



European Food Safety Authority

BACKGROUND ON THE LEGAL TOOLS FOR FUNDING SCIENTIFIC COOPERATION WITH MEMBER STATES

INTRODUCTION

The main basis for EFSA's scientific cooperation is rooted in the provisions of Chapter III Section 3 of its Founding Regulation 178/2002 (Articles 29 to 36)¹, within its core scientific operations.

From the perspective of financial support to scientific cooperation it is possible to separate these operations into three groups: Those funded via a public contract, those funded via grants and those not funded at all.

That differentiation is of interest as the procedure to assign the financial support and the conditions of the financial support differ depending on which financial tool is applicable. That is without prejudice to the fact that the vast majority of the operations and the scientific cooperation linked to them can be performed in all of the three groups above for the following reasons:

1) Public contract

EFSA makes use of public contracts on an ongoing basis, varying in value depending on its various activities. It is the “**classic**” tool foreseen by the law for public expenditure in return of services or goods. In principle all operations directly rooted² in chapter III can be subject to public contracts where scientific support activities like reports, evaluations, data collection or studies carried out by external experts are required.

2) Grants

Article 36 of Regulation 178/2002 foresees exclusively the use of grants for financial support to scientific networking. The scientific operations which can be entrusted within the network of Article 36 are defined more precisely in the implementing act Regulation 2230/2004 (see more details below) and basically match the core scientific operations of EFSA in Chapter III.

¹ For the purpose of this document Article 28 of Regulation 178/2002 is not further regarded despite the fact that the running of the EFSA Panels and the Scientific Committee obviously is part of the scientific cooperation and has financial implications.

² This includes all these activities which via Article 29 (1) (a) of 178/2002 link EFSA's operations to other pieces of sectoral legislation (e.g. opinions on regulated substances).

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3) Non-funded activities

Scientific cooperation rooted in Chapter III by definition can be performed without financial support if the partners agree on these terms. The implementing rules to Article 36 foresee that EFSA shall decide which activities with the network shall be financially supported. The obvious advantage of such cooperation lies in the much **lighter procedures** to assign tasks to Member State organisations.

THE FINANCIAL TOOLS

EFSA's means to fund scientific cooperation are determined by the legal framework set out in the Financial Regulations³. This framework provides two tools: **Public contracts and grants**.

There is a fundamental **difference between a public contract and a grant**. In the case of a contract, the Authority obtains a product or service it requires in return for a payment, whilst in the case of a grant it makes a contribution either to a project carried out by an external organisation because its activities contribute to policy aims. This conceptual difference has an impact on how both mechanisms can be applied by EFSA and how financial support can be given to science cooperation.

Public contracts and grants have in **common that their attribution is subject to strict procedures** which ensure the respect of the principles of transparency, proportionality, equal treatment and non-discrimination.

A. PUBLIC CONTRACT

1) Procurement procedures to award a public contract

Public contracts for services or supplies are awarded following a procurement procedure⁴. The basic rule underlying procurement is **to ensure competition between possible contractors**. EFSA must secure the best conditions in terms of price and quality but it must also ensure that the procedure is transparent and that all possible contractors are placed on an equal basis to tender for the public contract which EFSA intends to award. Cases where EFSA can approach an operator of its choice without launching a competitive procedure are the exception and reserved for specific and clearly defined situations (e.g. emergencies, technical reasons).

In abstract it can be said that competitive procedures are based on:

- a) A precise definition of the subject and terms and conditions of the contract and
- b) A variety of **criteria which are notified to possible contractors** so that they can draw up their tender bid accordingly.

³ See annex for the list of relevant legislation in this context

⁴ Exception low cost activities: Simple payment of costs against invoices *for purchases of less than 200 Euro*

The competitive procedure announced in advance in such a way is strictly applied throughout the entire process up to and including the selection of the contractor and the award of the public contract.

2) The application of the correct procurement procedure

The rules foresee different types of procurement procedures. For most services or supplies, the choice of the appropriate procurement procedure is determined by the estimation of the total value of the public contract.

The main difference among the different types of procedures concerns the **number of bodies that need to be notified** of the intention of EFSA to contract out an activity.

For contracts with a value below €60.000, EFSA has the right to limit the participation **by inviting a limited number of candidates**. These are the so-called negotiated procedures:

- Negotiated procedure whereby EFSA may decide to invite only one economic operator to tender for the contract, if its value is below €3.500
- Negotiated procedure whereby EFSA may limit the participation to three candidates if the resulting contract is below €25.000
- Negotiated procedure with at least five candidates if the value of the contract is below €60.000

Within the negotiated procedures, EFSA has a level of discretion for short listing the possible contractors invited to participate; however, it should be ascertained case-by-case that all invited candidates possess the technical, professional and economic capacity required for performing the contract concerned. The non respect of the rules linked to procurement is not authorised.

Contracts with a value beyond 60.000 Euros are awarded following an open market competition. Two procurement instruments can be distinguished, namely a call for expressions of interest⁵ and an open procurement procedure, with a contract notice⁶ published in the Official Journal of the EU.

3) Future new mechanisms

The **dynamic purchasing system** and the **competitive dialogue** are “new” procedures introduced by Directive n.18/2004. They are not yet in use, because the Commission is still in the process of developing templates and testing with some “pilot” DGs. In the near future, they will be useful tools also for EFSA. The possibility of using a dynamic purchasing system is not determined by the value of the

⁵ For service and supply contracts of more than €50.000 and less than €137.000 the restricted procedure will apply, based on a list of candidates drawn up following a call for expression of interest published in the OJEU. For work contracts, the restricted procedure with a call for expression of interest is applicable if the value is between €60.000 and less than €5.278.000

⁶ For service and supply contracts, if the value is more than €137.000 the appropriate procedure will be open or restricted with publication of tender notice in the OJEU

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contract but by its subject: commonly used purchases. The competitive dialogue is an option available when a contract is particularly complex, provided that direct use of the open procedure or the existing rules governing the restricted procedure will not allow the contract to be awarded to the tender offering best value for money.

4) Practical examples of contracts awarded by EFSA

There are three types of public contracts, namely supply contracts, work contracts and service contracts. EFSA has contracts running in each of the above-mentioned types. The vast majority concerns service contracts. In the Science related area, EFSA has e.g. signed public contracts for consultancy work or technical assistance, for carrying out studies, for conducting information and communication campaigns, setting up databases useful for EFSA activities⁷.

In particular, in **2003** two service contracts in the Science area were signed on:

- “Evaluation of chemically defined substances” following an open call;
- “Document on the non-cancer health effects of PCBs in animals”, following a negotiated procedure.

In **2004**, four service contracts in the Science area were signed:

- “Scientific and technical assistance relating to the collation, examination and reporting of data on the trends and sources of zoonoses, zoonotic agents and antimicrobial resistance”;
- “Forming a global system for identifying food related emerging risks” - EMRISK
- “Preparation of Summary Datasheets of toxicity data related to the evaluation by the EFSA/AFC Panel of substances to be used in food contact materials”;
- “Examination and drafting of Summary Datasheets on toxicity data related to the evaluation by the EFSA/AFC Panel of substances to be used in food contact materials”.

In **2005**, four service contracts in the Science area were signed: two by the AFC Unit, one by ZOONOSES and one by FEEDAP:

- “Review of toxicological data available on Para Red and other similar dyes”;
- “Preparation of Summary Datasheets of toxicity data related to the evaluation by the EFSA/AFC Panel of substances to be used in food contact materials”;
- “Provision on a study on the assessment of plants/herbs extracts and their naturally or synthetically produced components”;

⁷ See also document **AF 29.09.2006-6 on current scientific cooperation**

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- “Provision of scientific and technical assistance relating to the collation reporting and analysis of data on food-borne outbreaks”.

Until August **2006**, two service contracts in the Science area were signed: one by the AFC Unit and one by the Scientific Committee:

“Compiling information and working out proposals for the safety of the evaluation of flavouring substances used or intended for use in or on foodstuff in the framework of Commission Regulation (EC) n. 15685/20200 and maintaining a flavourings database”;

- “Draft of a transparent procedure for the interaction of EFSA scientific Panels/Committee”.

In addition there are four calls for tender under preparation/evaluation:

- The Animal Health and Welfare Unit (AHAW) launched a negotiated procedure on “Basic information for the development of the Animal Welfare Risk Assessment Guidelines”.

- The Zoonoses team is launching an open call on “Scientific and technical assistance relating to the collation, examination and reporting of data on the trends and sources of zoonoses, zoonotic agents, antimicrobial resistance and food-borne outbreaks”.

- The Scientific Expert Services prepared a negotiated procedure on “Summary report of the 3rd EFSA Science Colloquium on European Food Consumption Database: Current and medium to long-term strategies”.

- The GMO Unit is drafting the terms of reference for a restricted call on “Safety of Cry proteins and their expression in micro organisms and plants”.

B. GRANTS

The financing of tasks entrusted to organisations on the list⁸ established according to Article 36 of Regulation 178/2002 needs to be implemented in accordance with the rules on grants. Article 36 of Regulation 178/2002 has been accompanied with the Implementing Rules of Commission Regulation (EC) 2230/2004 which makes explicit reference to subsidies (grants) as the special tool for financial support to organisations operating under Article 36.

According to Article 5 of the implementing act this tool is to be used where the tasks assigned to organisations on the list are “*of particular interest as regards contributing to the performance of the Authority’s tasks or addressing the priorities laid down in*

⁸ The procedure for establishing the list of organisation is set out in Regulation 2230/2004 and comprises a) An initial stage of designation by the Member States according to criteria set out in Regulation 2230/2004 b) A screening stage by EFSA which leads to a proposal of the Executive Director to the Management Board c) The adoption of the list by the Management Board. The adopted list can continuously be extended or reduced.

its work programmes, or where the Authority's assistance is urgently needed by the Commission, particularly in order to deal with crisis situations“.

1) The financial tool

Grants are governed⁹ by the Financial Regulation and the Implementing Rules are defined as direct financial contributions from the Community budget awarded by way of a donation to third-party beneficiaries engaged in activities that serve Community policies.

Grants are subject to the following principles:

- **Co-financing:** external co-financing other than Community funds is required, either from the beneficiary's own resources or the financial resources of third parties;

- **Non-profit:** the grant may not have the purpose or effect of producing a profit for the beneficiary; grants are based on the actual costs incurred by the beneficiaries for carrying out the activities in question. The Financial Regulation admits public and private organisations to participate to calls for proposals, provided that they are not producing a profit (and this is checked by the financial services, before paying the balance for the action);

- **Non-retroactivity:** the expenditure giving rise to the grant must be incurred after the agreement is signed;

- **Transparency:** the availability of grants must be publicised widely and in an easily accessible way;

- **Equal treatment:** the grant award process must be completely impartial. This means notably that the proposals must be selected by an Evaluation Committee using the published eligibility and evaluation criteria;

- **Non-cumulation:** only one grant for an action may be awarded for the same action carried out by the same beneficiary.

2) The procedure for grants

In line with the legal requirements imposed by the Financial Regulation EFSA has developed a procedure for implementing the financial support for tasks entrusted to organisations belonging to the network according to Article 36 of Regulation 178/2002. In summary the procedure can be described as such:

- According to a planning the relevant scientific department will prepare and launch calls with very specific criteria in order to receive only qualified proposals according to the concrete competence required. The calls for proposals will be open only to the organisations on the list.

⁹ Since 1 January 2003, grants have been governed by the provisions of the Financial Regulation (Title VI Grants - Articles 108 to 120) and the Implementing Rules (Title VI Grants - Articles 160 to 184).

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- The best proposals will be recommended for funding on the basis of the eligibility check, the selection criteria and the award criteria identified in the call and following the timetable set in advance.
- A grant agreement will be signed with the organisation at stake.

3) The areas of cooperation under the network of Article 36

Article 36 of Regulation 178/2002 and the implementing rules of Commission Regulation (EC) 2230/2004 provide specific guidance of with regard to **the nature of the activities**. Regulation 178/2002 states that:

“The Authority may entrust to these organisations certain tasks, in particular preparatory work for scientific opinions, scientific and technical assistance, collection of data and identification of emerging risks.”

Whilst this provision is not detailed on the nature it fosters the horizontal principle that the work to be entrusted shall be of preparatory nature.

More detailed rules are set out in the Commission Regulation 2230/2004 which sets out in its Article 4 (a) of a limited list of tasks which may be entrusted to the organisations on the list:

- *Disseminating best practices and improving methods of collecting and analysing scientific and technical data, particularly for the purposes of facilitating comparability and producing a Community-level summary;*
- *Collecting and analysing specific data in response to a common priority, in particular the Community priorities contained in the Authority’s work programmes, and in cases where the Authority’s scientific assistance is urgently needed by the Commission, especially in the context of the general plan for crisis management referred to in Article 55 of Regulation (EC) No 178/2002;*
- *Collecting and analysing data with a view to facilitating risk assessment by the Authority, including assessment tasks in the field of human nutrition in relation to Community legislation, especially the compiling and/or processing of scientific data on any substance, treatment, food or feed, preparation, organism or contaminant which may be linked with a health risk, and the collection and/or analysis of data on the exposure of Member States’ populations to a health risk associated with food or feed;*
- *Producing scientific data or works contributing to the risk assessment tasks, including assessment tasks in the field of human nutrition in relation to Community legislation, for which the Authority is responsible; this type of task must correspond to precise problems identified in the course of the work of the Authority, and in particular that of its Committee and permanent Scientific Panels, and must not duplicate Community research projects or data or contributions which it is the industry’s duty to provide, especially in the context of authorisation procedures;*

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- *Preparing the Authority's scientific opinions, including preparatory work relating to the assessment of authorisation dossiers;*
- *Preparing the harmonisation of risk assessment methods;*
- *Sharing data of common interest, e.g. the establishing of databases;*
- *The tasks referred to in Articles 6 (3)(b) and 18(3)(b) of Regulation (EC) No 1829/2003”.*

C. CONCLUSION

Many of the tasks to be entrusted to organisations on the list of Article 36 are expected to have by their nature a strong service character. It needs to be explored how such activities will run under the grant scheme (*e.g. call for proposal instead of call for tender*). In addition the administrative procedures to award grants need to be compatible with certain tight deadlines EFSA needs to meet (*e.g. regulated substances*).

The fact that the mechanism of public contracts are still available to EFSA outside of the Article 36 network may impact on the future decision which activities will be financially supported within the network and which outside of Article 36.

Finally it should be noted that any cooperation with the Member States needs to respect the responsibilities and roles attributed to EFSA by the founding regulation and the respective vertical legislation.

ANNEX

Applicable legislation for funding scientific cooperation

[Financial Regulation of the European Food Safety Authority adopted on 13 October 2003](#)

[Implementing Rules for the implementation of the Financial Regulation adopted on 18 January 2005](#)

Council Regulation No 1605/2002 of 25 June 2002¹⁰ (Financial Regulation)

Commission Regulation No 2342/2002 of 23 December 2002¹¹, as amended by Commission Regulation No 1261/2005 of 20 July 2005¹² (Rules for the implementation of the Financial Regulation)

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004¹³ on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

Commission Regulation 2230/2004 of 23 December 2004¹⁴ laying down detailed rules for the implementation of European Parliament and Council Regulation (EC) N° 178/2002 with regard to the network of organisations operation in the fields within the European Food Safety Authority's mission.

¹⁰ OJ L 248, 16.9.2002, p. 1 .

¹¹ OJ L 357, 31.12.2002, p. 1

¹² OJ L 201, 2.8.2005, p. 3

¹³ OJ L 134 , 30/04/2004, p.114

¹⁴ OJ L 379, 24/12/2004, p. 64