/2006/EC of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011).

<sup>28</sup> Council Decision 2006/971/EC of 19 December 2006 concerning the Specific Programme Cooperation implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0086:0242:EN:PDF>

<sup>29</sup> Council Decision 2006/972/EC of 19 December 2006 concerning the specific programme: Ideas implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0243:0271:EN:PDF>

<sup>30</sup> Council Decision 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)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0272:0298:EN:PDF>

- **The "Capacities" programme**<sup>31</sup> funds actions that are designed to improve Europe's research infrastructure and the research capacity of SMEs. It also hosts smaller programmes relating to *Science in Society*, *Regions of Knowledge*, *Research Potential*, *International Cooperation*, and the *Coherent Development of Research Policies*.

Beside these four specific programmes, FP7 comprises **the Joint Research Centre (JRC)**, which supports direct actions relating to non-nuclear research under a separate specific programme under FP7<sup>32</sup>. JRC direct actions in the field of nuclear research<sup>33</sup> and the indirect actions supported by the EURATOM 7th Framework Programme for Nuclear Research and Training Activities<sup>34</sup> comprise distinct strands of FP7. The JRC was initially established by the Euratom Treaty and has since become a leading institute of nuclear research in Europe.

**Euratom** FP7 is distinct from the European Community (EC) and Euratom energy research activities are managed by the common Community institutions under a separate Framework Research Programme and two specific programmes, one covering indirect<sup>35</sup> actions in the fields of **fusion energy research** and **nuclear fission and radiation protection**, the other covering direct<sup>36</sup> actions in the **nuclear field** (undertaken by the JRC, as explained above).

Figure 1 provides an overview of the structure of the FPs and its evolution from FP5 to FP7.

Terminology between the FPs has changed over time, in particular the name of programmes/actions, funding schemes/instruments.

Figure 2 below provides an overview of evolution of FPs funding schemes over time.

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<sup>31</sup>Council Decision 2006/974/EC of 19 December 2006 on the Specific Programme: Capacities implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0299:0367:EN:PDF>

<sup>32</sup>Council Decision 2006/975/EC of 19 December 2006 concerning the Specific Programme to be carried out by means of direct actions by the Joint Research Centre under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0368:0403:EN:PDF>

<sup>33</sup>Council Decision 2006/977/Euratom of 19 December 2006 concerning the Specific Programme to be carried out by means of direct actions by the Joint Research Centre implementing the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0404:0433:EN:PDF>

<sup>34</sup>Council Decision 2006/970/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)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0060:0085:EN:PDF>

**and** Council Decision 2006/976/Euratom of 19 December 2006 concerning the Specific Programme implementing the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0404:0433:EN:PDF>

<sup>35</sup> [http://cordis.europa.eu/fp7/euratom/indirect\\_en.html](http://cordis.europa.eu/fp7/euratom/indirect_en.html)

<sup>36</sup> [http://cordis.europa.eu/fp7/euratom/direct\\_en.html](http://cordis.europa.eu/fp7/euratom/direct_en.html)

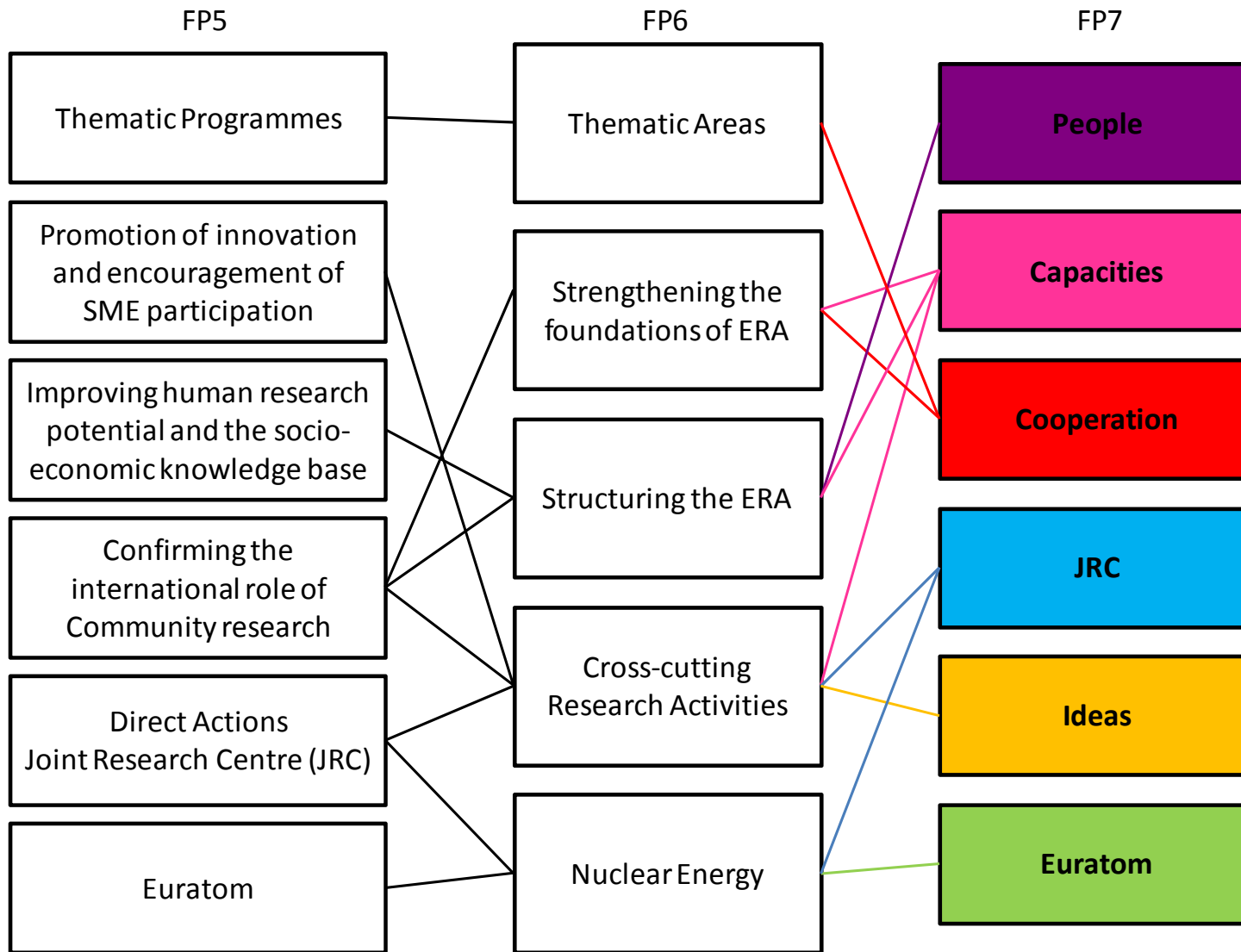


Figure 1 - Evolution of FP structure

Source : FP5, FP6 and FP7 relevant web-pages on CORDIS

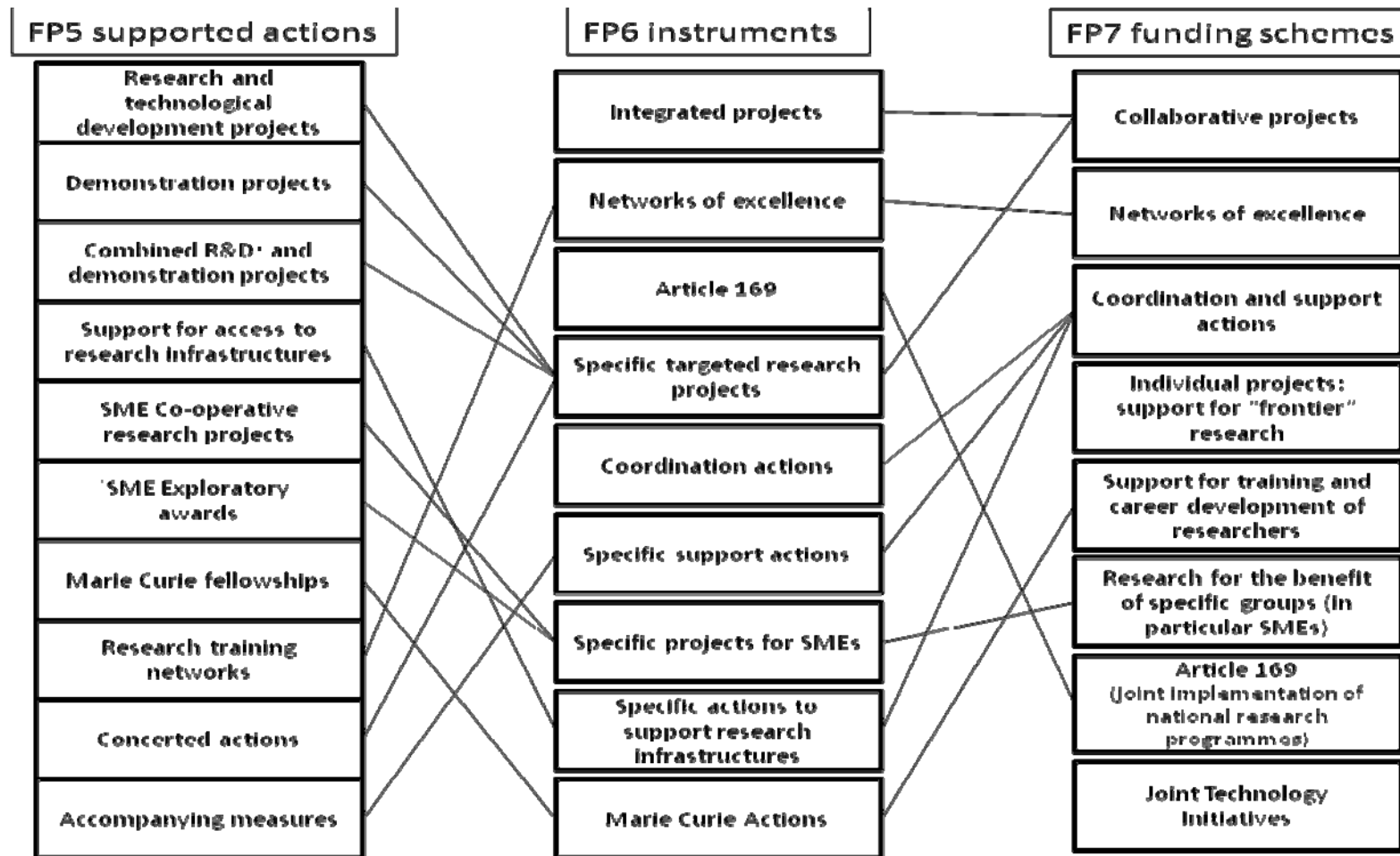


Figure 2 - Evolution of FP funding schemes

Source : FP5, FP6 and FP7 relevant web-pages on CORDIS

#### 2.2.2.2. Rules for Participation in the FPs<sup>37</sup>

The Rules for Participation in the FPs are adopted by Regulation and are applicable to all programmes under the FPs<sup>38</sup>.

The Rules for Participation state that it is the responsibility of the Commission to ensure the implementation of the framework programme and its specific programmes, including the related financial aspects.

Rules for Participation aim to further detail the rules set in the Decision adopting a FP. In particular, it specifies the conditions participants should fulfil in order to apply and benefit from EC support under the FP:

The Rules for Participation in FP7<sup>39</sup> define the conditions for participation, but also the procedures in place (calls for proposals, evaluation and selection of proposals and award of grants, implementation and grant agreements, etc) and the limits of the community financial contribution (eligibility for funding and forms of grants, payment, distribution, recovery and guarantees). The Rules for Participation also deal with intellectual property (dissemination, use and access rights) provisions related to consortia, monitoring and evaluation and indirect actions and communication of information, etc.).

#### 2.2.2.3. Rules for submission of proposals and the related evaluation, selection and award procedures

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<sup>37</sup> Council Regulation (Euratom) No 1908/2006 of 19 December 2006 laying down the rules for the participation of undertakings, research centres and universities in action under the Seventh Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2007 to 2011)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0001:0059:EN:PDF>;

and 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)

<http://cordis.europa.eu/documents/documentlibrary/90798691EN6.pdf>

<sup>38</sup> Article 1 of 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),

<http://cordis.europa.eu/documents/documentlibrary/90798691EN6.pdf>;

and article 1 of Council Regulation (Euratom) No 1908/2006 of 19 December 2006 laying down the rules for the participation of undertakings, research centres and universities in action under the Seventh Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2007 to 2011)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:400:0001:0059:EN:PDF>

<sup>39</sup> 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),

<http://cordis.europa.eu/documents/documentlibrary/90798691EN6.pdf>.

These rules - one for FP7<sup>40</sup> (EC and Euratom) and one for the ERC<sup>41</sup> - establish the rules for the proposals submission, and the related evaluation, selection and award procedures, for the FP7. Publication of such rules for submission is required by the Rules for Participation.

Rules for submission establish the basic procedures that the Commission will follow in accordance with the Rules for Participation, the Financial Regulation and the Commissions' Rules of Procedure<sup>42</sup>.

#### 2.2.2.4. Annual work programmes

The work programmes implementing the Specific Programmes may set out specific evaluation criteria or provide further details on the application of the evaluation criteria, which will be reflected in the call for proposals. Work programmes are adopted on an annual basis.

#### 2.2.2.5. Calls for proposals, Model Grant Agreement and guidelines for applicants

The call and associated Guide for Applicants may spell out in more detail the way in which these rules and procedures will be implemented and, where relevant, which options are to be followed.

Grant Agreements rule the contractual relations between the Commission and the beneficiaries of a grant. Model Grant Agreements are different from a programme to another. Separate model grant agreements have been adopted for the 'People' (Marie Curie) and for the 'Ideas' (European Research Council) Specific Programmes.

The grant agreements do not add many details for beneficiaries, as they mainly take over provisions of the Financial Regulation<sup>43</sup>.

Additionally, specific guidelines are provided to applicants. For instance, a guide to Financial Issues relating to FP7 Indirect Actions<sup>44</sup> provides applicants with specific guideline for the financial issues related to the Grant Agreement (section 2.2.2.6). In particular, the guide aims to

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<sup>40</sup>Rules for submission of proposals, and the related evaluation, selection and award procedures, COM (2008) 4617, version 3 of 21 August 2008

[http://ec.europa.eu/research/participants/portal/ShowDoc/Extensions+Repository/General+Documentation/Legal+documents+for+implementation/Rules+for+submission%2C+evaluation%2C+selection%2C+award/fp7-evrules\\_en.pdf](http://ec.europa.eu/research/participants/portal/ShowDoc/Extensions+Repository/General+Documentation/Legal+documents+for+implementation/Rules+for+submission%2C+evaluation%2C+selection%2C+award/fp7-evrules_en.pdf)

<sup>41</sup> ERC Rules for the submission of proposals and the related evaluation, selection and award procedures for indirect actions under the Ideas Specific Programme of the Seventh Framework Programme (2007-2013)

[ftp://ftp.cordis.europa.eu/pub/fp7/docs/erc-evrules\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/erc-evrules_en.pdf)

<sup>42</sup> Rules of Procedure of the Commission, C(2000) 3614

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2000Q3614:20060101:EN:PDF>

<sup>43</sup> On eligible costs of the project, see FP7 Model Grant Agreement – Annex II – General Conditions, II.14

[ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-annex2-v5\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-annex2-v5_en.pdf)

<sup>44</sup> Guide to Financial Issues relating to FP7 Indirect Actions

[ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide_en.pdf)

help participants to understand and interpret the financial provisions of the Model Grant Agreement (GA). However, it is important to note that this guide was published for information purpose only and has no legal value.

#### 2.2.2.6. Proposal, negotiation and signed Grant Agreement

Proposals submitted in answer to a call are evaluated by a group of experts. Pre-selected applicants may be invited for project negotiations following the evaluation of proposals. The objective of the negotiation process is to agree on the scientific-technical details of the project and to collect financial and legal information needed for preparing a Grant Agreement as well as for the project management and reporting on the project execution<sup>45</sup>. The negotiation phase aims to revise the proposal, and in particular to modify its financial and/or technical content in order to find an agreement between the Commission and the applicants, represented by their coordinator.

When this agreement is reached, both parts sign the Grant Agreement, in line with the “revised” proposal.

### 2.3. Hierarchy of rules

The Figure below presents the vehicles of the rules applicable to FPs and their level in the rule hierarchy<sup>46</sup>.

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<sup>45</sup> Source: FP7 “Negotiation Guidance Notes”, Version 27/01/2009  
([ftp://ftp.cordis.europa.eu/pub/fp7/docs/negotiation\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/negotiation_en.pdf))

<sup>46</sup>Legend:

**EC:** European Community

**ERC:** European Research Council

**Em:** Euratom

**FP:** Framework Programme (2)

**FR:** Financial Regulation

**G:** Guidance documents (20 available online when this report was finalised)

**GA:** Guidelines for Applicants (1 per call)

**IR:** Implementing Rules

**JRC:** Joint Research Centre

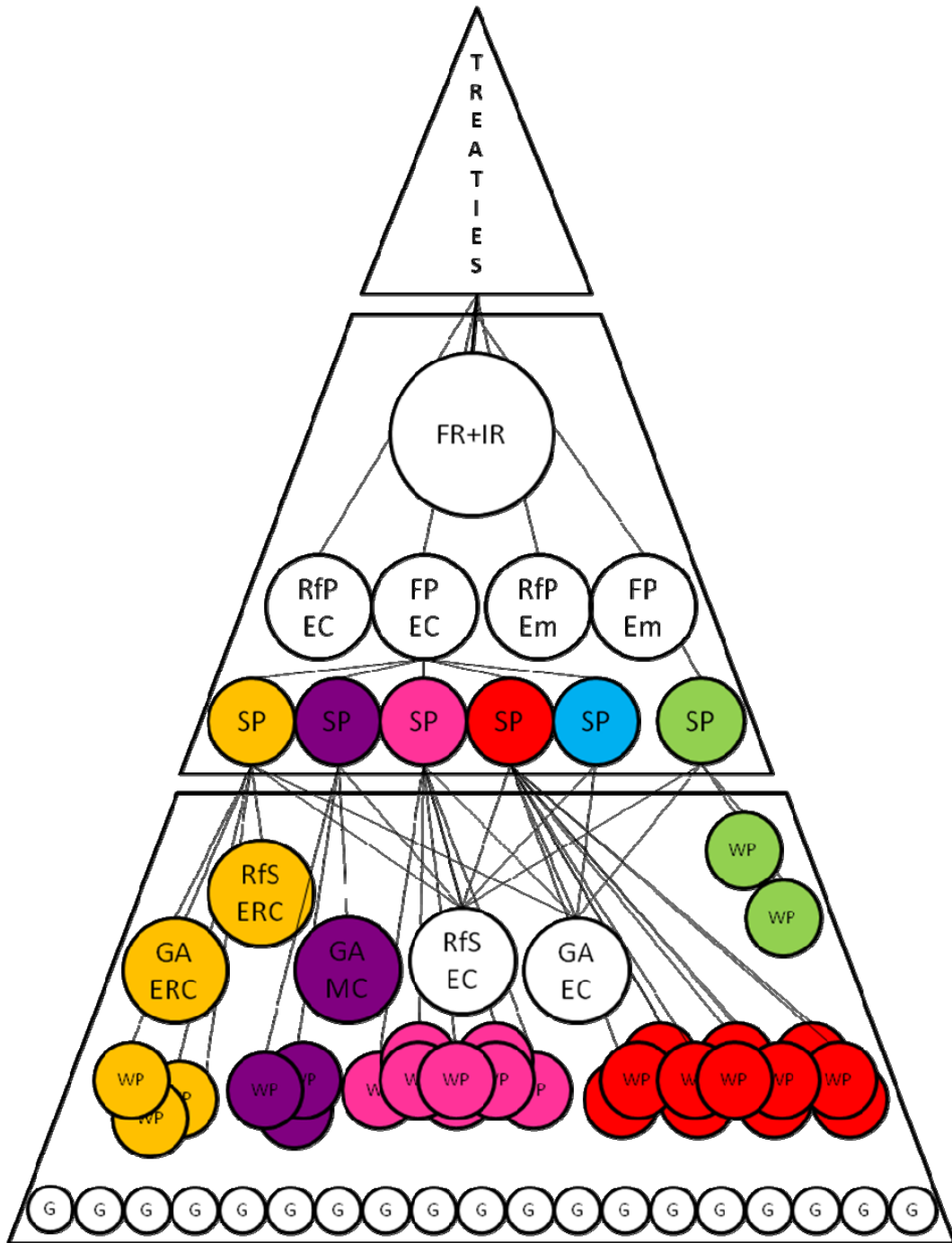
**MC:** Marie Curie

**RfP:** Rules for Participation (1 for EC, one for Euratom)

**RfS:** Rules for Submission of proposals (1 for EC+Euratom, 1 for ERC)

**SP:** Specific Programme (5)

**WP:** Work programmes (5 per year)



Source : FP7 relevant web-pages on CORDIS <sup>47</sup>

Figure 3 - Rules applicable to FPs

<sup>47</sup> On the basis of information found on CORDIS about FP7 “find a document” ([http://cordis.europa.eu/fp7/find-doc\\_en.html](http://cordis.europa.eu/fp7/find-doc_en.html))

### 3. FINANCIAL RULES APPLICABLE TO THE RESEARCH FRAMEWORK PROGRAMMES

The evolution of the financial rules applicable to FPs generally originates from the incorporation of the changes applied to the EU Financial Regulation / Implementing Rules, and reflects the evolution of research programmes and activities specificities. This evolution aims, among other objectives, at finding a better balance between transparency and flexibility for the EU budget implementation, including grants management. In addition, specific financial rules (mainly concerning the Guarantee Fund and ex ante certification) were also designed for the FP7 within this evolution context.

Such evolution has impacted both positively and negatively the implementation of EU funded research projects by beneficiaries. Changes of rules for the submission and evaluation of proposals, and the introduction of the redress procedure and of the Guarantee Fund are unanimously referred to as an improvement.

This chapter focuses on the description of the financial rules that have been identified as creating an unnecessary burden or financial risks for applicants and beneficiaries. Issues related to these rules are analysed in Chapter 4.

#### 3.1. Interest on Pre-Financing

In order to provide beneficiaries with treasury funds at the beginning and during the implementation of a project, grant agreements generally foresee the payment of one or several pre-financing. In general, such pre-financing remains the property of the Commission until it is “cleared” up to the limit of eligible expenses claimed by the beneficiary.

As a consequence, in case interest is generated by the deposit of pre-financing on a bank account, this interest is the property of the Commission and constitutes revenue of the project to be taken as counterpart of the eligible expenses declared by the beneficiary.

#### **Financial Regulation<sup>48</sup> Article 5a**

*1. Interest generated by pre-financing payments shall be assigned to the programme or the action concerned and deducted from the payment of the balance of the amounts due to the beneficiary (...).*

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<sup>48</sup> Financial Regulation, Op.cit.

The Financial Regulation also foresees exceptions to this rule:

### **Financial Regulation<sup>49</sup> Article 5a**

*2. Interest shall not be due to the Communities in the following case:*

*(a) pre-financing which does not represent a significant amount, as determined in the implementing rules; (...);*

*(c) pre-financing paid to Member States;*

*(b) pre-financing paid under a procurement contract within the meaning of Article 88;*

*(d) pre-financing paid under the pre-accession aid;*

*(e) advances paid to members of the institutions and to staff in accordance with the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, hereinafter ‘the Staff Regulations’;*

*(f) pre-financing paid in the framework of joint management as referred to in point (c) of Article 53(1).*

### **Implementing Rules<sup>50</sup> Article 3**

#### **Scope of pre-financing**

*(Article 5a of the Financial Regulation)*

*1. In the case of direct centralised management involving a number of partners, indirect centralised management and decentralised management within the meaning of Article 53 of the Financial Regulation, the rules laid down in Article 5a of the Financial Regulation shall apply solely to the entity receiving pre-financing directly from the Commission.*

*2. Pre-financing shall be regarded as representing a significant amount within the meaning of Article 5a(2)(a) of the Financial Regulation if the amount is higher than EUR 50 000.*

*However, for external actions pre-financing shall be regarded as representing a significant amount if the amount is higher than EUR 250 000. For crisis management aid and humanitarian aid operations, pre-financing shall be regarded as representing a significant amount if it exceeds per agreement EUR 750 000 at the end of each financial year and is for projects of a duration of more than 12 months.*

The Model Grant Agreement for FP7 projects refers to the Financial Regulation:

<sup>49</sup> Financial Regulation, Op.cit.

<sup>50</sup> Implementing Rules, Op.cit.

1. *Pre-financing* remains the property of [*the Union*] [*Euratom*] until the final payment.
2. The *Commission* shall recover from the *coordinator*, for each reporting period following the implementation of the agreement, the amount of interest generated when such pre-financing exceeds the amount fixed in the *Financial Regulation* and its *Implementing Rules*.

However the Guide to Financial Issues relating to FP7 Indirect Actions<sup>51</sup> gives an interpretation of this rule, imposing the management of EC funding in an interest-bearing account for all project coordinators under FP7.

### **Article II.19 of ECGA<sup>52</sup> – Interest yielded by the pre-financing provided by the Communities**

This Article in the GA makes reference to the Financial Regulation of the European Communities (Art. 5a FR) and its Implementing Rules (Art. 3 IR); they refer to the obligation to deduct the interests generated by the pre-financing from the payment of the balance of the amounts due to the beneficiary when:

- such pre-financing represents a significant amount and
- only for the entity receiving pre-financing direct from the Commission (the coordinator in a multi-partner project or the beneficiary in a mono-partner project).

**The coordinator should receive and manage the EC funding in an interest-bearing bank account.**

The issues linked to the interest-bearing bank account in FP7 will be further developed in the section 4.1.3.3.

## **3.2. Cost calculation**

### **3.2.1. Eligible costs**

Costs incurred by beneficiaries during a project may be considered for reimbursement only if they satisfy the eligibility criteria laid down in the Rules for Participation<sup>53</sup>, in the model contract<sup>54</sup> (FP6) or the model grant agreement<sup>55</sup> (FP7).

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<sup>51</sup> Guide to Financial Issues relating to FP7 Indirect Actions, version 2 April 2009 ([ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide_en.pdf))

<sup>52</sup> ECGA refers to the Model Grant Agreement for projects carried out under the EC FP7

<sup>53</sup> 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), op. cit., whereas (2), Art.14, §2 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:391:0001:0018:EN:PDF>;

<sup>54</sup> FP6 model contract, Art.II.19 (<http://cordis.europa.eu/fp6/find-doc-specific.htm#modelcontracts>)

<sup>55</sup> Art.II.14 of ECGA

In addition, the notion of eligibility may be impacted by restrictions introduced by the definitions of direct and indirect costs (including specific provisions of some instruments), the type of activities inherent to an instrument, and the method used for (indirect) cost calculation (cost models defined in FP6, combination of actual costs plus flat rates or simplified method for FP7).

To be considered as eligible, costs must satisfy the following criteria, which are common to FP6 and FP7:

(i) **Actual<sup>56</sup>:**

Costs must be real and not estimated. Beneficiaries may however declare estimates should actual costs not be available when issuing certificates on financial statements. In this case, two conditions should be fulfilled:

- Estimates should be as close to reality as possible
- They should be established in conformity with the accounting principles of the beneficiary

Use of estimates must be clearly mentioned in beneficiaries' financial statements, and necessary adjustments must be reported for in the financial statements for the subsequent reporting period.

Moreover, beneficiaries may opt to declare **average personnel costs** if:

- Consistent with the management principles and usual accounting practices
- Based on a certified methodology approved by the Commission<sup>57</sup>

(ii) **Incurred by the beneficiary<sup>58</sup>:**

Beneficiaries must keep evidence (supporting documents, bookkeeping and payment) for all the costs incurred, up to five years after the project.

(iii) **Incurred during the duration of the project<sup>59</sup>:**

The project duration and start date defined in Art.3 of ECGA determines the period of eligibility of costs for a project. For beneficiaries using accrual accounting systems, supporting documents as well as effective payments might be registered outside this period, but the related costs may still be eligible, if their generating event occurs during the eligibility period (e.g. salaries paid after the project but referring to activities conducted during the project) and as long as the corresponding debt is certain.

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<sup>56</sup> Art. II.14.1.a) of ECGA

<sup>57</sup> Art. II.4 of ECGA – see infra, CoMAv

<sup>58</sup> Art. II.14.1.b) of ECGA

<sup>59</sup> Art. II.14.1.c) of ECGA – an exception is foreseen regarding costs related to final reports, financial certifications and financial reviews.

- (iv) **Determined according to the usual accounting and management principles and practices of the beneficiary<sup>60</sup>**

Costs must be determined according to :

- Applicable accounting rules of the country where the beneficiary is established;
- Usual accounting and management principles and practices of the beneficiary.

It is stressed that this principle is not absolute and must be moderated on two aspects:

- It cannot be invoked to deviate from other provisions of the ECGA – e.g. although beneficiaries' accounting principles may recognise VAT as an eligible cost, article II.14.3.a clearly stipulates that VAT is not an eligible cost;
- Beneficiaries cannot create specific accounting principles for FP7 projects that would deviate from their usual accounting practice, except when they need to introduce changes in order to align with other provisions of the ECGA – e.g. time recording practices

- (v) **Used for the sole purpose of achieving the objectives of the project and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness<sup>61</sup>**

Costs must be reasonable and comply with the sound financial management principles and with the objectives of the project.

- (vi) **Recorded in the accounts of the beneficiary and, in the case of any contribution with third parties, recorded in the accounts of the third parties<sup>62</sup>**

In case a third party is involved in a project, its costs may be eligible if they have been identified during the negotiations<sup>63</sup>.

- (vii) **Indicated in the estimated overall budget annexed to the ECGA<sup>64</sup>**

Transfers of costs between costs items identified in the budget may be authorised without a supplementary agreement.

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<sup>60</sup> Art. II.14.1.d) of ECGA

<sup>61</sup> Art. II.14.1.e) of ECGA

<sup>62</sup> Art. II.14.1.f) of ECGA

<sup>63</sup> Art. II.14.2 of ECGA

<sup>64</sup> Art. II.14.1.g) of ECGA

### 3.2.2. Non-eligible costs

Both FP6 model contract<sup>65</sup> and FP7 model grant agreement<sup>66</sup> identify types of costs that may not be charged to a project. The list of non-eligible costs is not exhaustive, and consists of the following minimum costs types:

- Identifiable indirect taxes<sup>67</sup>, including VAT or duties;
- Interest owed;
- Provisions for possible future losses or charges;
- Exchange losses;
- Costs declared, incurred or reimbursed in respect of another Community project;
- Costs related to return on capital;
- Debt and debt service charges;
- Excessive or reckless expenditure;
- Any cost which does not meet the conditions for its eligibility

### 3.2.3. Cost Models for FP6 projects

#### 3.2.3.1. Nature of grants and Cost Models applicability

According to the FP6 Rules for Participation, Community contribution to a grant may take the two following forms:

- **Lump sum payments**<sup>68</sup>
- **Reimbursement of eligible costs**<sup>69</sup> (i.e. “grant to Budget”<sup>70</sup> and “grant to Integration”<sup>71</sup>)

Most of indirect actions under the FP6 are granted through the reimbursement of eligible costs. Costs models are applicable to all instruments in the FP6 where the Community contribution takes the form of a reimbursement of eligible costs. They do not apply to instruments where the Community contribution is a lump sum grant.

#### 3.2.3.2. Direct and indirect costs

Cost models are designed for the calculation of three types of costs:

- **Direct costs**<sup>72</sup> : eligible costs **directly associated to a project**, determined by the contractor<sup>73</sup> in accordance with its usual accounting practice.

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<sup>65</sup> Art.II.19.2 of model contract

<sup>66</sup> Art.II.14.3 of ECGA

<sup>67</sup> With the exception of airport taxes

<sup>68</sup> Article 14.1 b) of the Rules for Participation, op. cit.

<sup>69</sup> Article 14.1 a) and 14.1 c) of the Rules for Participation.

<sup>70</sup> Concerns : Networks of Excellence.

<sup>71</sup> Concerns : Integrated Projects, Specific Targeted Projects, Specific Actions for SMEs, Integrated Infrastructure Initiatives, Coordination Actions, and certain Specific Support Actions.

<sup>72</sup> Article II.20.1 of Annex II (General conditions) to the FP6 model contract, op. cit.

- **Direct additional costs** : costs additional to the normal recurring costs of the contractor and not covered by any sources of funding.
- **Indirect costs**<sup>74</sup> : costs that are **not directly related to the project**<sup>75</sup>, not identified as direct costs, and which do not include any costs already directly charged to the project. They are determined in accordance with the accounting principles of the contractor and are in direct relationship with the direct eligible costs of the project.

To be considered eligible, all costs must be declared according to the type of activities in which the beneficiary is involved and the activities allowed by each instrument of FP6, i.e.<sup>76</sup> :

- Research and technological development or innovation activities
- Demonstration activities
- Training activities
- Management of the consortium activities
- Other specific support activities

The following table shows the different types of activities proposed for each instrument<sup>77</sup> :

**Table 1 – Type of activities per type of instrument**

Types of Instruments / Actions - Types of Activities		Research and technological development or innovation activities	Demonstration activities	Training activities	Management of the consortium activities	Other specific activities
Network of Excellence					x	x
Integrated Projects		x	x	x	x	
Specific targeted research or Innovation project		x	x		x	
Specific research project for SMEs	Cooperative research	x			x	
	Collective research	x		x	x	
Integrated Infrastructure Initiative		x	x		x	x
Coordination action	Classical			x	x	x
	For infrastructure				x	x
Specific support action					x	x

<sup>73</sup> Direct costs incurred by subcontractors are, under certain conditions and up to certain limits, also eligible, provided that the prior Commission's agreement for subcontracting was obtained.

<sup>74</sup> Article II.21.1 of Annex II (General conditions) to the FP6 model contract

<sup>75</sup> Typically, these costs encompass : general administration and management, costs of office or laboratory space (incl. buildings rent, depreciation, maintenance, water, heating, electricity, ...), communication and mailing costs, office equipment (hardware, software, ...), miscellaneous recurring consumables, ...

<sup>76</sup> Art.II.2 of Annex II of FP6 model contract.

<sup>77</sup> Guide to Financial Issues relating to Indirect Actions of the Sixth Framework Programme – Version – February 2005, p.43, op. cit.

### 3.2.3.3. Costs Models<sup>78</sup>

Rules for Participation under FP6 propose three main types of cost models :

- **Full Cost with actual indirect costs (FC)** : In this model, all eligible direct and indirect costs are charged by the contractor;
- **Full Cost with indirect flat rate (FCF)** : In this model, all eligible direct costs and a flat rate for indirect costs are charged. The flat rate is 20% of all direct eligible costs minus the cost of sub-contracts;
- **Additional Costs with indirect flat rate costs (AC)**: In this model, all eligible direct additional costs and a flat rate for indirect costs are charged. The flat rate is 20% of all direct additional costs minus the cost of sub-contracts.

Two additional cost models are available to participants for **activities providing transnational access to infrastructures** :

- **User Fee<sup>79</sup> (UF)** : this model is similar to the FCF model. Its specificities lie in the calculation method for **eligible direct costs**, based on a user fee;
- **Additional Costs with flat rate for indirect actions (AC)** : see above.

For participants involved in an activity providing transnational access to infrastructure as well as other activities relating to Integrated Infrastructure Initiatives or Specific Support Actions for Infrastructures, two different cost reporting models might be used for the same indirect action.

### 3.2.3.4. Access to cost models<sup>80</sup>

Access conditions to cost models depend on the type of legal entity and, for some of them, to their accounting capacity, as shown in the table below :

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<sup>78</sup> FP6 Rules for Participation, art.14, §2

<sup>79</sup> Art.III.13.2 of Annex III to FP6 model contract.

<sup>80</sup> Guide to Financial Issues relating to Indirect Actions of the Sixth Framework Programme – Version February 2005, p.48.

**Table 2 - Cost reporting models per type of legal entities**

Cost reporting model per type of Legal Entity				
Type of Legal Entity	Accounting capacity to distinguish direct and indirect costs	Cost reporting model		
		FC	FCF	AC
Physical Persons	N/A			x
SMEs	N/A	x	x	
Non-commercial or non-profit organisations, International organisations	Yes	x	x	
	No		x (1)	x
Other Legal Entities	N/A	x		
(1) Only if the direct costs of the project can be calculated				

In principle, the cost reporting model adopted by a legal entity must be applied consistently in all FP6 contracts in which this legal entity is involved, whatever the type of instrument. However, derogations are foreseen<sup>81</sup> that enable any legal entity:

- Eligible for the AC model in a first contract to change for the FC or the FCF model;
- Eligible for the FCF model in a first contract to change for the FC model.

Such changes in the use of a cost reporting model apply to all the legal entity's subsequent contracts<sup>82</sup>.

For the particular case of activities related to transnational access to Infrastructure, access conditions to the specific cost reporting models are shown in the table below<sup>83</sup>:

<sup>81</sup> Art.II.22, §4 of of Annex II of FP6 model contract

<sup>82</sup> With an exception for certain RTD performers in cooperative and collective research projects.

<sup>83</sup> Guide to Financial Issues relating to Indirect Actions of the Sixth Framework Programme – Version February 2005, p.51.

**Table 3 - Cost reporting models for an "I"<sup>3</sup><sup>84</sup> and an "SSA for Infrastructure"<sup>85</sup>**

Cost reporting model per type of Legal Entity for I <sup>3</sup> and SSA for Infrastructure						
Type of Legal Entity	Accounting capacity to distinguish direct and indirect costs	Cost reporting model for all activities except transnational access			Cost reporting model for transnational access	
		FC	FCF	AC	AC	UF
SMEs	N/A	x	x		x	x (2)
Non-commercial or non-profit organisations, International organisations	Yes	x	x			x
	No		x (1)	x		x
Other Legal Entities	N/A	x				x
(1) Only if the direct costs of the project can be calculated						
(2) The contractor must be able to justify direct eligible costs relating to the project						

Finally, the two following specificities must be mentioned:

- Contractors using the FC model may not claim their actual indirect costs for Coordination actions, and Specific Support actions<sup>86</sup>;
- Physical persons participating as contractors in a project use the AC model and may not charge any labour costs for their personal contribution to the project<sup>87</sup>.

### 3.2.4. Cost calculation for FP7<sup>88</sup>

#### 3.2.4.1. Principle

Maximum EC grant is based on an estimation of eligible costs prepared by the partners and negotiated with the Commission<sup>89</sup>, to which a reimbursement rate is applied according to the activity and the type of organisation.

To be eligible for reimbursement, costs incurred by beneficiaries in the course of a project must satisfy the eligibility criteria provisioned in the model Grant Agreement. The final decision concerning the nature and amount of eligible costs is always taken by the Commission. Such decision occurs at two levels :

- When analysing proposals for the establishment of the estimated budget of the project
- When examining the financial statements for the purposes of determining the EC contribution

<sup>84</sup> Integrated Infrastructure Initiative

<sup>85</sup> Specific Support actions

<sup>86</sup> FP6 model contract, Art.II.25.

<sup>87</sup> FP6 model contract, Art.II.22.3.

<sup>88</sup> Guide to Financial Issues relating to FP7 Indirect Actions, 02.04.2009.

<sup>89</sup> Art.5 of ECGA

### 3.2.4.2. Cost calculation method

Under FP7, there are no cost reporting models. The beneficiaries must declare their **actual costs** (with the possibility for a beneficiary to use average costs if this is approved by the Commission). Optionally, beneficiaries may opt to declare their actual direct costs plus a **flat rate** for indirect costs of 20% of the direct costs (minus sub-contracting and third party costs not incurred on the premises of the beneficiary).

A specific flat rate is also foreseen for certain types of organizations or activities, in order to assure the transition between the FP6 AC model to a real indirect cost method.

In FP7, all departments, faculties or institutes which are part of the same legal entity must use the same system of cost calculation (unless otherwise foreseen in the grant agreement).

- **Actual indirect costs**

Beneficiaries *who have an analytical accounting system* that can identify and group their indirect costs in accordance with the eligibility criteria must report their real indirect costs or choose the 20% flat rate option. The distribution of indirect costs to the different projects require the use of fair cost drivers. Different allocation methodologies are acceptable, if :

- They are in line with the general accounting policy of the beneficiary (allocation of indirect costs to projects via personnel, either as a percentage of the personnel costs or a fixed hourly rate);
- They are fair and reliable (and not unsubstantiated estimation).
- When another cost driver not based on personnel is used, the result of the application of this cost driver must not exceed the total amount of indirect costs to be allocated.

Organisations which do not aggregate their indirect costs at a detailed level (centre, department), but can aggregate them *at the level of the legal entity*, may use the simplified method as a modality of actual indirect costs calculation. This system can be used if the organisation does not have an accounting system with a detailed cost allocation, and does not require a certification by the Commission<sup>90</sup>. The simplified approach must be based on actual costs derived from the financial accounts of the last closed accounting year. The utilisation of the simplified method is subject to the following minimal requirements :

- The system must allow the beneficiary to identify and remove its indirect ineligible costs;
- It must (at least) enable the allocation of the overheads at the level of the legal entity to the individual projects by using a fair driver<sup>91</sup>;
- The system applied and subsequent costs declared must be in accordance with the usual accounting and management principles and practices of the beneficiary.

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<sup>90</sup> However, for the beneficiaries allowed to use the certification on the methodology – see section 3.3.2. –, this certification may cover the methodology of calculation of indirect costs, including the simplified method.

<sup>91</sup> If the overheads taken into account are all those of the beneficiary, the driver used for the calculation of the relevant rate will include all the activities of the beneficiary.

- **Flat rates**
  - **Flat rate of 20% :**

All beneficiaries may use this flat rate, whatever the accounting system they use. The base of calculation is the *total eligible direct costs* of the beneficiary, excluding the costs for subcontracting and the costs of resources made available by third parties that are not used on the premises of the beneficiary.

A beneficiary that opts for the flat rate of 20% for its first participation under FP7 may subsequently opt for the analytical actual indirect cost system or the simplified method in future participations (as long as its accounting system is adapted – see here above). This change will not affect the previous grant agreements, but the organisation will not be authorised to opt again for the flat rate.

- **Transitional flat rate of 60%**

This flat rate applies to grants awarded under calls for proposals closing before 1<sup>st</sup> January 2010, for the whole duration of the grant agreement. It aims at helping organisations during the transition from a flat rate calculation of their overheads (organisations using the AC cost basis in previous FPs) to an actual cost calculation.

The flat rate of 60% is subject to revision as from 1<sup>st</sup> January 2010<sup>92</sup>.

The use of this flat rate is conditioned by the status of the organisation<sup>93</sup>, its accounting system<sup>94</sup> and the type of funding scheme<sup>95</sup> envisaged.

### 3.2.5. Maximum reimbursement rates of eligible costs / Upper funding limits

The maximum reimbursement rates (FP6) / upper funding limit (FP7) depend on several factors:

- For FP6, these factors are the type of activity, the type of instrument and the type of cost model envisaged;

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<sup>92</sup> Based on an approximation of the real indirect costs concerned, but not lower than 40%.

<sup>93</sup> This flat rate may only be used by non-profit public bodies, secondary and higher education establishments, research organisations and SMEs, provided they already have this status at the start of the grant agreement, and up to the moment they lose their status;

<sup>94</sup> The organisation must be unable to identify with certainty its real indirect costs for the project. Therefore, an organisation that used the FC model under FP6 is presumed to be able to identify its real indirect costs and allocate them to the project, and may not in principle use the flat rate of 60%.

<sup>95</sup> The transitional flat rate is reserved to funding schemes which include research and technological development and demonstration activities.

- For FP7, the upper funding limit will be determined by the type of activity, the type of beneficiary and the funding schemes.

#### 3.2.5.1. FP6 maximum reimbursement rates of eligible costs

The following table<sup>96</sup> shows the different maximum reimbursement rates of eligible costs for a grant to the Budget, in function of the type of instrument, activities and cost models adopted by the beneficiaries:

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<sup>96</sup> Guide to Financial Issues relating to Indirect Actions of the Sixth Framework Programme – Version February 2005, p.152

Table 4 – Maximum reimbursement rates of eligible cost per type of cost models and activities

Instruments		Types of Activities						
		Research and Innovation-related activities	Demonstration activities	Training activities	Management of the consortium activities	Other specific activities (2)		
						Transnational access to infrastructure	Connectivity services	Others
Network of Excellence (NoE)					AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)			AC / FC / FCF : 100%
Integrated project		FC / FCF : 50% AC : 100%	FC / FCF : 35% AC : 100%	AC / FC / FCF : 100%	AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)			
Specific targeted research or innovation project		FC / FCF : 50% AC : 100%	FC / FCF : 35% AC : 100%		AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)			
Specific research project for SMEs	Cooperative research	FC / FCF : 50% AC : 100%			AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)			
	Collective research	FC / FCF : 50% AC : 100%		AC / FC / FCF : 100%	AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)			
Integrated infrastructure activities (I <sup>3</sup> )		FC / FCF : 50% AC : 100%	FC / FCF : 35% AC : 100%		AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)	UF / AC : 100%	AC / FC / FCF : 50%	AC / FC / FCF : 100%
Coordination action (CA)	Classical			AC / FC / FCF : 100% Except FC indir. Costs (1)	AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs) Except FC indir. Costs (1)			AC / FC / FCF : 100% Except FC indir. Costs (1)
	For infrastructures				AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs) Except FC indir. Costs (1)			AC / FC / FCF : 100% Except FC indir. Costs (1)
Specific support action (SSA)					AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs) Except FC indir. Costs (1)	UF / AC : 100%		AC / FC / FCF : 100% Except FC indir. Costs (1)
(1) Flat rate for FC indirect costs : 20% of their eligible direct costs minus the eligible direct costs of sub-contracts								
(2) Other specific activities :								
- For NoE : Joint Programme of Activities, except management of the consortium activities								
- For I <sup>3</sup> and SSA : personnel, durable equipment, travel and subsistence, subcontracting, consumables, including transnational access to infrastructure								
- For CA : coordination activities								

### 3.2.5.2. FP7 upper funding limits

Art.II.16 of the model grant agreement provisions differentiate upper funding limits to be applied for the reimbursement of eligible costs, depending on the type of activity and the category of beneficiary:

- (i) Research and technological development activities (RTD)

Art.II.16 of the model grant agreement foresees a general reimbursement rate of 50% of eligible costs, which may reach a maximum of 75% in the cases of not-for-profit public organisations, secondary and higher education establishments, research organisations and SMEs. The rate of 75% may also be applied in the case of security-related activities (under certain conditions).

- (ii) Demonstration activities : 50% of eligible costs

- (iii) Management activities : see “Other activities”

In general, management activities are considered as “other activities” (see below). In particular, when a participant has only management costs, the reimbursement rate of eligible costs may reach 100%, whatever its legal status. Therefore, it must be noted that unlike in FP6 (where management costs cannot exceed 7% of the Community contribution), FP7 financial rules do not foresee a ceiling for costs or percentage of EC funding.

- (iv) Training activities : see “Other activities”

- (v) Other activities : 100% of eligible costs

Other activities include : dissemination, networking, coordination, intellectual property, studies, promotion, ...

Moreover, the funding limits are also dependent on the funding schemes concerned, as shown in the table below<sup>97</sup> :

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<sup>97</sup> Art.II.16 ECGA, Guide to Financial Issues relating to FP7 Indirect Actions, p.70.

**Table 5 – Upper funding limits per funding scheme and type of legal entity**

Funding schemes	Non-profit public bodies, secondary and higher education establishments, research organisations and SMEs	All other organisations
Collaborative project	75%	50% (1)
Network of Excellence	75%	50% (1)
Coordination and Support Actions	100%	100%
Support for "frontier" research (ERC)	100%	100%
Research for the benefit of specific groups	75%	50% (1)
Support for training and career development of researchers (Marie Curie)	N/A	N/A

(1) 75% for security-related RTD activities (under certain conditions)

### 3.3. Certification procedures

In the perspective of the verification of beneficiaries' cost statements by the EC, FPs financial rules foresee, in certain circumstances, the obligation for beneficiaries to produce certificates delivered by independent auditors. Following criticisms from the Court of Auditors about the number of errors declared by beneficiaries to the Commission, certification rules in FP6 were based on ex post controls resulting in *Audit Certificates* issued by an external auditor and aiming to provide additional assurance to the Commission regarding the reality and accuracy of costs declared. FP7 financial rules maintain the ex post certification principle through the introduction of the *Certificate of the Financial Statements* (CFS) of beneficiaries (which replaces the FP6 Audit Certificate). Additionally, they introduce the option for beneficiaries to request from the Commission an ex ante agreement on their personnel and indirect costs calculation, by the submission of *Certificates on the Methodology* (CoM) for personnel and indirect costs, or on the *Methodology on average personnel costs* (CoMAv).

### 3.3.1. Audit certificate<sup>98</sup> (FP6) and Certificate on the Financial Statements<sup>99</sup> (FP7)

The Audit Certificate and the Certificate on the Financial Statements (CFS) are independent reports of factual findings produced by an external auditor (or possibly a public competent officer when the beneficiary is a public body) to the attention of beneficiaries. Their purpose is to certify the costs incurred and claimed by a beneficiary in the course of an EC funded project, thus giving reasonable assurance to the Commission that these costs are calculated according to the FPs financial provisions and that they are eligible.

Therefore, both certificates are provided at the time of the submission of cost claims by beneficiaries. However, they are mandatory only when the amount of costs claimed reach the thresholds provisioned in the financial rules for FP6 and FP7.

### 3.3.2. Certificate on the Methodology for both personnel and indirect costs (CoM) and on the Methodology for average personnel costs (CoMAv)

The Certificates on the Methodology for both personnel and indirect costs (CoM) and on the Methodology on average personnel costs (CoMAv) are also independent reports on factual findings produced by an external auditor or a competent public body.

The objective of the Certificates on the Methodology is to promote the use of correct methodologies (in accordance with the relevant legal and financial provisions of the FP7 model Grant Agreement) by beneficiaries when calculating personnel costs (for the CoM and the CoMAv) and indirect costs (for the CoM), in particular in the cases when average costs for personnel are claimed<sup>100</sup>. The objective is to limit the expected error rate detected by Commission services after, for example, an ex-post audit.

Ex ante Certifications on Methodology are designed to provide advantages to both beneficiaries and the Commission:

- Advantages for beneficiaries:
  - No need for periodic recalculation of individual actual costs in the framework in the CFS
  - No obligation to issue a CFS if a CoM is approved by the Commission
  - CoM and CoMAv are valid through the whole FP7 period
  - Reduction of the cost for the whole certification system
  - Simplification of administrative burden (less certificates to provide and process)

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<sup>98</sup> FP6 model contract, Art.II.26

<sup>99</sup> FP7 ECGA, Art.II.4

<sup>100</sup> Source: Certificates issued by external auditors – Guidance notes for beneficiaries and auditors ([ftp://ftp.cordis.europa.eu/pub/fp7/docs/guidelines-audit-certification\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/guidelines-audit-certification_en.pdf))

- Advantages for the Commission:
  - Reasonable assurance on the reliability of the methodology used for the preparation of future costs claims
  - Assurance on the accuracy of cost calculation
  - Early detection and corrections of possible errors in costs calculation
  - Simplification of administrative burden (less certificates to provide and process)

The procedure for requesting and submitting a Certificate on Methodology is different for CoM and CoMAv:

- For the CoM, the procedure always remains optional and contains four steps : (1) request from the beneficiary to the EC; (2) Acceptance or rejection of the request by the EC<sup>101</sup>; (3) Submission of the Certificate to the EC; (4) Acceptance or rejection of the certificate by the EC.
- For the CoMAv, no request by the beneficiary is required as the certificate is mandatory in case of use of average personnel costs. However, the certificate may be rejected by the Commission.

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<sup>101</sup> Article II.4.4 of the ECGA

## 4. ISSUES ARISING FROM FINANCIAL RULES IN RESEARCH FRAMEWORK PROGRAMMES

This chapter identifies the main issues causing concern to stakeholders. These issues are either linked to the financial rules themselves (in particular the rules described in the previous chapters), or to their implementation. The identification of these issues reflects the concrete examples of unnecessary burden and financial risks provided by the different stakeholders interviewed during the study<sup>102</sup>.

Each issue analysed in this chapter will be subject to recommendations aiming at tackling the negative impacts of the rules in chapter 5.

### 4.1. Key issues regarding the rules themselves

#### 4.1.1. Publication of applicable rules

Beneficiaries stressed that when the first calls for proposals for FP7 were published, the Model Grant Agreement and the guidelines designed to assist them in the application process, in particular the Financial Guidelines, had not yet been published. Moreover the reporting guidelines were still not available at the time some beneficiaries had to submit their first interim report.

In its special report concerning FP5<sup>103</sup>, the Court of Auditors observed that implementing regulations and model contracts for FP5 were adopted late. The Court had the same criticism for FP6 in its Annual Report concerning the financial year 2003, where the Court of Auditors concluded that *“the late completion of the FP6 model contracts led to uncertainty for participants (and was, together with other deficiencies) to some extent off-setting the initial improvements achieved by the earlier adoption of the legal framework (...).”* As well, the Court’s Annual Report on the Financial year 2005 criticised the fact that the Commission published guidelines on audit certificates after a significant part of the audit certificates had already been submitted.

This situation created uncertainty for applicants/beneficiaries:

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<sup>102</sup> The study also takes specific recommendations from the EP regarding these issues. In particular, the European Parliament Decision of 23 April 2009 on the discharge for implementation of the European Union general budget for the financial year 2007, Section III – Commission (SEC(2008)2359), Research, 113-123  
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0289#BKMD-85>

<sup>103</sup> Court of Auditors, Special Report N°1/2004 on the management of indirect RTD actions under the fifth framework programme (FP5) for research and technological development (1998 to 2002), together with the Commission’s replies <http://eca.europa.eu/portal/pls/portal/docs/1/173477.PDF>

- The absence of clear definitions of eligible costs (published later in the Grant Agreement and Financial Guidelines) resulted in uncertainty for cost planning in the framework of applicants' financial proposals.
- Misunderstandings on the financial rules to be used for the submission of Certificates of Methodology for average personnel costs (published in June 2009) resulted in the rejection of almost all submitted CoMAv.

#### 4.1.2. Problems linked to the diversity of the rules and the complexity of the legal framework

The chapters above give an overview of the diversity and complexity of the rules applicable to FPs.

Both beneficiaries and Commission officials involved in the design and implementation of the FP accept that this complexity exists. It is reinforced by the diversity of actions (FP 7 administered by the Commission, Joint Technology Initiatives (JTIs), ERANET plus, and the non FP 7 CIP and EFRE programmes, which are used in combination with FP 7 programmes).

However, interviewees' opinions diverged about the rationale for this complexity.

Beneficiaries generally agree that the diversity of rules may be justified by the specificities of the FPs. This opinion was reinforced by Commission officials, who note that this diversity reflects the diversity of types of actions and instruments (e.g. individual mobility grants, support for direct and indirect actions), target domains (fundamental research, applied research) and beneficiaries (individual researchers, SMEs, Higher Education Institutions, etc.)<sup>104</sup>.

In general, the fact that different financial rules cover different research activities is not as such identified as creating unnecessary diversity in the rules. However, some elements are clearly perceived as hampering smooth management of the whole programme:

Beneficiaries often criticised the large number of documents, in particular work programmes, calls for proposal, guidelines for applicants and other guidance documents available on

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<sup>104</sup> See the 2006 annual report of the Court of Auditors, 7.5: "EU support for Research and Technological Development covers a wide range of research activities and is characterised by a multiplicity of funding schemes supporting various thematic areas and types of projects. The projects are carried out by research institutes and universities, but also by individuals, commercial firms or public administrations. They usually involve multiple research partners working as a consortium across a number of EU Member States, although a single 'project coordinator' is nominated to maintain contact with the Commission and to take charge of the financial and administrative aspects of the contract. EU grants to partners in individual projects range from a few hundred euros to tens of millions. Of the more than 15 000 final beneficiaries, approximately 2% account for more than 40% of the total EU funding."

<http://eca.europa.eu/portal/pls/portal/docs/1/479520.PDF>

Cordis<sup>105</sup>. They consider that it is difficult for them to find the information they are looking for and that important information can easily be missed.

The importance of the learning process was stressed by both Commission and beneficiaries, who agree on the fact that it takes time to understand and apply the rules of a new programme.

This learning process is made more difficult when beneficiaries have to work in parallel with different sets of rules. It could be the case:

- Beneficiaries who would work in parallel on several projects under the same FP but for which different rules are applicable;
- Beneficiaries who would work in parallel on ongoing projects under FP7 with one (or several) sets of rules while submitting proposals for FP8, subject to new financial rules, and be at the same time audited on projects ruled by FP6.

The Commission is aware of the need for simplification and has been trying to tackle this issue in the framework of the elaboration of new FPs. In FP5 for instance, the introduction of the flat rate cost reimbursement system aimed at simplification. The Court of Auditor also highlighted it in its Annual Report concerning the financial year 2001, where the Court, in which a “fundamental simplification of the cost systems” is recommended. In its Annual Report concerning the financial year 2003<sup>106</sup>, the Court welcomed the “simplification of the contractual structure” introduced by FP6. Since the simplification in FP6 was not considered sufficient and since participation in FP6 remained complex for beneficiaries, Commission published a Communication on the simplification in FP7<sup>107</sup> in 2005. More recently, the Parliament recalled “*the importance of optimising the implementation of framework programmes*” and invited the Commission “*to act, in respect of those implementation problems (...)*”.<sup>108</sup>

The Rules for Participation in FP7<sup>109</sup> clearly underline the importance of simplification: “participation in the activities of the Seventh Framework Programme should be facilitated through the publication of all relevant information, to be made available in a timely and user-friendly manner to all potential participants and the appropriate use of simple and quick procedures, free of unduly complex financial conditions and unnecessary reporting”.

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<sup>105</sup>FP7 : [http://cordis.europa.eu/fp7/find-doc\\_en.html](http://cordis.europa.eu/fp7/find-doc_en.html) ; FP6: <http://cordis.europa.eu/fp6/find-doc.htm> ; FP5: <http://cordis.europa.eu/fp5/>

<sup>106</sup> <http://eca.europa.eu/portal/pls/portal/docs/1/133991.PDF>

<sup>107</sup> <http://cordis.europa.eu/documents/documentlibrary/72661501EN6.pdf>

<sup>108</sup> European Parliament resolution of 17 December 2009 on the draft general budget of the European Union for the financial year 2010 as modified by the Council

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2009-0115+0+DOC+XML+V0//EN>

Referring to European Parliament Decision of 23 April 2009 on the discharge for implementation of the European Union general budget for the financial year 2007, Section III – Commission (SEC(2008)2359), Research, 113-123

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0289#BKMD-85>

<sup>109</sup> Op. cit., paragraph 23

In a near future, EC will commission a study on assessing the effectiveness on simplification measures under FP7. It is an important element of a progress report for the independent experts who will carry out FP7 interim evaluation. The results of the study will also be used by the EC for further work and communicated to other policy makers such as the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions, and the Member States.

#### 4.1.3. Appropriateness of the financial rules for beneficiaries

##### 4.1.3.1. Flat rate

The extension of the utilisation of flat rates for the calculation of indirect costs, was widely criticised by grants beneficiaries. Although the rationale behind the extension of the use of flat rates is to achieve simplification and is constantly recommended by the Court of Auditors, it may result in reality in an increased administrative burden for beneficiaries and is in this case perceived by the latter as a simplification only for the Commission.

In FP7, beneficiaries can choose flat rate of actual costs. This opportunity leads to the following situations:

- Some public bodies cannot identify actual indirect costs due to their accounting systems. In that case, the opportunity to use flat rates has a real added value.
- For those beneficiaries who have chosen the flat rate, the processing of such costing systems might require them to manage two separate accounting systems:
  - General project and financial management requirements often incite beneficiaries to use accounting systems based on actual costs (as required by national legislation or based on funding / financial rules other than Community rules);
  - Choosing the flat rate system implies the implementation of an accounting system based on **flat rates** for the purpose of cost claims issuance towards the Commission.

The appropriateness of the percentage rate was also questioned.

Different percentage rates are applied for indirect costs (varying from 20% to 40%<sup>110</sup>). This sometimes lead to misunderstandings by the beneficiaries when preparing their budget at the proposal stage and also when establishing their cost statements at the reporting stage. As a consequence, it could also lead to the rejection of a part of their related expenses by the Commission.

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<sup>110</sup> Up to 60% until December 2009 (transition phase, extended up to the end of FP7)

The opportunity to apply different percentage rates by category of beneficiary (universities, not-for-profit organisations, SMEs, etc.) was often mentioned as an appropriate solution, which would combine:

- Flexibility: adaptability to beneficiaries' profile;
- Simplification – both for the Commission and beneficiaries, provided that they choose the appropriate system;

Moreover, the percentage rate applied to a project should not allow beneficiaries to make profit in comparison with what they would have received with the real cost system.

#### 4.1.3.2. CoMav

The introduction within FP7 of Certificates on the Methodology on average personnel costs is generally considered as a simplification, and the concept is broadly welcomed by beneficiaries.

However, reality shows that it raises problems:

- the criteria for the acceptance of certificates submitted by beneficiaries are considered as much too strict and complex<sup>111</sup>;
- late publication of criteria<sup>112</sup> created uncertainty for beneficiaries in the first years of FP7.

As a consequence, only one certificate had been officially approved at the time when we carried out our interviews (years after the approval of the first FP7 project). This simplification initiative therefore seems to have actually led to increase the administrative burden.

It must be noted that the Commission is currently working on improving the system in order to have an effective and efficient Certification system in the future.

#### 4.1.3.3. Interest-bearing bank account

As explained in section 3.1, bank interests generated by pre-financing advanced by the Commission to FP project beneficiaries in the framework of EC granted research projects are the property of the Commission. The amount of these interests must be taken into account when verifying the eligible amount projects costs incurred by beneficiaries.

The Financial Regulation and its Implementing Rules do not strictly require beneficiaries to generate such interest and, according to their national law, public organisations benefiting from Community funds may not be allowed to use bank accounts that generate interest.

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<sup>111</sup> The rationale behind these strict criteria must be assessed in the light of the principle of tolerable error rate for auditing.

<sup>112</sup> June 2009

However, article II.19 of ECGA is ambiguous regarding this issue. When stipulating that the Commission should recover the amount of interest generated, this could be interpreted as implying that EC funding must always be managed by beneficiaries in an interest-yielding bank account. The "Guide to Financial Issues" is clearer, as it states that "the coordinator should receive and manage the EC funding in an interest-yielding bank account." (i.e. not generally all beneficiaries but coordinators should observe this).

It appears that national legislation in various participating countries prohibits the use of interest-bearing bank accounts to public bodies. In practice, project officers interpret i.e. art.II.19 of ECGA strictly (and in line with the Guide to Financial Issues) and try to impose the generation of interest on pre-financing, even when the beneficiaries are not authorised to do so as per national legislation. This situation creates uncertainty for beneficiaries, unnecessary administrative burden – in particular if they have to justify several times their incapacity to use interest-bearing bank accounts- thus delaying payment.

## 4.2. Issues regarding the management and implementation of the rules

### 4.2.1. Room for interpretation and changes in the rules

Many interviewees stressed that the financial rules applicable to FP7 are often subject to interpretation. In theory, this room for interpretation could have a positive effect in the sense that it allows for flexibility and adaptability of the rules to specific cases. In reality, interpretation of the rules is rarely advantageous for beneficiaries, as it often results in legal uncertainty and need for using different procedures.

- Interpretation of the same rule can differ from one project officer to another:
  - It may imply that a beneficiary carrying out two projects subject to the same rules has to face different interpretation;
  - It may imply that, even within one project, there can be different interpretations of the same rule when there is a change of project officer.
- Interpretation of the same rule can differ between project officers and auditors. This can lead to a situation where a cost statement accepted by the project officer is rejected by the auditor.
- Interpretation of the same rule can differ from one auditor to another - and even between Commission auditors, external auditors and the EU Court of Auditors). This can result in a situation where a beneficiary who carries out two projects subject to the same rules (and even with the same project officer) faces conflicting interpretation when there are audits;

A number of guidance documents are available on CORDIS<sup>113</sup>. These documents often aim to facilitate interpretation of unclear rules.

This practice is not limited to FPs, and interesting examples of best practice were identified in DGs beyond the DG involved in FPs.

For instance, DG JLS has recently sent to national authorities in charge of the implementation of the SOLID Programme (Solidarity and Management of Migration Flows) at national level a document aiming to provide technical guidance to the national authorities on how to interpret and apply the Community rules in this area<sup>114</sup>. Although this document does not provide an exhaustive list of situations faced by beneficiaries when carrying out their projects, it complies with the legal basis of the programme, commonly accepted principles for the management of EC-funded projects and on best practices observed throughout the implementation of various EC-funded programmes. As for guidelines in FPs, the legal value of this document is not clear, it may be seen as "soft law", the fact that they were drafted with the help of auditors and

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<sup>113</sup> See section 2.2.2

<sup>114</sup> <http://www.eu-fonds-dofi.be/Manual%20Rules%20on%20Eligibility%20-%20version%202019-06-2009.pdf>

approved by the legal unit of the relevant service gives good hope that those who follow them will avoid misunderstanding and surprises in case their projects are audited.

However, the legal value of these documents is not always clear and there are cases in which the interpretation is not in line with the spirit of the rule. This situation occurs in particular in relation to the interpretation of the nature of eligible costs (VAT, events and meetings related costs, etc.) and the justifications to be provided in support of requests for reimbursement of costs (supporting documents, etc.). Interest on pre-financing, as described in section 4.1.3.3, is another example of legal uncertainty deriving from room for interpretation of the rules.

#### 4.2.2. Communication between EC and beneficiaries and within EC

Beneficiaries claim that a lack of communication among project officers and between project officers and beneficiaries contributes to creating unnecessary administrative burden.

This has occurred in the following (non exhaustive) situations:

- Lack of communication of changes to rules (new or amended): projects officers sometimes send instructions about cost eligibility to external auditors in charge of a project without informing the project beneficiaries. Beneficiaries are thus informed of the change in the rule by their auditors rather than by the project officer;
- Lack of communication among project officers about the change of situation for a beneficiary (FP6): beneficiaries had to individually inform project officers in charge of their projects about a change in their situation (such as change of legal status), which implied sending exactly the same information (official document when required) several times, rather than sending it once for single validation applicable to all projects. This situation created unnecessary burden for organisations involved in many projects. The Unique Registration Facility (UFR) introduced in FP7 contributes to solving this issue.
- Lack of clarity about the justification for a request:
  - Lack of responsiveness of project officers when asked to clarify the reason for a decision;
  - Lack of communication about the rationale behind a request. Some beneficiaries claimed they might complain less about requests for additional information from the Commission if they understood why the information is needed.

#### 4.2.3. EC audit strategy

Key controls in FPs are carried out at different levels, as illustrated in the Figure below<sup>115</sup>:

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<sup>115</sup> Source: Court of Auditors, Annual Reports concerning the financial year 2007, <http://eca.europa.eu/portal/pls/portal/docs/1/1569525.PDF>

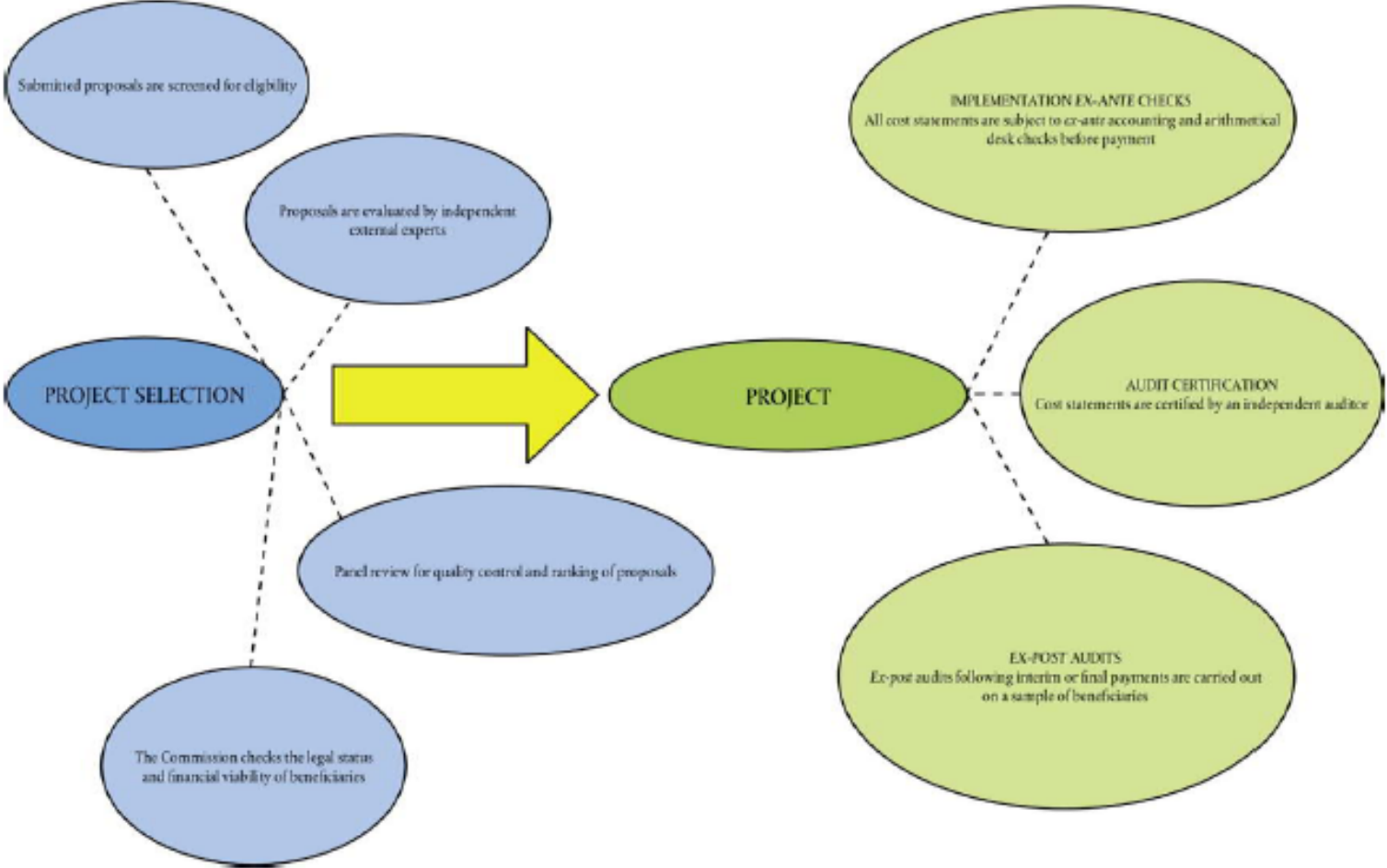


Figure 4 - Key controls in Research Framework Programmes

Source: Court of Auditors

Ex-post audits are carried out by (or by external auditors for) the Commission. These audits are carried out in order to control the regularity of beneficiaries' cost claims, and to correct them when necessary. A sample of these ex-post audits is controlled by the Court of Auditors on an annual basis.

In 1998, Directorates-General operating the FPs agreed on a common audit strategy for FP5 with a target of auditing 10% of the contractors. In reply to the recurring Observations from the Court of Auditors on the level of error (mainly due to an over-declaration of costs by beneficiaries which were not detected by the Commission<sup>116</sup>) and the fact that the FP5 audit target of 10% of contractors was not reached (partially because the number of contractors was much higher than anticipated), audit certificates were introduced in FP6 in order to provide additional assurance to the Commission regarding the reality and accuracy of costs declared<sup>117</sup>. Moreover, the Commission adopted in 2004 a common audit approach for FP6. However, although audit certificates have a preventive effect and contribute to improving the accuracy of claims, audits carried out by the Court of Auditors continue to detect ineligible costs which are not identified in the corresponding audit certificates submitted to the Commission to support the payment request.

As there were still comments from the Court on the FP6 audit strategy, the Commission launched in 2007 a new common ex-post audit strategy for FP6, designed to increase assurance in the legality and regularity of expenditure. This strategy is based on:

- The use of common risk criteria and sample selection methods, focusing on large beneficiaries;
- Management: Enhanced quality control procedures, the introduction of a working group for the sharing of audit results, the development of a common audit manual, joint audit teams and monthly coordination meetings to discuss cases and adopt common positions;
- an extension of systemic findings to all contracts of the most significant beneficiaries.

Since 2007, EC has intensified ex-post controls of FP6 projects. Although beneficiaries understand the need for control on how tax-payers money is spent, the way this intensified audit strategy has been implemented is strongly criticised by beneficiaries.

The most frequently criticised components of this strategy are the following:

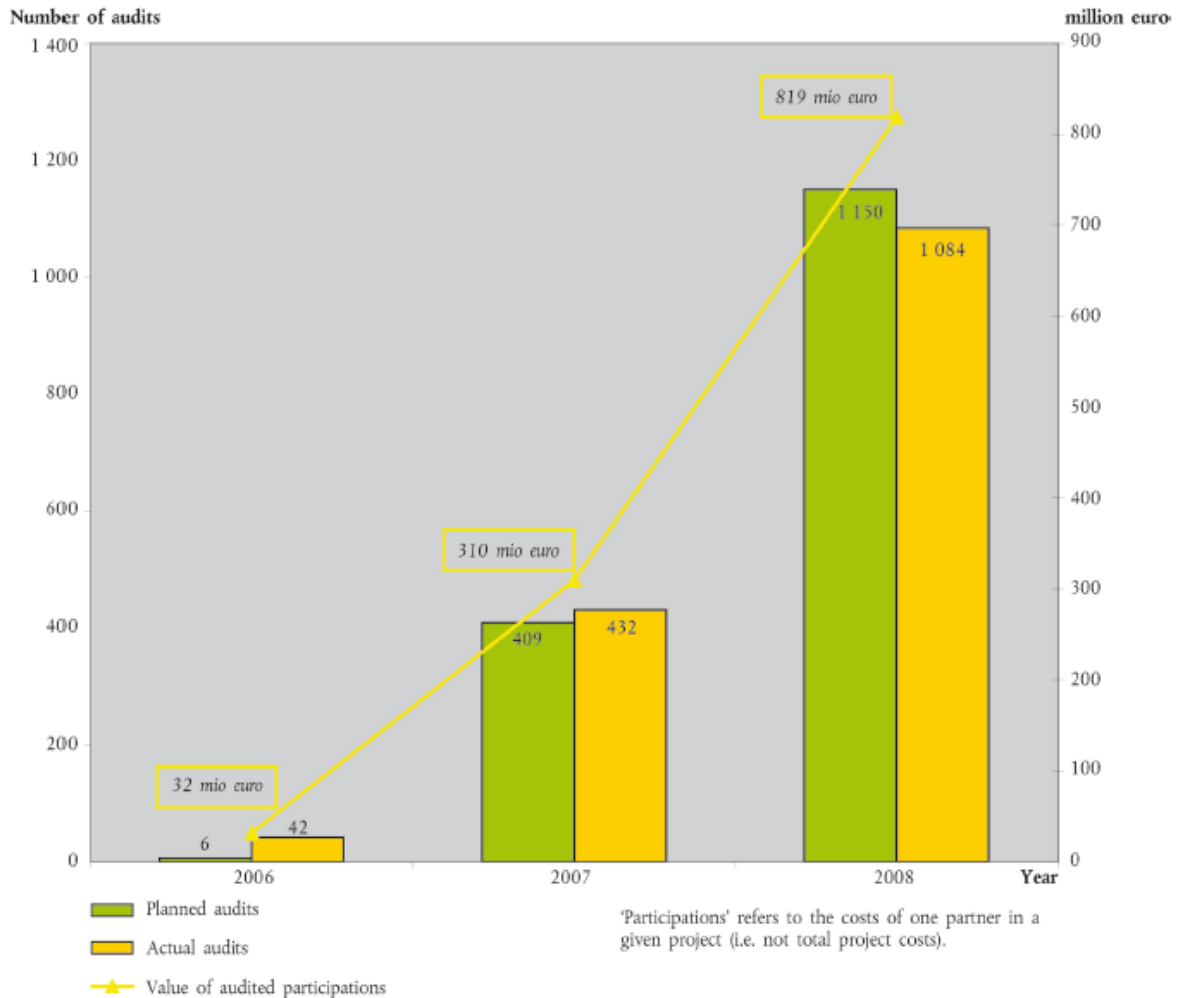
- Increased number of audits: The number of audits has increased significantly from 2006 to 2007, as presented in the Figure below:

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<sup>116</sup> Court of Auditors, Special Report concerning FP5, op.cit.

<http://eca.europa.eu/portal/pls/portal/docs/1/173477.PDF>

<sup>117</sup> See section 3.3.1



Source: Court of Auditors<sup>118</sup>

**Figure 5 - Implementation of the Commission's common ex-post audit strategy**

- The Commission, when carrying out ex-post audits has determined on occasion that the cost claims contain errors, even when prepared, as required in the Rules for Participation, “in accordance with their usual accounting principles and practices”<sup>119</sup>. However, beneficiaries often contest the Commission’s opinion and complain about the fact that the Commission often changes the definition of previously eligible costs post facto, and retrospectively rejected claims for costs that they previously accepted as eligible<sup>120</sup>.

<sup>118</sup> Court of Auditors, Annual report on the implementation of the budget 2008, 2009/C 269/01

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:269:0001:0256:EN:PDF>

<sup>119</sup> Art 31, C, of the Rules for Participation, op.cit.

<sup>120</sup> Source: C. Hull, Secretary General of EARTO at the EP ITRE committee mini hearing “Implementing the research Framework programme – How to reduce red-tape and increase effectiveness?”, Brussels, 10 November 2009

- Commission-managed audits often identify errors and some of those were classified as systematic, i.e. errors that are considered repetitive and recurring, which implies that the contractor is not complying with his contractual obligation in a systematic way. Commission auditors make the assumption that all currently open and closed contracts involving the beneficiaries under the same framework program (FP) are affected and might need to be (retrospectively) adjusted (extrapolation principle). The impact for the beneficiaries is that they are asked to review all financial statements submitted under the same FP and where necessary recalculate and revise the statements<sup>121</sup>, which implies, for organisations participating in a significant number of projects, a significant amount of work in a very short period of time;
- The Court of Auditors, when reviewing audits performed by or for the Commission, has determined on occasion that the cost claims already approved by the EC (and its external auditors) contain errors. Commission take then corrective actions on the beneficiaries. These actions add to actions that might have been taken by Commission itself (including extrapolation) and consequences might be dramatic for beneficiaries.

In its Annual Report concerning the financial year 2006, the Court of Auditors put the onus on the risk of errors made by beneficiaries which are not detected by the Commission in their ex-post controls: “the principal risk to the legality and regularity of the underlying transactions is that beneficiaries overstate costs in their cost statements, and this is not subsequently detected and corrected by the Commission”. According to the Commission, the objective of financial audits and ex-post controls is to measure the detection and correction of the main systemic errors on a multi-annual basis, which would not have otherwise been detected by ex-ante controls (and) to keep the residual error rate below the materiality threshold level<sup>122</sup>

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<sup>121</sup> Section 3, 5 of the Guide to Financial Issues

<sup>122</sup> Court of Auditors, Annual Report concerning the financial year 2007  
<http://eca.europa.eu/portal/pls/portal/docs/1/1569525.PDF>

## 5. RECOMMENDATIONS

The previous chapters highlight the complexity of the financial rules applicable to research FPs. However, the content of only a small number of changes is criticised as such by beneficiaries. The Commission is aware of this situation and is already trying to find solutions to these issues.

One of the main conclusions of this study is that the manner in which the rules are implemented is more problematic than the rules themselves. This leads to lack of mutual trust between beneficiaries and the Commission as well as unnecessary administrative burden on both sides.

The Court of Auditors also plays a role in this less than trustful climate. Criticisms of the Commission in annual reports and special reports by the Court tend to have an indirect impact on beneficiaries, as the Commission sometimes responds by tightening controls.

Based on the key findings described in Chapter 4, the following recommendations are formulated. They are prioritised in relation to their short-term feasibility.

### 5.1. Commission Audit strategy

Following comments by the Court of Auditors, the Commission intensified its auditing of research projects. The impact of this is significant both in terms of the public resources mobilised, the potential financial impact on the beneficiaries and the administrative burden created, while the benefits remain unclear.

The following recommendations concern the management of FP6, and in particular the way audits are carried out:

- The Commission should focus on reducing the errors made by beneficiaries rather than on reducing the error rate between its own controls and the Court of Auditors'. This could be primarily prevented by clearer, more transparent and consistent rules. If uncertainty remains, the Commission should foresee an effective accompanying process for beneficiaries at an early stage of the project (ideally before or right after the first interim financial report).
- The Commission should carry out a cost-benefit analysis of the FP6 ex-post audit strategy and assess the total value of financial corrections both to the benefit of the Commission and of beneficiaries. The analysis should also measure the correlation between the increase in the number of ex-post audits and the reduction of the error rate between EC audits and the Court of Auditors controls.
- For the sake of consistency and to avoid uncertainties for beneficiaries, no corrective actions against beneficiaries should be taken in case the Court of Auditors notices errors in an audit previously approved by the Commission.

## 5.2. Simplification of the rules

In particular, interest on pre-financing, calculation of eligible costs and certification procedures (for audit and financial statements and for methodology of cost calculations) are the topics most mentioned as problematic by beneficiaries. The main criticisms concern the fact that these rules are not aligned to the realities research organisations have to face – and sometimes contravene their national legal frameworks - and that the benefit they generate does not justify the burden they create.

The following recommendations concern the management of the current FP. They concern specific rules as well as simplification in general.

### 5.2.1. Simplification of the flat rate system

The utilisation of flat rates, as opposed to real costs, for the calculation of indirect costs was extended in FP7. This extension has often been recommended by the Court of Auditors, but is widely criticised by beneficiaries, as in reality it results in an increased administrative burden for them and is perceived as a simplification only for the Commission. Our recommendation regarding the flat rates system is as follows:

- The opportunity to use flat rates should represent a simplification both for the Commission and for beneficiaries. However, in order to be really effective, flat rates should be better adapted to the categories of beneficiaries (e.g. universities, SMEs, not-for-profit organisations, etc.). Beneficiaries should be assisted in choosing the system that is best aligned with their profile.

### 5.2.2. Simplification of the ex-ante certification procedure

In the context of the verification of beneficiaries' cost statements by the EC, FPs' financial rules foresee, in certain circumstances, the obligation for beneficiaries to produce certificates delivered by independent auditors. FP7 financial rules introduce the option for beneficiaries to request from the Commission an ex ante agreement on their personnel and indirect costs calculation, by the submission of *Certificates on the Methodology* (CoM), or *Certificates on the Methodology for average personnel costs* (CoMAv). Our recommendation regarding these ex-ante certification procedures is as follows:

- Ex-ante certification should be maintained. However, the complexity of the procedure calls for an assessment of the administrative burden it involves for beneficiaries and the Commission, as well as an investigation on how it could be simplified. In order to comply with the principles of protection of the Union's financial interests and sound financial management, and considering the statutory liability of the Commission

financial actors, the simplification of these criteria should be introduced in line with the tolerable error rate applied during the audit of the Commission's financial statements.

### 5.2.3. Simplification of financial project coordination: interest-yielding bank account requirement

In order to provide beneficiaries with funds at the beginning and during the implementation of a project, grant agreements generally foresee the payment of one or several amounts of pre-financing. The interest generated by the deposit of pre-financing funds on a bank account is legally the property of the Commission, according to the Financial Regulation. The fact project coordinators under FP7 are obliged to hold EC funds in an interest-bearing bank account is often criticised.

Our recommendations regarding this, is that the Financial Regulation should be strictly applied as regards the requirement for an interest-bearing bank account to manage pre-financing. This would preserve EU financial interests when required, but the system would remain adaptable to beneficiaries' legal constraints. For the sake of clarity, the stipulation "the coordinator should receive and manage the EC funding in an interest-yielding bank account." in the Guide to Financial Issues should be modified.

### 5.2.4. General recommendation on simplification

The specific recommendations above lead us to a general recommendation on simplification for the remainder of FP7 and the preparatory work of future FPs:

- Financial rules applicable to the research programmes should be established in the spirit of simplification, a concept introduced in FP6 and FP7. The simplification process should be based on consultation with all parties involved (beneficiaries and their representatives, DGs involved in FPs, DG BUDG, external auditors and the Court of Auditors), in order to facilitate the management of FP7 programmes and projects. The evolution of the rules should be smooth, so that the simplification process itself does not create unnecessary burden.

## 5.3. Legal uncertainty: publication, communication and interpretation of the rules

Beneficiaries often criticise the lack of effective communication with the Commission. They criticise in particular the late publication of the rules, as well as the lack of consistency in Commission messages, including interpretation of the rules. This results in uncertainty regarding the legal value of the rules.

### 5.3.1. Publication of the rules

In order to avoid legal uncertainty linked to the late publication of the rules, we recommend the following:

- The full legal information package should be communicated before or at the time the calls are published. In case the rules are not finalised in time for the publication of the calls, a transition solution should be foreseen, e.g. an agreement that the new programme will follow the rules of the previous programme for a transition period. As a minimum, the legal regime applicable to the programme for this transition period should be clarified and well communicated.

### 5.3.2. Communication and interpretation of the rules

Lack of effective communication was often mentioned as one of the main reasons for the less than trustful climate. In order to limit legal uncertainty linked to communication and interpretation of the rules, we recommend the following:

- Room for interpretation should be limited in rules applicable to FPs. Where room for interpretation remains, consistency in the interpretation be ensured, inter alia by training of project officers (and internal auditors) on interpretation of the financial rules and by regular publication of guidelines for both project officers and beneficiaries, giving clarity on ambiguous rules. The guidelines should take the experience of auditors into account.
- Commission should also establish a mechanism to ensure that cases of differing interpretation are addressed centrally and that decisions on clarification are communicated to all project officers for application in all cases where the same issue might arise. These decisions should also be taken speedily in order not to hamper the payment process. In order to avoid legality issues, the interpretation should not be applied retrospectively.
- The process should be designed to (a) provide satisfactory, consistent and reliable answers to beneficiaries; (b) enable beneficiaries to respect the regulatory timeframe for submission of proposals or reports to the Commission; (c) enable the Commission to create the conditions for payment process acceleration; (d) ensure continuous improvement towards consistency in the interpretation and application of the rules; and (e) ensure smooth and seamless information circulation among project officers.

## ANNEX 1: METHODOLOGY

Our methodology for this study was based on desk research and interviews. Findings from the desk research and interviews were analysed, in order to formulate clear conclusions and recommendations for the Committee.

### Desk research:

A Preliminary desk research has been carried out in the first weeks of the Study. Interviews with the European Commission and other stakeholders complemented the initial desk research review by helping us identify additional relevant reference documents.

The list of desk research documents used for this study is presented in the bibliography.

### Interviews:

Interviews helped us identify rules creating unnecessary complexity as well as financial risks for candidates and beneficiaries, and provide recommendations to tackle issues linked to these rules. In particular, interviews gave us stakeholders' points of view (beneficiaries and Commission).

The table below presents the interviews carried out by our team.

Category of interview	Organisation and Position	Name	Date
Beneficiaries	UK Research Office (UK), Director	Amanda Crowfoot	30 October 2009
	UK Research Office (UK), European Adviser	Christina Miller	
Beneficiaries	IWT-agentschap voor Innovatie door Wetenschap en Technologie (BE/Flanders), Coordinator European programmes	Alain Deleener	12 November 2009
Beneficiaries	KOWI-KOoperationsstelle EU der Wissenschaftorganisationen (DE)	David Uwe	16 November 2009
Beneficiaries	CNRS-Centre National de la Recherche Scientifique (FR), Director	Monika Dietel	24 November 2009
	CNRS-Centre National de la Recherche Scientifique (FR), Policy Officer	Gaëlle Le Boulter	
Beneficiaries	CNR-Consiglio Nazionale delle Ricerche (IT), Director	Giuseppe Roffi	9 December 2009
	CNR-Consiglio Nazionale delle Ricerche (IT), Research Policy Officer		
European Commission, DG	Adviser responsible for analysing the new financial	Nicolas	1 December

Category of interview	Organisation and Position	Name	Date
RTD	instrument	Sabatier	2009
European Commission, DG RTD	<p>Directorate A - Inter institutional and legal matters – Framework programme, Director</p> <p>Unit A6 – Definition of Management Processes, Head of Unit</p> <p>Unit A6, Sector 001 – Coordination of FP7 operations</p> <p>Directorate R – Resources, Director</p> <p>Unit R2 – Budget and financial services, Head of Unit</p> <p>Unit R5 – Risk Management, Head of Unit</p>	<p>Clara de la Torre</p> <p>Antonio Miceli</p> <p>Peter Haertwich</p> <p>Franco Biscontin</p> <p>Priscila Fernandez-Canadas</p> <p>José Antonio Lopez Sanchez</p>	9 December 2009
European Commission, DG INFSO	HoU Operations ICT Research and Innovation	Morten Moller	16 December 2009
Research Executive Agency	Head of Administration, Finance and FP7 Support	Marc Tachelet	17 December 2009
European Commission, DG BUDG	<p>Unit D1-Financial Regulation, Legal Officer</p> <p>Unit D3- Financial Procedures and Control Systems, Co-ordinator for Internal Control Standards</p>	<p>Jiří Hladík</p> <p>Andrew Leader</p>	17 December 2009
European Commission, DG RTD	Unit T1- Relations with the REA agency and management of NEST	Martin Bohle	17 December 2009
Beneficiaries (network)	EARTO-Trade Association of Europe's specialised research and technology organisation	Hull	14 December 2009

## Questions covered during the interviews:

### Profile of the interviewee:

- Involvement in Framework programme
  - Previous to (excluding) FP6
  - FP6 and FP7
  - FP7 only
- Role
  - Contacts with beneficiaries
  - Contacts with the European Commission

### Financial rules applicable to FPs:

- **Overview: General opinion about the Financial rules in FPs**
  - What are the main differences between FP6 and FP7 (e.g. process, terminology, etc.)?
  - How is the improvement claimed by EC perceived by NCPs/beneficiaries/applicants regarding:
    - Simplification?
    - Transparency?
    - Efficiency?
  - To what extent are NCPs/beneficiaries/applicants involved in the rules simplification process?
- **Identification of rules creating unnecessary diversity, complexity and financial risks**
  - At what stages of the expenditure lifecycle (call for proposal/contract execution/interim and final technical and financial reports/closure/evaluation (measuring output: reporting/evaluation at different stages of project/grant agreements execution and closure)/audit/guarantee management, etc.) are the most burdensome rules encountered?
    - What are these rules?
    - Why and how do they create issues?
    - What is the overall impact of flat rates vs. reimbursement? Consistency in the application of recovery rules?
  - Identification of negative evolution from FP6 to FP7:
    - “Efficient” rules of FP6 not retained in FP7
    - Rules existing in PF7 but not applied
    - “Efficient” rules of FP6 replaced by “burdensome” in FP7
    - New “burdensome” rules introduced in FP7
    - Contradictory rules between FP6 and FP7
  - Are there rules with a retro-active impact creating financial risks?
  - Are there research areas in which financial rules are more burdensome than for other areas?
- **Suggestions on how to improve the financial rules** (feasibility, barriers to a real change, role to be played by each key actor, lessons learned/good practice from comparable large-scale programmes, etc.)

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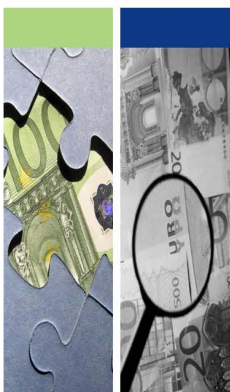


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