Akce Marie Curie – Smluvní a právní aspekty
Marie Curie Actions - Contractual and Legal aspects

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Vademecum 7. RP EU

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CONTRACTUAL RELATIONSHIPS IN MARIE CURIE PROJECTS

SMLUVNÍ VZTAHY V PROJEKTECH MARIE CURIE

Kamila Hebelková, Jana Kratěnová, Petra Perutková

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Předmluva

Hlavním cílem specifického programu Lidé - akcí Marie Curie je podpořit v Evropském výzkumném prostoru kvalitativní i kvantitativní rozvoj lidských zdrojů, mobilitu a profesní růst výzkumných pracovníků ve všech vědních oborech. Vzhledem k různým typům mobility dochází, podle typu Marie Curie projektu, k uzavírání několika smluv mezi různými smluvními stranami (ať už se jedná o grantovou dohodu, konsorciální, partnerskou či pracovní smlouvu). Smluvními vztahy v projektech Marie Curie se zabývá první kapitola, která obsahuje doporučení českým institucím, co by měly obsahovat partnerská a konsorciální smlouva. Další dvě kapitoly jsou adresovány zahraničním vědecko-výzkumným pracovníkům a jsou věnovány českému pracovnímu právu a systému sociálního zabezpečení a také vybraným ustanovením grantové dohody (pravidlům projektů Marie Curie), které jsou relevantní pro vědecko-výzkumné pracovníky v kontextu pracovně-právních otázek a práva sociálního zabezpečení.

Tato brožura je stručným průvodcem vybranými smluvními a právními otázkami jak pro instituce, které přijímají zahraniční výzkumné pracovníky, tak pro samotné zahraniční výzkumné pracovníky, kteří přicházejí na české výzkumné instituce a nevědí, jaké má postavení zaměstnanec podle českého práva nebo neznají relevantní pravidla projektů Marie Curie. Z tohoto důvodu je první část brožury, určená pro české instituce, sepsána v češtině, zatímco druhá a třetí část, určená zahraničním vědecko-výzkumným pracovníkům, je sepsána v anglickém jazyce.

Foreword

The People Specific Programme aims to strengthen, quantitatively and qualitatively, the human potential in research and technology within the European Research Area as well as to support mobility and career development of researchers in all fields of science. With regard to the different types of mobility, there exist – depending on the type of a Marie Curie project – different types of contracts concluded between different parties (e.g. Grant Agreement, Consortium, Partnership Agreement or Employment Contract). Contractual relationships within Marie Curie projects are dealt with in the first chapter, which contains recommendations for Czech institutions about the content of Partnership and Consortium Agreements. The next two chapters aim at foreign researchers and describe the Czech employment and social security law as well as selected provisions of the Grant Agreement relevant to individual researchers within the framework of employment and social security laws.

This brochure is a concise guide to selected contractual and legal aspects both for institutions hosting foreign researchers and for individual researchers coming to Czech host institutions without knowing their rights and obligations resulting from the Czech employment law or without being aware of the relevant Marie Curie rules. For this reason, the first part, which is targeted at Czech institutions, is written in Czech, whereas the other parts, aimed at foreign researchers, are in English.

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Part 1 / Část 1

Contractual relationships in Marie Curie projects

Smluvní vztahy v projektech Marie Curie

1. Smluvní vztahy v projektech Marie Curie

Kapitola *Smluvní vztahy v projektech Marie Curie* podává přehled smluv včetně jejich obsahu, s nimiž se účastníci Marie Curie projektů mohou setkat. Z důvodu neexistence vzorového dokumentu pro partnerskou nebo MC konsorciální smlouvu je největší pozornost věnována právě těmto smlouvám. V úvodu je pro přehlednost upravena také Grantová dohoda a načrtnuta existence smlouvy s výzkumníkem. Kde je to možné a vhodné, je uváděn také výčet nebo příklad Marie Curie projektů, v nichž se daná smlouva uzavírá. V závěru kapitoly je pro ilustraci uveden příklad smluvních vztahů v ITN – EID a IOF projektu a seznam relevantních odkazů.

Projekty specifického programu Lidé 7. RP (Marie Curie projekty) mají za cíl podpořit mezinárodní a mezisektorovou (akademická sféra vs. průmysl) mobilitu výzkumníků. V těchto projektech dochází, podle typu projektu[1], k uzavírání několika smluv mezi různými smluvními stranami. Smluvní strany, resp. subjekty účastnící se Marie Curie projektů, tak mají různá práva a povinnosti.

Těmito subjekty jsou:

- **Výkonná agentura pro výzkum** (Research Executive Agency - **REA**)
    - Jedná jménem Evropské unie, administrativně řídí projekty Marie Curie
    - Je vždy smluvní stranou Grantové dohody
- **Příjemce**
    - Je příjemcem finančního příspěvku Evropské unie (v tomto případě v projektech Marie Curie), někdy označován jako účastník projektu, partner projektu aj.
    - Je vždy smluvní stranou Grantové dohody
    - Může být smluvní stranou Konsorciální smlouvy – v Marie Curie projektech s více příjemci (např. ITN EID)
    - Může být smluvní stranou Partnerské smlouvy – v Marie Curie projektech s organizacemi, které nejsou příjemci finančního příspěvku EU, a tudíž neuzavírají Grantovou dohodu (např. IOF)
- **Partnerská instituce**[2]
    - Je vždy smluvní stranou Partnerské smlouvy
    - Nikdy není smluvní stranou Grantové dohody (není příjemcem finančního příspěvku EU) ani Konsorciální smlouvy
- **Výzkumník**
    - Je vždy smluvní stranou Smlouvy s výzkumníkem
    - Nikdy není smluvní stranou Grantové dohody, Konsorciální smlouvy ani Partnerské smlouvy

Ve všech Marie Curie projektech vždy vystupuje REA, příjemce a výzkumník. Partnerská organizace je součástí pouze některých Marie Curie projektů (např. IOF, IRSES).

1

- Initial Training Networks (ITN)
- Intra-European Fellowships for Career Development (IEF)
- Career Integration Grants (CIG)
- Co-funding of Regional, National, and International Programmes (COFUND)
- Industry Academia Partnerships and Pathways (IAPP)
- International Outgoing Fellowships (IOF)
- International Incoming Fellowships (IIF)
- International Research Staff Exchange Scheme (IRSES)

2

V některých typech Marie Curie projektů je partnerská organizace označovaná termínem „asociovaný partner“ – viz Marie Curie ITN Innovative Doctoral Programme („IDP“) a Marie Curie ITN European Industrial Doctorates („EID“)

Smlouvy uzavírané v projektech Marie Curie regulují jak otázky duševního vlastnictví, tak i finanční otázky, otázky odpovědnosti a další relevantní oblasti. Seznam smluv je k dispozici v tabulce níže.

SEZNAM SMLUV

Grantová dohoda	**Konsorciální smlouva**	**Partnerská smlouva**	**Smlouva s výzkumníkem**
Uzavřena mezi REA a příjemci/příjemcem	Uzavřena mezi příjemci	Uzavřena mezi příjemci a partnerskými institucemi	Uzavřena mezi příjemcem a výzkumníkem
Uzavírá se v každém Marie Curie projektu	Uzavírá se v Marie Curie projektech s více příjemci[3]	Uzavírá se v těch Marie Curie projektech, v nichž je partnerská organizace[4]	Uzavírá se v každém Marie Curie projektu
Existuje vzorová smlouva www.cordis.europa.eu	Neexistuje vzorová smlouva vytvořena EK K dispozici CA Checklist, který připravila EK ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-consortium-agreement-checklist-2011v2_en.pdf	Neexistuje vzorová smlouva vytvořena EK K dispozici Guidance Notes on Partnership Agreement – IRSES projekty, který připravila REA http://ec.europa.eu/research/mariecurieactions/funded-projects/how-to-manage/funded-projects/how-to-manage/irses/guidance-partnership-agreements_en.pdf	Neexistuje vzorová smlouva vytvořena EK V ČR vytvořen vzor http://vydavatelstvi.vscht.cz/knihy/uid_isbn-978-80-7080-804-7/978-80-7080-804-7.pdf (str. 40 a násl.)

1.1. Grantová dohoda

Grantová dohoda upravuje práva a povinnosti příjemce vůči REA (např. finanční otázky, odpovědnost, duševní vlastnictví), zároveň ale často stanoví rámec pro další smlouvy uzavírané mezi příjemci (konsorciální smlouva), příjemcem a partnerskou organizací (partnerská smlouva) a příjemcem a výzkumníkem (smlouva s výzkumníkem). Z Grantové dohody plyne pro příjemce povinnost neuzavírat žádné smlouvy, které by byly v rozporu se zněním Grantové dohody. Grantová dohoda tak například:

- stanoví podpůrný režim pro spoluvlastnictví výsledků projektu mezi příjemci, čímž ovlivňuje úpravu spoluvlastnictví v konsorciální smlouvě;
- stanoví pravidlo, podle kterého vlastníkem výsledků je příjemce, tj. i v případě, kdy se jedná o projekt realizovaný ve spolupráci s partnerskou organizací a výzkum je prováděn na půdě partnerské organizace (lze modifikovat);

[3] Konsorciální smlouva je povinná v ITN – EID projektech; dobrovolná například v ITN Multi-partner, ITN – IDP, IAPP

[4] IOF, ITN – IPD a EID vůči asociovaným partnerům, IRSES – vůči partnerům ze třetích zemí

- stanoví povinnost poskytovat výzkumníkovi přístupová práva ke stávajícím nebo novým znalostem bezúplatně v případě, kdy výzkumník potřebuje tyto znalosti z důvodu provádění prací na projektu, čímž ovlivňuje úpravu poskytování licencí ve smlouvě s výzkumníkem.

V Marie Curie projektech se Grantová dohoda skládá z následujících částí:

- Základní text – existují dva typy Základního textu podle toho, zda se jedná o projekt s jedním příjemcem,[5] nebo o projekt s více příjemci[6];
- Annex II. – existují dva typy Annexu II. podle toho, zda se jedná o projekt s jedním příjemcem,[7] nebo o projekt s více příjemci[8];
- Annex III. – existuje několik typů Annexu III. podle druhu Marie Curie projektu (například Annex III. IOF);
- Annex IV. – přístupový formulář před zahájením projektu („Formulář A“);
- Annex V. – přístupový formulář po zahájení projektu („Formulář B“);
- Annex VI. – finanční výkaz („Formulář C“); různé druhy podle typu Marie Curie projektu;
- Annex VII. – podmínky zadání pro osvědčení o finančních výkazech („Formulář D“);
- Annex VII. - podmínky zadání pro osvědčení o metodice („Formulář E“);
- Seznam speciálních ustanovení, která se mohou vkládat do Základního textu.

Annex II. a Annex III. představují nejdůležitější části Grantové dohody, pokud jde o úpravu práv a povinností. Annex III. doplňuje Annex II. a upravuje práva a povinnosti v závislosti na konkrétním typu Marie Curie projektu. Annex II. obsahuje zejména úpravu finančních otázek, duševního vlastnictví, změn a ukončení projektu, odpovědnosti, kontrol a sankcí, podávání zpráv o řešení projektu aj. Annex III. dále například zmiňuje smlouvu s výzkumníkem a partnerskou smlouvu v těch typech projektů, v nichž má být uzavřena.

Grantová dohoda definuje a upravuje základní instituty duševního vlastnictví a povinnosti s nimi spojené, které ale mohou být modifikovány v komplementárních smlouvách (konsorciální smlouva, partnerská smlouva, smlouva s výzkumníkem) v rozsahu, v němž to Grantová dohoda připouští.

→ **Vlastnictví a převod nových znalostí**
Podle Grantové dohody je vlastníkem nových znalostí příjemce, který tyto nové znalosti vytvoří. V případě, kdy jsou nové znalosti vytvořené na půdě partnerské instituce, je zde možnost převést vlastnictví. Partnerská organizace je třetí stranou, a proto za splnění podmínek (ohrožení bezpečnostních nebo etických zájmů, snížení konkurenceschopnosti) může Evropská komise namítat proti převodu nových znalostí do třetí země, tj. země, v níž partnerská organizace sídlí.

→ **Ochrana nových znalostí**
Stejně jako v jiných projektech 7. RP i zde platí, že nové znalosti, které mohou být využitelné v průmyslu nebo komerčně, mají být chráněny vlastníkem tak, aby byla zajištěna jejich adekvátní a efektivní ochrana.

→ **Využití a šíření nových znalostí**
Vlastník nových znalostí má povinnost využívat a šířit nové znalosti, nebo zajistit jejich využití a šíření jiným subjektem. Aktivity související s využitím a šířením mají být oznamovány Evropské komisi například v plánu pro využití a šíření nových znalostí.

→ **Přístupová práva k novým a stávajícím znalostem**
V projektech s více příjemci mají být přístupová práva poskytnuta vždy, pokud jsou potřeba k provádění vlastních práci na projektu, resp. realizace projektu. Bez ohledu na to, zda se jedná o projekt s více nebo s jedním příjemcem, vždy musí být poskytnuta přístupová práva

[5] ftp://ftp.cordis.europa.eu/pub/fp7/docs/rea-core-ga-mc-mono_en.pdf
[6] ftp://ftp.cordis.europa.eu/pub/fp7/do-cs/rea-core-ga-mc-multi_en.pdf
[7] ftp://ftp.cordis.europa.eu/pub/fp7/docs/rea-annex2-mc-mono-v3_en.pdf
[8] ftp://ftp.cordis.europa.eu/pub/fp7/docs/rea-annex2-mc-multi-v3_en.pdf

výzkumníkovi, aby tento mohl provádět své práce na projektu. Konkrétní podmínky udělení přístupových práv včetně finančních aspektů jsou uvedené tabulce níže:

PŘÍSTUPOVÁ PRÁVA			
	Důvod pro udělení přístupových práv	**Stávající znalosti**	**Nové znalosti**
Mezi příjemci	Z důvodu realizace projektu	Bezúplatně, pokud nebylo sjednáno jinak před podpisem grantové dohody	Bezúplatně
	Z důvodu využití vlastních nových znalostí	Bezúplatně nebo spravedlivé a přiměřené podmínky	Bezúplatně nebo spravedlivé a přiměřené podmínky
Mezi příjemcem a výzkumníkem	Potřebnost přístupových práv k provádění výzkumných prací v projektu	Bezúplatně	Bezúplatně

1.2. Konsorciální smlouva

Podobně jako v jiných typech projektů 7. RP, ustanovení Grantové dohody představují minimální standardy, s nimiž musí příjemci jednat v souladu. V projektech s více příjemci mohou/musí[9] příjemci také uzavírat mezi sebou Konsorciální smlouvu. Zde si příjemci mohou přizpůsobit pravidla 7. RP v souladu s Grantovou dohodou s cílem regulovat interní fungování a strukturu konsorcia; organizaci výzkumných prací; otázky duševního vlastnictví; finanční, časové a jiné podmínky pro vzájemné umožnění přístupu mezi členy konsorcia ke svým znalostem; pravidla pro rozdělení finančního příspěvku EU; způsob řešení vnitřních sporů včetně případů zneužití pravomoci; ujednání projektových partnerů o odpovědnosti za škodu, odškodnění a povinnosti zachovávat mlčenlivost aj.

Konsorciální smlouva by měla být ideálně uzavřena před podpisem Grantové dohody. V opačném případě, tj. tam kde je projekt 7. RP zahájen, aniž je podepsána Konsorciální smlouva, mohou nejasnosti, které jsou jinak upravené v Konsorciální smlouvě, ohrozit samotný průběh realizace projektu (např. neexistence potřebného zachycení stavu znalostí, s nimiž účastníci vstupují do projektu, neexistence vnitřní organizace konsorcia s příslušnými pravomocemi jednotlivých orgánů atd.). Tam, kde Grantová dohoda obsahuje tzv. podpůrný režim úpravy určité otázky aplikovatelný v případě, že si účastníci projektu nesjednají jinak (tj. typicky v případě neuzavření Konsorciální smlouvy), přichází v úvahu podpůrné použití tohoto režimu obsaženého v Grantové dohodě (např. spoluvlastnictví nových znalostí). Pokud partneři uzavírají Konsorciální smlouvu dobrovolně, mohou tak učinit kdykoliv během řešení projektu.

Evropská komise nepřipravila žádný oficiální vzor konsorciální smlouvy pro projekty 7. RP (ani pro Marie Curie projekty), k dispozici je stručný Consortium Agreement Checklist (ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-consortium-agreement-checklist-2011v2_en.pdf).

[9] Uzavření konsorciální smlouvy je povinností partnerů ve většině projektů 7. RP založených na spolupráci partnerů. Pouze v případě, že výzva k podávání projektových návrhů výslovně uvádí, že konsorciální smlouva nemusí být uzavřena, není její uzavření povinností partnerů. Tam, kde povinnost uzavřít konsorciální smlouvu není dána, mohou ji členové konsorcia uzavřít dobrovolně.

V Konsorciální smlouvě je mj. potřebné zaměřit se zejména na oblasti, které Grantová dohoda nijak neupravuje a je tedy pouze na příjemcích, jak si toto upraví, a na ty oblasti, které Grantová dohoda sice upravuje, ale umožňuje příjemcům se od této úpravy odchýlit. Z posledně jmenovaných se jedná v oblasti duševního vlastnictví konkrétně například o tyto otázky:

- **Povinnost zachovat mlčenlivost**
    - Grantová dohoda stanoví povinnost zachovávat mlčenlivost o skutečnostech souvisejících s projektem po dobu 5 let po jeho skončení, pokud nebylo sjednáno jinak.
        - *Konsorciální smlouva může stanovit dobu delší nebo kratší.*
- **Spoluvlastnictví nových znalostí**
    - Grantová dohoda stanoví tzv. podpůrný režim pro nakládání se společně vlastněnými novými znalostmi v případě, kdy spoluvlastníci neuzavřeli smlouvu o způsobu nakládání se svými společně vlastněnými novými znalostmi – každý ze spoluvlastníků může udělit nevýhradní licenci třetím stranám bez práva udělovat podlicence; o tomto musí spoluvlastníky informovat 45 dnů předem a poskytnout jim přiměřenou a spravedlivou kompenzaci
        - *Konsorciální smlouva může stanovit vlastní, zcela odlišný režim pro nakládání se společně vlastněnými novými znalostmi*
- **Převod nových znalostí**
    - Grantová dohoda stanoví, že za určitých podmínek musí příjemce (partner v projektu) informovat všechny další příjemce o záměru převést své nové znalosti na jiný subjekt ve lhůtě 45 dnů předem; partneři následně mají možnost namítat proti plánovanému převodu ve lhůtě 30 dnů od oznámení. Konsorciální smlouva může tento režim měnit co do stanovení jiných časových limitů nebo daný režim zcela vyloučit.
        - *Konsorciální smlouva tak např. může stanovit časové limity delší nebo kratší, než je 45 a 30 dnů. Konsorciální smlouva může také úplně vyloučit tuto oznamovací povinnost a právo namítat, což může vést až ke znemožnění převodu nových znalostí.*
- **Šíření nových znalostí včetně publikování**
    - Jakýkoliv záměr šířit nové znalosti má být podle Grantové dohody oznámen partnerům ve lhůtě 45 dnů předem včetně popisu dané aktivity a časového plánu šíření; poté mají partneři možnost ve lhůtě 30 dnů od oznámení namítat proti plánované aktivitě s tvrzením, že šíření by ohrozilo jejich legitimní zájmy související s jejich stávajícími nebo novými znalostmi.
        - *Konsorciální smlouva může stanovit časové limity delší nebo kratší než, je 45 a 30 dnů. Konsorciální smlouva nemůže tento režim vyloučit; může ale nad rámec toho, co je uvedeno v Grantové dohodě, například upravit časové limity pro rozhodování o námitkách pro šíření s tím, že po uplynutí daného časového limitu se má za to, že šíření je umožněno.*
- **Přístupová práva k novým a/nebo stávajícím znalostem**
    - Grantová dohoda stanoví, že udělení přístupových práv v sobě nezahrnuje poskytnutí podlicence třetím subjektům, pokud není s vlastníkem sjednáno jinak.
        - *Konsorciální smlouva může obsahovat souhlas vlastníků nových znalostí s poskytováním podlicencí v případě udělování přístupových práv.*
    - Grantová dohoda stanoví, že přístupová práva ke stávajícím znalostem pro účely provádění projektu mají být udílena bezplatně, pokud nebylo sjednáno jinak před podpisem Grantové dohody (viz tabulka výše).
        - *Konsorciální smlouva může obsahovat ujednání o úplatě za poskytování přístupových práv ke stávajícím znalostem pro účely realizace projektu, pokud byla uzavřena před podpisem Grantové dohody.*

- Grantová dohoda stanoví, že přístupová práva ke stávajícím a novým znalostem pro účely využití vlastních nových znalostí mají být udílena za přiměřených a rozumných podmínek nebo bezplatně.
  - *V konsorciální smlouvě tak má být upravena jedna z výše uvedených možností.*
- Přístupová práva pro přidružené subjekty – podle Grantové dohody přidružené subjekty k příjemcům mají mít stejná přístupová práva jako příjemci, pokud není sjednáno jinak.
  - *Konsorciální smlouva tak může přístupová práva pro přidružené subjekty úplně vyloučit nebo podmínit udílení přístupových práv.*

1.3. Partnerská smlouva

Partnerská smlouva je svým zaměřením obdobnou smlouvou jako je Konsorciální smlouva, tj. jejím smyslem je upravit interní fungování spolupráce partnerů (resp. příjemce a partnera/partnerů) po dobu vyslání výzkumníka do partnerské instituce, a to v různých aspektech spolupráce – výzkumné práce, management, duševní vlastnictví, přístupová práva k novým znalostem, platby a jejich převod aj.

Evropská komise ani REA nepřipravily žádný vzor Partnerské smlouvy. REA nicméně připravila stručného průvodce pro Partnerskou smlouvu pro projekty IRSES, podle něhož ujednání mezi příjemcem a partnerem může spočívat ve stručném prohlášení: *„We the undersigned legal representatives of partner organizations declare that we will implement the Project (Insert: project title, acronym and number) in accordance with the provisions of the Grant Agreement and in line with the Description of Work (Annex I to the Grant Agreement).“*
Výše uvedené prohlášení je pro potřeby REA postačující, jelikož se tímto partneři zavazují postupovat v souladu s Grantovou dohodou. Jelikož ale Grantová dohoda nepokrývá a ani nemůže pokrývat všechny možné vztahy mezi příjemce a partnerem, je určitě vhodnější sjednat si detailnější Partnerskou smlouvu, do níž budou převzata relevantní ustanovení Grantové dohody, nebo bude na Grantovou dohodu odkázáno například ve formě přílohy.

Partnerská smlouva se běžně skládá z těchto částí:

- **Identifikace smluvních stran včetně identifikace výzkumníka**
- **Definice** – zejména:
  - *Projekt*
  - *Důvěrné informace*
  - *Stávající znalosti*
  - *Nové znalosti*
- **Účel smlouvy**
- **Trvání smlouvy**
  - *Po dobu trvání vyslání*
  - *Předčasné ukončení smlouvy v případě předčasného ukončení projektu nebo předčasného ukončení účasti příjemce REAou*
- **Jazyk smlouvy**
  - *Standardně angličtina*
- **Závazek partnerské instituce provádět projekt v souladu s Grantovou dohodou včetně Annexu I.**
  - *Možnost odkázat na Grantovou dohodu jako na přílohu Partnerské smlouvy*
- **Seznam povinností partnerských organizací vůči výzkumníkovi po dobu vyslání**
- **Finanční otázky**

- *Jak vysoký příspěvek uhradí příjemce partnerské organizaci a na jaké období;*
- *Popis položek, které mohou být financovány z příspěvku, např. cestovné, registrační poplatky na konference, nepřímé náklady partnerské instituce aj.;*
- *Způsob konverze měn;*
- *Kdy bude příspěvek převeden partnerské instituci (např. po podpisu partnerské smlouvy), případně v jakých procentuálních částech;*
- *Povinnost partnerské instituce podat příjemci zprávu o způsobu nakládání s příspěvkem, resp. popis uskutečněných výdajů;*
- *Vrátit poměrnou část příspěvku za předem stanovených podmínek (např. do určitého dne, pokud nebyla utracena atd.;*
- *Audity.*

- **Povinnost mlčenlivosti** – příklady ujednání:
  - *Jakékoliv informace, které jsou označené jako důvěrné, případně je k nim připojeno prohlášení o jejich důvěrném charakteru, jsou důvěrnými informacemi a nesmí být odtajněny v rozporu s touto smlouvou.*
  - *Zpřístupnění důvěrných informací zaměstnancům a dalším osobám spolupracujícím na projektu musí být doprovázeno jejich poučením o důvěrnosti těchto informací.*
  - *Přijímající strana nemá povinnost mlčenlivosti, pokud se například jedná o informace, které jsou veřejně přístupné v době zpřístupnění; které jsou v době zpřístupnění již známé přijímající straně aj.*
- **Duševní vlastnictví**
  - Vlastnictví nových znalostí – příklady ujednání:
    - *Pokud nové znalosti vytvořené po dobu vyslání*[10] *budou vytvořené pouze zaměstnanci partnerské instituce, pak budou ve vlastnictví partnerské instituce. Pokud nové znalosti budou vytvořené částečně zaměstnanci partnerské instituce a částečně zaměstnanci vysílající organizace, pak budou tyto nové znalosti spoluvlastněny v poměru 50% a 50%. Výzkumník zůstává zaměstnancem vysílající organizace.*
    - *V případě patentovatelných výsledků bude majitelem patentu příjemce s tím, že zaměstnanci partnerské organizace, kteří se na vynálezu spolupodíleli, budou uvedeni jako spoluvynálezci. Příjemce bude informovat partnerskou organizaci o svém záměru podat patentovou nebo jinou přihlášku související s novými znalostmi.*
  - Publikování – příklad ujednání:
    - *Jakékoliv publikace včetně prezentací aj. budou před samotným šířením zaslány druhé straně k posouzení, zda šířením nebudou ohroženy její zájmy. Posuzující strana může žádat úpravu včetně odstranění a/nebo pozdržení šíření těch pasáží předloženého materiálu, které obsahují její stávající znalosti, a/nebo v případě, že šířením by bylo znemožněno posuzující straně zajistit pro své nové znalosti patentovou nebo jinou ochranu. Pozdržení šíření nesmí být v žádném případě delší než … dnů.*
    - *Povinnost zmiňovat finanční příspěvek EU.*
- **Způsob řešení sporů**
  - **Interní** – nezávazný, doporučující, např.:
    - *V případě sporu bude ustanovena ad-hoc komise sestávající ze zástupců příjemce a partnerské instituce s cílem dosáhnout smírného vyřešení věci.*
  - **Externí** – závazný, např. *vložení rozhodčí doložky se stanovením arbitrážního soudu*

[10] Termín „vyslání“ odpovídá v grantové dohodě užívanému anglickému termínu „secondment“

- **Povinnosti reportovat příjemci/příjemcům o postupu prací na projektu**
    - Např. *každých 6 měsíců o postupu prací na projektu*

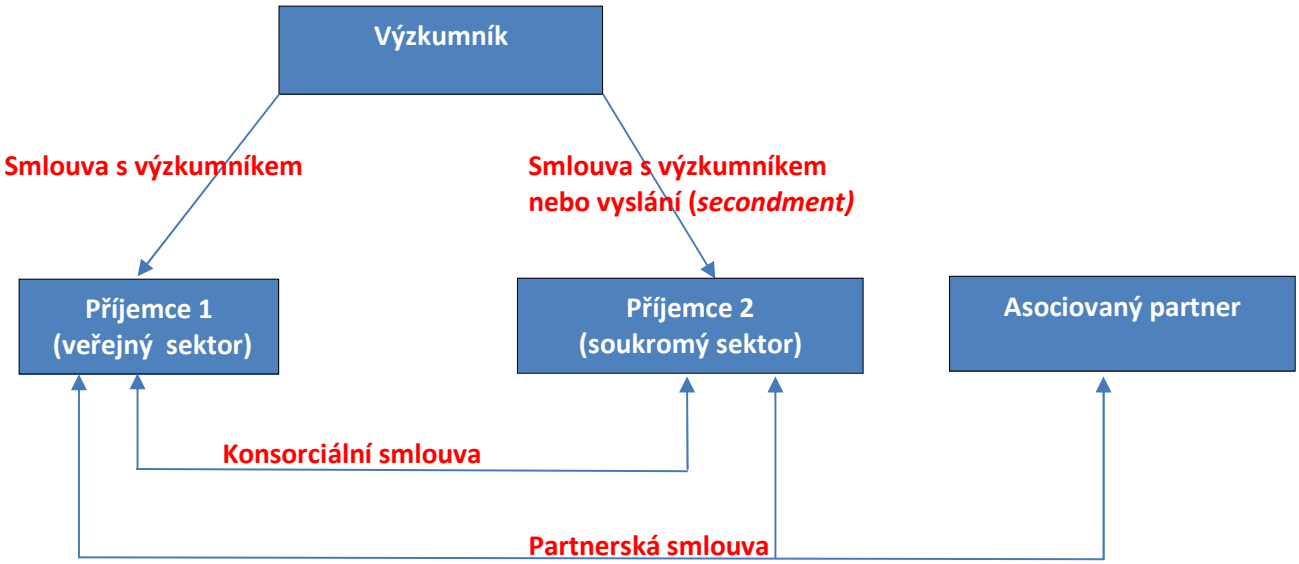
Z praktického hlediska doporučujeme věnovat zvýšenou pozornost následujícím oblastem:

- Povinnosti partnerské instituce ve vztahu k výzkumníkovi:
    - Zajištění přístupu k infrastruktuře a zařízení nezbytném pro provádění projektu po dobu vyslání;
    - Zajištění stejného standardu ochrany bezpečnosti a zdraví při práci jako v případě místních výzkumníků;
    - Poskytnutí administrativní a jiné podpory zejména, ale ne pouze, v souvislosti se zařizováním např. pracovního povolení, víza atd.;
    - Určení konkrétní osoby, která bude dohlížet na výzkumníka po dobu vyslání v souvislosti s prováděním prací na projektu.
- Povinnosti partnerské instituce ve vztahu k příjemci, resp. vzájemné povinnosti:
    - Zachování mlčenlivosti;
    - Vlastnictví nových znalostí partnerskou institucí/příjemcem a vzájemné poskytování licencí (např. pro nekomerční účely bezplatně);
    - Platby ze strany příjemce vůči partnerské instituci včetně vystavování faktur a termínů pro úhradu faktur;
    - Zmiňovat finanční podporu EU na všech šířených výstupech projektu;
    - Způsob změn partnerské smlouvy;
    - Odpovědnost za škodu, omezení.

Grafické znázornění možných smluvních vztahů v Marie Curie projektech

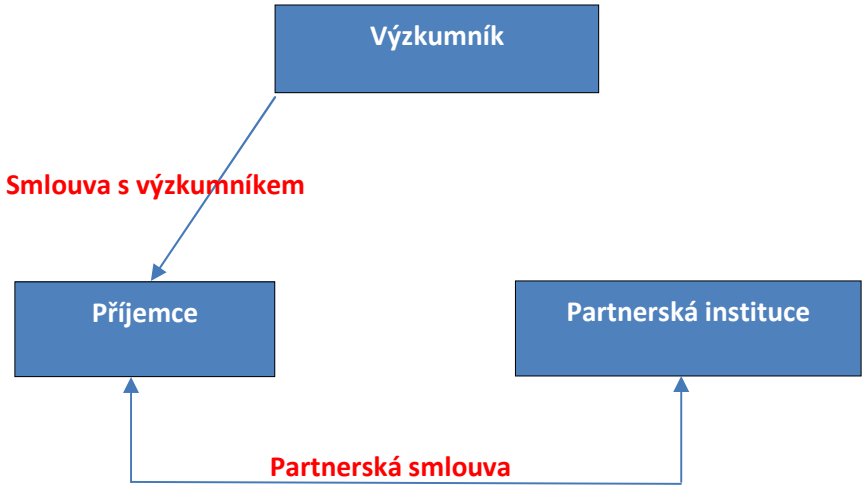
Konsorcium – ITN – EID

- V projektu vždy vystupuje výzkumník, příjemce ze soukromého sektoru a příjemce z veřejného sektoru
- Výzkumník – smlouva (nejčastěji pracovní) s jedním z příjemců, v níž je reflektován obsah Annexu III.4; může uzavřít smlouvu i s druhým příjemcem
- Příjemci – povinnosti uzavřít konsorciální smlouvu
- Asociovaný partner – může, ale nemusí být součástí projektu; uzavírá partnerskou smlouvu s příjemci



IOF

- V projektu vždy vystupuje výzkumník, příjemce a partnerská instituce
- Výzkumník - smlouva (nejčastěji pracovní) s příjemcem, v níž je reflektován obsah Annexu III.4
- Příjemce a partnerská instituce – uzavírají partnerskou smlouvu



Seznam relevantních odkazů

- http://cordis.europa.eu/fp7/calls-grant-agreement_en.html#rea_ga
  – grantová dohoda pro projekty Marie Curie a její přílohy
- http://www.iprhelpdesk.eu/taxonomy/term/119 - Marie Curie v kontextu IPR otázek
- http://ec.europa.eu/research/participants/portal/page/home - výzvy
- http://ec.europa.eu/research/mariecurieactions/index_en.htm
  - http://ec.europa.eu/research/mariecurieactions/about-mca/faq/index_en.htm - FAQ
- http://fp7.cz/akce-marie-curie/ - novinky, akce, informace o Marie Curie projektech v češtině

Část 2 / Part 2

Czech employment and social security law

České pracovní právo a sociální zabezpečení

2. Czech employment and social security law

This part of the brochure is devoted to relevant aspects of Czech labour and social security law. It is, in particular, the life cycle of an employment relationship: establishment, changes (e.g. relocation or business trip), and termination. Further important parts of the Labour Code, which are also described in this chapter, include stipulations with regard to leaves and impediments to work.

These last two aspects, and the entire labour law in general, are closely connected with social security. That is why relevant aspects of social security are also dealt with here, in particular conditions for participating in an insurance and individual allowances (e.g. sickness, maternity).

2.1. Labour law

Czech labour law is governed mostly by the Labour Code which regulates the performance of work by an employee for an employer. The Labour Code stipulates rights and obligations of both parties - the person who does the job and the person offering it. The Code regulates every phase of the employment relationship – establishment, changes, and termination. The code also stipulates rules that apply to business trips, leaves, impediments to work, etc. These important parts of employment relationships will be described below.

First it is necessary to describe the employment relationship as a whole and to mention the differences between this employment relationship and the relationship between students and universities which may be important for Marie Curie projects.
Employment, which is established on the basis of an employment agreement or an agreement for work, falls under the labour law and is therefore governed by the Labour Code as opposed to the relationship between a student and a university, which is not regulated by this law.
There are some other differences between these two relationships. A typical feature of the employment relationship is superiority and subordination. In this case, an employee is subordinated to an employer and is expected to follow the employer's rules. These relationships further differ in the fact that work performed under an employment agreement is being done on behalf of an employer and is their responsibility. This means that when an employee causes damage to a third person, the employer is liable for the damage. This rule does not apply in the student-university relationship.
Moreover, employers are obliged to remunerate their employees. The above-mentioned facts are the characteristic features of the relationship between an employer and an employee.

As has already been mentioned above, the relationship between employers and employees is governed by the Labour Code and contains some principles specific for this branch of law. Namely the prohibition to transfer the risk arising from employment to an employee, prohibition to impose pecuniary penalties on employees for a breach of employment obligations and, last but not least, an equal treatment and non-discrimination principle which applies generally. Nevertheless, there is more emphasis on the issue in the labour law because the working environment is more predisposed to discrimination than others.

The following part is devoted to a description of the employment relationship from its beginning to its termination.

2.1.1. Employment relationship

Establishment of employment relationship

An employment relationship can be established in three ways: employment contract, work performance agreements, and appointment. The way of establishing an employment relationship using an employment contract is the one which is used the most.

- **Employment contract**

As mentioned above, an employment contract is the most frequently used way to establish an employment relationship. That is why the Czech Labour Code simplifies the process of concluding this contract. It is necessary to only agree to three essential conditions:

  - **type of work** (job title) – the activity that the employee will perform
  - **place of work** – better to agree on a specific location – the broader the definition, the easier it is for an employer to assign work to an employee at different locations
  - **date of work commencement** – the employment relationship is established on this date

The stipulation of these terms must be specific and comprehensive. Then it is also possible to agree on other conditions, e.g. the duration of the contract, trial period, salary, etc.

Before the employment contract is concluded, an employer is entitled to require only information directly connected with the conclusion of the employment contract. Such information may concern an employee's education, skills, or their state of health. An employer is further obliged to inform future employees about their rights and duties arising from the contract and about working conditions, payments, length of annual leave, etc.

According to the Czech Labour Code, the law imposes a set of basic rights and duties on both parties from the day agreed as the beginning of the performance of work in the employment contract. For an employer this means the duty to assign employees to the work stipulated in the contract and to pay them for that work. On the other hand, employees have the duty to perform the stipulated work during working hours and to act in compliance with the law and with the employer's instructions.

In addition to these duties, there are some other details also set forth in the Labour Code. It is an employee's duty to cooperate with other employees and to work in compliance with their employer's interests. It is an employer's obligation to take reasonable care of the safety of employees.

As has been mentioned above, the parties of the employment contract may also agree on the duration of the contract. Unless the duration is otherwise agreed on, the contract is concluded for an unlimited period. Therefore, it is necessary to stipulate a restricted period of time explicitly.
A fixed-term employment relationship must not exceed 3 years. Following the expiration of the period agreed, it is possible to continue performing the work. Unless there are any objections on the employer's part, the employment contract is changed to a permanent relationship.
Other methods of establishing a relationship between an employer and an employee include an agreement for work and an appointment. An appointment turns to an employment relationship in cases stipulated by special legal regulations. It is used to establish, e.g. the head of an organizational unit or section, a contributory organization, etc. The regime of agreements for work is described below.

2.1.2. Other types of employment relationships

Work performance agreements

Work performance agreements are bilateral legal acts which result in the creation of an employment relationship between an employer and an employee.

These agreements provide more flexibility to parties, especially with regard to working hours, payments, and ways of terminating the employment. Despite the fact that work performance agreements are more flexible, there are also some limitations. These limitations concern the number of working hours per year and per week. The number of working hours per year, in case of an agreement to complete a job, must not exceed 300 hours while the limit for working hours per week is 20 hours.

The Labour Code sets out rules which apply to agreements to work.

1. **Agreement to complete job**

While it is possible to employ a person on the basis of this legal act, the workload may not exceed 300 hours per calendar year. If the amount of working hours exceeds 300 hours per calendar year, the agreement is rendered invalid.
The content of the agreement is up to the parties. However, it should contain the type of work to be performed by the employee, their remuneration, and the extent of the work.

2. **Agreement to perform work**

This agreement is also a bilateral act that establishes a basic employment relationship under which an employee performs work and an employer pays them for their work. The main difference is of the same type that applies to the agreement to complete a job – the extent of work, namely the amount of working hours, is limited.
The amount of working hours must not exceed, on average, half of the stipulated weekly working hours (20 hours).
Agreements to perform work may be concluded for definite and indefinite periods of time.
It is possible to terminate an agreement to perform work by a notice of termination, but there is a notice period which is shorter than the period that applies in case of terminating an employment agreement – there is a 15-day notice period commencing on the date of delivery of the notice.
Employees who work on the basis of these agreements are also entitled to leaves in the event of personal impediments to work (mentioned below). These include a maternity leave and a parental leave.

2.1.3. Employment relationship changes

Changes of the employment relationship are generally possible by means of an agreement between both parties. The Labour Code also includes a comprehensive description of ways to change the relationship.

Unilaterally agreed changes on the basis of an employer's decision are possible only if the Labour Code allows this type of changes.

Employees may be obliged to perform work of some other type or at some other place than stipulated in the employment contract only in cases specified in the Labour Code.

The most significant changes will concern the type of work and the place of the performance of the work.

2.1.3.1. Transfer to different work

In some cases an employer **is obliged** to transfer an employee to different work. This is mostly due to the employee's incapacity to perform their current work. This can occur in the following cases: An employee is unfit to perform their current work in the long term due to their state of health as confirmed by a medical report. An employee cannot perform their current work anymore due to a work accident, occupational disease, or a threat of such a disease as indicated by a medical report. A pregnant employee, breastfeeding employee, or an employee who is a mother of a child under 9 months of age and who is assigned work which she cannot perform or which is dangerous for her. If it is necessary due to medical care or pursuant to a final decision of a court.If an employee who works at night is found unable to perform night work. At a request of a pregnant employee, breastfeeding employee, or an employee who is a mother of a child under 9 months of age.An employer **may** transfer an employee

- If the employee has been given notice by the employer because the employee fails to fulfill the prerequisites for performing the work stipulated by legal regulations, if there are reasons for an immediate termination of employment, or if there was a breach of duty as defined by legal regulations.
- If criminal proceedings against the employee have been commenced on the grounds of a suspicion of an intentional crime committed during the performance of the work. If the employee has temporarily ceased to meet the preconditions for the performance of the work. In this case, the duration of the transfer may not exceed 30 working days in a calendar year. A transfer without the consent of an employee is possible for a period of time that is absolutely necessary, and if this is required to avoid an extraordinary event. The employee is then always entitled to a salary for the work that they currently perform (for the work they were transferred to).

2.1.3.2. Business trip

A business trip occurs when an employer dispatches an employee to perform work away from the agreed place of work for a necessary period of time. An employer may send an employee on a business trip to perform a one-off task or even a long-term project not always for a restricted period of time.
Therefore, this institute is temporary and may be carried out only on the basis of an agreement with the employee. Such consent may be included in the employment contract or it may be concluded later when a specific need requires so. Another possibility is that the employee expresses their agreement simply by going on the business trip.
An employee's work on a business trip is organized by the manager who sends the employee on the trip. Managers may also authorize other managers to organize, direct, and control the work of employees in case their work is to be performed at another organizational unit. An employer's right to send an employee on a business trip is restricted with regard to pregnant employees, employees caring for a child under the age of eight, and single employees caring for a child under the age of fifteen. Their consent is always required.

2.1.3.3. Relocation

An employee may be relocated for the performance of work to some other place than agreed in their employment contract only with their consent and within the framework of their employer if this is an operational requirement.
In general, an employer may relocate an employee to perform work at some other place than agreed on, but there are some restrictions. These restrictions represent the protection of employees, which applies to pregnant women and to employees who provide a proof that they take care of a person who is mostly or completely physically dependent on them. These employees may be relocated only following their own request.
When an employee is relocated they become obliged to perform their work at the new place.
The work of a relocated employee is organized, directed, and controlled by the manager of the unit to which the employee was relocated.
Generally, an employee is obliged to perform their work at the place agreed on in their employment agreement. In principle, an employee is not obliged to perform their work outside the agreed place.

2.1.3.4. Joint provisions on changes in employment relationship and return to work

If the reasons for a transfer or relocation cease to exist or if the agreed period for such a change has expired, the employer is obliged to re-assign the employee to their original job, unless the parties agree to amend the employment contract. An employer is obliged to provide an employee with work suitable for them. Therefore, when an employee requests a transfer to another job because according to the recommendation of the company's preventive care physician their current work is no longer suitable for them, the employer must transfer them, operation conditions permitting. The new position must be suitable for the employee.

2.1.4. Termination of employment relationship

The Czech Labour Code provides several ways to terminate an employment relationship. The relationship may be terminated by these acts:

- Agreement
- Notice of dismissal
- Immediate cancellation (termination)
- Cancellation during the probation (trial) period

The role of the Labour Code is also to protect employees. With regard to the termination of an employment relationship, it protects against an unfair dismissal.

2.1.4.1. Agreement

Agreement regarding the termination of an employment relationship is the easiest way to terminate this relationship. This agreement must be in writing, and it is necessary to agree on the date of the termination. The agreement may be initiated by either party – the employer and the employee. The Czech Labour Code does not state grounds for a dismissal as an essential condition for the validity of the agreement. The reasons must be expressly stated only when the employee requires so.

2.1.4.2. Notice of dismissal

While an agreement is the easiest way of terminating an employment relationship, a notice of dismissal is the most common. This type of termination is a one-side act, and it may be used at any time throughout the duration of the relationship between an employer and an employee.
A termination by a notice of dismissal must be in writing. This method features several specific aspects.
The first is that the notice of dismissal must contain a period of notice which starts the next month after receiving the notice and lasts at least 2 months. It is possible to agree on a longer period, but an agreement on a shorter period is not allowed.
The other specific elements include restrictions for the employer stated in the Labour Code. The function of these restrictions is the protection of employees as mentioned above. This protection is based on the fact that the Czech Labour Code provides the only acceptable reasons for a dismissal. Moreover, the specific grounds for a particular dismissal must be clearly stated in the relevant notice of dismissal. There are two kinds of grounds for the termination of an employment relationship in the Czech Labour Code. These grounds relate to employees and employers.

Employer giving notice of dismissal to employee

- Grounds related to employers - so-called organizational grounds - are established in three situations: relocation or dissolution of the company or its part or organizational changes that make employees redundant.
- The other reasons for dismissal are related to employees. An employee may be dismissed when they are not capable of performing the agreed work anymore due to a long-term illness, if the employee does not have the necessary qualifications, or if they do not meet the employer's requirements anymore. An employer is also entitled to dismiss an employee if they violate the work discipline or fail to fulfill their duties.

We can summarize the above reasons as follows: the reasons for which an employer may present an employee with a notice of dismissal are related to organizational changes, the employee's state of health, and the employee's behaviour.

The grounds for a notice of dismissal should not be copied entirely from the Code or refer to the statutory reasons for giving notice. The reason must be clearly specified, and the employer must justify their decision and give the employee a specific description of the particular situation.

An employer is not allowed to dismiss an employee during their period of protection. This period contains the period of temporary incapacity for work, period of unpaid leave in order to serve in a public office, certain periods of pregnancy, period of parental leave, and a period when a night shift employee is temporary unable to continue with night work.
Nevertheless, this protection is not absolute. There are exceptions concerning organizational changes mentioned above when a dismissal is allowed even within the protection period. The situation is more complicated in the case of pregnant women or employees on parental leave. The exceptions related to organizational grounds do not apply to these employees.

Employee giving notice of resignation to employer

- An employee may present an employer with a notice of resignation on any grounds even without stating their reasons.

2.1.4.3. Immediate cancellation of the employment relationship

Immediate cancellation is similar to the notice of dismissal in that it is a one-side act and there must be justified reasons for the termination of the relationship.
This type of termination may be used only in very serious situations that prevent further employment on both sides - on the employee's side and on the employer's side. It is possible to cancel the relationship between an employer and an employee only during a period of two months from the day when one party learns about the reason for termination which must be in compliance with the relevant part of the Czech Labour Code and at the latest within one year from this day.

Employer cancelling the employment relationship immediately

- The grounds on the employer's side are a valid sentence for an intentional criminal act to an unconditional prison term of at least one year or of six months if the crime was committed in connection with the employee's work. The other reason consists in an employee´s violation of work discipline.

Employee cancelling the employment relationship immediately

- An employee is allowed to cancel the employment relationship immediately if, according to a doctor's opinion, they are not capable of performing the agreed work anymore, and the employer has failed to assigned them to some other work within 15 days. The second reason is the absence of payments for the work performed.

2.1.4.4. Cancellation of the employment relationship during the trial period

This type of cancellation may be used by both parties. The Czech Labour Code requires the notice to be in writing. The employment relationship is terminated on the day when the notice is delivered. However, the parties may agree on a later termination. The notice may be given without any reasons.
There is a rule of a three-day period which is related to the delivery of the notice. The rule stipulates that the notice should be delivered to the other party three days prior to the termination. Nevertheless, a breach of this period does not make the notice invalid.

If an employee believes that the given notice is invalid, they must inform their employer in writing, without undue delay, of the fact that they insist on continuing the employment.

2.1.5. Leave (with pay)

An employee who performs their work in accordance with their employment agreement and the employer's instructions is entitled to:

- Annual leave or its proportional part
- Leave for days of work
- additional leave

An employee who performs their work for the same employer continuously for at least 60 days in one calendar year is entitled to the full statutory amount of leave or to its proportional part if the employment for the same employer did not last continuously for whole calendar year. A proportional part equals one twelfth of an annual leave for every calendar month of employment. An employee is entitled to a proportional part of an annual leave in the length of one twelfth also for each calendar month in which they changed employment. However, there is one condition – the employment that was terminated was immediately followed by a new one.

The standard length of an annual leave is four weeks. For public sector employees, the length of an annual leave is five weeks. Pedagogical and academic employees have an annual leave in the length of eight weeks.

Employees who are not entitled to an annual leave or its proportional part because they did not perform their work for the same employer for at least 60 calendar days are entitled to a leave depending on the number of days they have worked. These employees have a leave in the length of one twelfth for every 21 days they perform their work during the given calendar year.

An employee who works for the same employer underground, extracting minerals, or driving tunnels and galleries for an entire calendar year or an employee who is engaged in particularly hard work for an entire calendar year shall be entitled to an additional leave in the length of one week.

Compensatory wage or salary for leaves

When an employee takes their leave, they are entitled to a compensation of wage or salary in the amount of their average earnings. When an employee does not take their leave they are entitled to compensatory wage or salary but only in case of a termination of their employment relationship.

Reduction of leaves

If an employee does not perform their work due to impediments to work on their part, the employer is obliged to reduce the employee's leave for the first 100 missed working days by one twelfth and for every 21 working days after that also by one twelfth.
An employer is allowed to reduce an employee's leave on the grounds of the employee's unauthorized absence from one to three working days.

2.1.6. Impediments to work

2.1.6.1. Impediments to work on the part of employees

Important personal impediments
An employer must excuse the absence of an employee from work if they are temporary unable to work, during a period of quarantine, during a period of maternity or parental leave, for the period of treatment of a sick child under 10 years, or due to other reasons stated in the Sickness Insurance Act. The law also specifies cases when salary compensation is provided and when there is no entitlement to such compensation.

- **Temporary incapacity for work or quarantine**

An employee who has been recognized to be temporarily unfit for work or whose quarantine has been ordered is entitled to compensatory wage or salary in the amount of 60% of average earnings during the first 14 calendar days (or during the first 21 calendar days when the temporary incapacity or quarantine occurs in the period from the 1st of January 2012 to the 31st of December 2013) if they meet the conditions for the entitlement to the payment of sickness allowance pursuant to the sickness insurance statutory provisions. An employee is not entitled to compensatory wage or salary for the first three days of their temporary incapacity for work.
An employer may check whether an employee complies with the regime prescribed to them by their doctor, e.g. to remain in their residence and to observe the time and scope of

permitted walks. The employee is obliged to inform the employer in writing about the date of the next medical check-up and the time period of absence from the place of stay allowed by the doctor. If the employee does not observe these rules, the employer is allowed to dismiss the employee.
An employee who works on the basis of an agreement to complete a job or to perform work is also entitled to compensatory remuneration during the first 14 calendar days or the first 21 calendar days (from the 1st of January 2012 to the 31st of December 2013) under the same conditions as employees who are employed on the basis of an employment agreement.

- **Maternity leave**

In connection with childbirth and care for a newborn child, a woman (female employee) is entitled to 28 weeks of maternity leave. If she gave birth to two or more children at the same time, she is entitled to 37 weeks of maternity leave.
A female employee goes on her paid maternity leave as a rule at the beginning of the sixth week but not earlier than at the beginning of the eight week before the expected childbirth. Maternity leaves related to childbirth must not be shorter than 14 weeks and employees cannot be terminated or suspended before the expiry of six weeks from the date of the childbirth.

- **Parental leave**

A parental leave is granted upon request to a mother of a child upon the end of her maternity leave and to a father of a child from the day when the child is born.
To take a parental leave, a female employee must request the leave at the end of her maternity leave. In the request she also specifies the length of her parental leave. The same applies for a father. He can request the leave upon childbirth.
A parental leave may never exceed the moment when the child reaches the age of three.
If an employee decides to return to work earlier than specified during a parental leave, it is up to their employer to decide if it is possible.
A female employee and a male employee may take a maternity leave and a parental leave concurrently.

- **Other important personal impediments to work**

When employees cannot perform their work due to important impediments to work relating to their person, employers shall grant them time off for the stated duration and in certain cases also provide compensatory wage or salary in the amount of average earnings even if the concrete impediment is not expressly stated in the Labour Code.
The area and extent of other important impediments is laid down in the *Regulation on Employee Impediments*, and it is, e.g. medical examination or treatment, wedding, funeral, childbirth, moving, etc.

As stated in the Czech Labour Code, other impediments to work may include reasons of public interest (discharge of public office, performance of civic duties), training, studies, etc. If an employee knows about an impediment to work in advance, they are obliged to ask their employer for a leave from work beforehand. Otherwise an employee must notify their employer of an impediment on their side and of its estimated duration without undue delay.

2.1.6.2. Impediments to work on the part of employers

- **Dead time and interruption of work caused by unfavourable weather conditions**

If an employee cannot perform their work

a) due to a temporary defect of machinery or equipment which they have not caused or due to a problem with supplies of raw materials or power or due to some other operational causes, this constitutes a delay. If an employee was not transferred to some other work they are entitled to compensatory wage or salary in the minimum amount of 80% of their average earnings.
b) due to an interruption of work caused by unfavourable weather conditions or a natural disaster. If an employee is not transferred to other work they are entitled to compensatory wage or salary in the minimum amount of 60% of their average earnings.

- **Other impediments to work on the side of employers**

It is also possible that other impediments on an employer's side appear. If an employee cannot perform their work due to these other impediments, the employer is obliged to compensate their salary at 100% of their average earnings.

2.2. Social security

Social security premium in the Czech Republic includes a premium on pension insurance, sickness insurance, and a contribution to the state policy of employment. Therefore this branch of law is governed by several legal regulations. The three most important acts governing this area in the Czech Republic are: the Sickness Insurance Act, Pension Insurance Act, and the Premiums for Social Security and Contribution to the State Policy of Employment Act. These regulations state the percentage rate of payments, what daily assessment base is, and who is obliged to pay the insurance payments. Social security systems in the European Union are coordinated by the Regulations on the coordination of Social Security Systems. These regulations lay down rules and principles that guarantee the right of free movement of persons within the EU.
There are also international agreements in this branch of law – they mainly apply outside the European Union.

An insured person is a subject to the legislation of a single state only, but sometimes it may be difficult to find out which regulation applies to a particular person who is moving and working within the Union or outside the EU. The applicable law is determined according to the place where the work is performed, i.e. according to the employment contract. If the contract of employment is concluded with a Czech institution, the applicable law is Czech law. In case several employment agreements are concluded, an insurance overlap occurs. This area is very complicated, and it is therefore better, for the sake of clarity, to have only one employment agreement.

2.2.1. Sickness insurance

Sickness insurance is very important for employees. If they pay this insurance, they get the allowance when certain life situations, such as pregnancy or illness, occur.

2.2.1.1. Conditions for participation in sickness insurance in the Czech Republic

If a natural person has an employment agreement or a work performance agreement, so that they are in an employment relationship, they must participate in the insurance. The first condition for the participation in the insurance is the existence of an employment relationship. The second condition is related to the place of work, which must be permanently in the Czech Republic or the employer must have their permanent headquarters in the Czech Republic. Yet another condition refers to the duration of the employment relationship, which needs to last at least 15 calendar days. The last requirement is that the agreed amount of chargeable income from the job for a calendar month is no less than the amount of the decisive income, which is CZK 2500. The amount of decisive income is stipulated by the Ministry of Labour and Social Affairs.

2.2.1.2. Origin, termination, and suspension of employee insurance

The insurance comes into effect on the day when an employee starts to perform the agreed work and expires on the day of the termination of the employment relationship. The insurance also comes into effect when the agreed amount of income is increased to the amount of the decisive income. On the other hand, if the agreed amount of income drops below the level of the decisive income, the insurance expires.

If the employment relationship is based on a work performance agreement, the above-mentioned rule regarding the start and termination of the insurance applies similarly.

2.2.1.3. Allowances

Every employee fulfilling the conditions mentioned above is entitled to the following allowances:

- **Withdrawal period**
  If the conditions for the entitlement are met within the period of 7 days from the termination of employment, the employee is still entitled to the allowances.
  Female employees are entitled to maternity allowances for a period of 180 calendar days from the termination of their employment relationship.
  There are also some situations when a withdrawal period does not apply. It is, for example, when an employee is employed on the basis of an agreement to perform work (it is an exception from the above-mentioned rule regarding the start of the insurance) or in the case of an employment in small-scale production.
  This period expires with the start of the new insurance.

Allowances are paid for calendar days and the amount is rounded up. If an employee is entitled to income for a part-time job, their allowance will be in the appropriate proportional amount.

- **Daily assessment base (reference amount).** To be able to calculate the amount of allowance and also for better orientation in this issue, it is useful to know what the daily assessment base is and how is it calculated.

  Sickness insurance allowances are calculated from the assessment base using the appropriate percentage rate. The daily assessment base is the assessment base which falls on the decisive period divided by calendar days and is subject to reduction by three reduction limits. The number of reduction limits is announced by the Ministry of Labour and Social Affairs.
  The relevant period for the determination of the reference amount is 12 calendar months before the calendar month in which the social situation occurs.
  If the decisive period contains excluded days, the period will be reduced by the number of these excluded days. Excluded days are, for example, calendar days of excused employee absence provided the employee is not entitled to compensatory wage or salary, calendar days of temporary incapacity for work during which the employee is also entitled to compensatory wage or salary for the period of the first 14 calendar days of the period of incapacity, etc.

2.2.1.4. Sickness allowance

An employee is entitled to sickness allowance paid by the Czech Social Security Administration (by the State) if they are certified by a doctor to be temporarily unable to perform work and if the temporary incapacity lasts for at least 15 calendar days or for 21 calendar days if from the 1st of January 2012 to the 21st of December 2013. During the period of the first 14 days (20 days) the employer is obliged to provide the employee with compensation wage or salary. The amount of sickness allowance is calculated on the base of the reference amount. For the purpose of sickness allowance, the reference amount is reduced as follows:

- Up to CZK 863: 90% - first reduction level
- Up to CZK 1295: 60% - second reduction level
- Up to CZK 2589: 30% - third reduction level

Sickness allowances are calculated by applying a percentage to the daily assessment base. It means 60% of the reduced daily assessment base from the fifteenth calendar day.

- **Support period**

A support period begins on the 15th calendar day of the temporary incapacity or ordered quarantine and lasts to the end of the incapacity or quarantine. During the period from the 1st of January 2012 to the 21st of December 2013, the support period begins on the 21st day.
The maximum length of this period is 380 calendar days from the beginning of the inability to work.

2.2.1.5. Maternity (paternity) allowance

Insured women who gave birth to a child, women who substitute parental care, and persons who take care of a child whose mother have died are entitled to maternity allowance. Men may be entitled to maternity benefits if a mother cannot or should not take care of a child, e.g. due to a serious long-term illness.

The condition to be fulfilled is the aforementioned participation in the insurance which needs to be at least 270 calendar days during the last two years before the commencement of the maternity leave.
The period of participation in the insurance also includes the period of studies at high school, university, or a conservatory, all of which are regarded as systematic preparation for future employment if the education is successfully finished.

The period for which women are entitled to maternity allowance expires at the end of 28 or 32 weeks. If the child dies before the end of the support period, the period is 2 weeks from the death of the child.

The daily reference amount is reduced as follows:

- Up to CZK 863: 100% - first reduction level
- Up to CZK 863 to CZK 1295: 60% - second reduction level
- Up to CZK 1295 to CZK 2589: 30% - third reduction level

Maternity benefit is 70% of the daily assessment base.

- **Support period**

A support period for maternity allowances is 28 weeks for insured women who gave birth to one child or 37 weeks for women who gave birth to two or more children. A support period for men who take care of a child is 22 weeks.
The support period begins on the day the woman determines. The day should be any day of the period from the beginning of the eight week to the beginning of the sixth week before the expected date of birth or the day of birth if the birth occurred before the beginning of the period mentioned above.

2.2.1.6. Compensation allowance in pregnancy and maternity

A compensation allowance is the difference between the daily assessment base before a transfer and the average chargeable income for one calendar day after the transfer.

The following employees are entitled to this type of allowance:

- pregnant women who were assigned to other work because their former work had been unsuitable or even forbidden for pregnant women
- female employees whose previous work was forbidden for nursing mothers or was for some other reason dangerous for them

For the purpose of this kind of allowance, a transfer to some other work may be also represented by a modification of work conditions, such as a reduction of the required workload, exemption from some types of work (e.g. night work), etc.

The compensation allowance is paid per calendar days when the employee is transferred to other work.

There are also days when the allowance is not paid, e.g. days of temporary incapacity for work, employee's time-off without compensatory wage or salary, unexcused absence, etc.

More information:

http://www.cssz.cz/cz - sickness and retirement insurance – terms of participation, insured persons, benefits provided
http://www.mpsv.cz/en/ - labour law – legislation; financial support for families, maternity and parental leave

Resources:
http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Czech%20Republic_en.pdf – social security rights in the Czech Republic

Labour code: commentary - Petr Hůrka, Nataša Randlová (2011)
Czech Labour law in European context – Martin Štefko (2007)

Část 3 / Part 3

Provisions of the Grant Agreement relevant to individual researchers

Ustanovení grantové dohody relevantní pro vědecko-výzkumné pracovníky

3. Provisions of the Grant Agreement relevant to individual researchers

While the previous part of this brochure describes the employment relationship and the social security system in the Czech Republic, this part deals with some of the rules that apply to individual researchers at the European level (based on the provisions of the Grant Agreement, with particular attention to Annex II and III). The description is not exhaustive, but it takes into account some of the situations that may occur during the life-cycle of a project, such as maternity leaves, suspension or termination of the Grant Agreement, secondment, or part-time work.

The relationship between the European Commission (in case of Marie Curie Actions Research Executive Agency, REA) and the host institution (beneficiary) is governed by the Grant Agreement which defines the rights and obligations of both parties. The Grant Agreement regulates each phase of the relationship between the beneficiary and the Research Executive Agency – establishment, changes, suspension, and termination. It also stipulates the rules that apply to maternity leaves, part-time work, stay away from the host institution, etc. The important parts of this relationship are described below.

The relationship between the host institution (beneficiary) and the individual researcher (Marie Curie fellow) is defined in an agreement between both parties (usually an employment contract) which always has to be in compliance with the Grant Agreement, especially with its Annex III (specific provisions for a particular Marie Curie action). It is an obligation of the beneficiary to conclude an agreement with the fellow. The fellow must be informed about their rights and obligations. Therefore, they must also receive a copy of the Grant Agreement together with this agreement. Within 20 days of the appointment of the researcher (i.e. ITN, IAPP actions), the start date of the project, or the entry into force of the Grant Agreement (i.e. individual Marie Curie actions – IOF, IEF, IIF, CIG), the beneficiary shall submit, by electronic means (via the Participant Portal), a declaration on the conformity of the agreement with the Grant Agreement following the layout given by the REA.

3.1. Part-time project work and stay away from the host institution

As a general rule, **a fellow must devote themselves full-time** and continuously **to their project**. **Exceptionally**, in duly justified cases related to **personal or family circumstances**, provided it does not interfere with the execution of the project and after prior approval of the REA (the responsible project officer), a fellow **may** devote themselves to the project on a part-time basis. Their activities within the project may be carried out in several phases. The amount of the contribution may be adjusted pro rata to the time actually spent on the project. This will affect the time it takes to execute the project - the duration (measured in full time equivalent). The EU contribution will not change.

Teaching (IEF, IOF, IIF, CIG, ITN actions)

The question whether teaching can be considered a part of a full-time commitment to a project has been frequently discussed. Teaching can be considered **a complementary research competence** within the above-mentioned Marie Curie actions although this activity must not jeopardize the execution of research projects as set out in the Grant Agreement. Thus, **the amount of teaching**

should not be excessive. Any teaching activity, and the time devoted to it, should preferably be mentioned in the proposal. Nevertheless, specific requests received during the project implementation will be examined on an individual basis taking into account the career development of the particular fellow. Such requests would then be approved by the project officer on a case by case basis.

With regard to the specific objective of this action (transfer of knowledge within a research project), teaching is not accepted during the secondment period in IAPP projects.

Stays away from the beneficiary's premises

As a general rule, **a project must take place on the premises of its host organization** except when a stay away is justified for reasons linked to the investigation of the project. A fellow may stay away from the beneficiary's premises for the purpose of executing a project for a short period. Typically, these stays away are a part of usual research activities (such as participation at conferences or summer schools, etc.). However, if the period of the stay away from the host organization's premises exceeds one month, the responsible REA project officer must be informed. The total length of all stays away **may not exceed 30% of the duration of the project**[11].

Exceptionally, stays away from the host organization exceeding 30% of the total duration of the project may be justified for individual Marie Curie Actions (IOF, IEF, IIF, CIG) as a part of collaboration, research, or training (e.g. when going to another sector) if they have been explicitly provided for in the original proposal, approved by the evaluators, and have already been foreseen in Annex I of the Grant Agreement. However, these are exceptional cases, and the fellow should be aware that they should choose such institution that has all the expertise and infrastructure necessary for a successful execution of the project (this is a part of the evaluation criteria).

In all cases the stay away must be **justified by reasons linked to the implementation of the project**. It must be **in line with the objectives** of the particular Marie Curie action and must **not deviate from other contractual provisions** of the Grant Agreement, especially with regard to IIF-IOF mobility and the compulsory IOF reintegration phase.

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This does not apply to the EID scheme. For more details see “secondment” bellow.

3.2. Project suspension

As a general rule, the REA may suspend a whole project or a part of a project if it comes to the conclusion that the beneficiary is not fulfilling its obligations in accordance with the Grant Agreement. A beneficiary may propose to suspend their whole project or a part of their project if force majeure or exceptional circumstances render its execution excessively difficult or uneconomic.

Additionally, for individual Marie Curie Actions (IEF, IOF, IIF, CIG), a beneficiary may propose to suspend a part or all of their project due to personal, family (including parental leave), or professional reasons of researchers not foreseen in Annex I. The whole project is usually suspended in such cases because the project has only one principal investigator – the Marie Curie fellow. The request has to be fully justified and approved by the REA.

However, the situation is different in ITN projects. No suspension of whole projects for personal, family (including parental leave), or professional reasons of researchers is necessary. A fellow is entitled to a period of leave related to maternity or paternity. The leave is to be taken under the (national) law applicable to the agreement of the host organization with the researcher. The responsible REA project officer should be informed. Following their return, the fellow may continue to work on the project. In case the fellow would not be able to finish the whole period foreseen (max. 36 moths) following their return because the project is ending, the duration of the project may be extended.

3.3. Project/Grant Agreement termination

As a general rule, a termination of a Grant Agreement may be requested by any of the parties. Requests for the termination of the Grant Agreement must justify the termination and all reports and deliverables relating to the work must be brought up to date to the date on which the termination is to take effect. The REA may terminate the Grant Agreement for major technical or economic reasons that have a substantially adverse effect on the completion of the project, incl. situations when the beneficiary is declared bankrupt, or in cases of non-performance or poor performance of the work imposed by the Grant Agreement, or if the beneficiary has contravened fundamental ethical principles, has not submitted the required reports or deliverables or submitted reports and deliverables that have not been approved by the REA (more details can be found in Annex II of the Grant Agreement). In addition to these circumstances, the REA may terminate the Grant Agreement in individual Marie Curie actions (IOF, IEF, IIF, CIG) if the researcher is, for any reason, no longer in a position to continue working on the project (e.g. due to personal, family, or professional reasons), the agreement between the beneficiary and the researcher is terminated due to non-compliance in respect to their obligations under the agreement, or if the researcher has made false declarations for which they may be held responsible or has deliberately withheld material information in order to obtain a financial contribution from the EU or any other advantage provided for by the Grant Agreement.

The most common reason for the termination of a Grant Agreement in individual Marie Curie actions (IOF, IEF, IIF, CIG) is that the researcher is no longer in a position to continue working on the project

for professional reasons (e.g. obtaining better position/significant career improvement). However, these cases are exceptional (they cannot be foreseen or planned at proposal stage) and are decided case by case by the REA, the responsible project officer.

The most common reason for the termination of a Grant Agreement in ITN/IAPP/IRSES is a bankruptcy of a beneficiary or underperformance.

3.4. Reintegration phase

Only a few Marie Curie projects have a reintegration phase/return period: International Outgoing Fellowships (IOF) and, in some cases (researchers active in an International Cooperation Partner Country – ICPC[12]), International Incoming Fellowships (IIF). However, the objectives and the philosophy behind these two actions are completely different. The IOF project consists of an initial outgoing phase (of 1-2 years) which is to be spent in a distinct legal entity in an other third country[13] (partner organization) and a mandatory reintegration phase (of 1 year) within the contracting organization (return host organization) in a Member State or an associated country[14]. This is because the EC aims to use this action to reinforce the international dimension of European researchers' careers by giving them the opportunity to be trained by and acquire new knowledge in high-level research organizations established in Other Third Countries. However, **the EC then wants these researchers to return with the acquired knowledge and experience to Europe**. **While the reintegration phase is compulsory in IOF projects, it is optional in IIF projects.** The IIF action aims to reinforce the research excellence of EU member states and associated countries through the sharing of knowledge with incoming top-class researchers active in other third countries. It also aims to encourage them to work on research projects in Europe with a view to developing mutually beneficial research co-operation between Europe and other third countries. In both cases, the reintegration phase must be applied for at the same time as the incoming phase, i.e. at the time of proposal submission.

- IOF

  In accordance with the Grant Agreement, a researcher must return to the beneficiary's premises for the duration indicated in Annex I to carry out the reintegration period. In case of a non-fulfilment of their obligation to carry out the reintegration period, the beneficiary (host institution) shall, in accordance with Annex III, take all appropriate measures to recover from the researcher the total amount received from the Research Executive Agency (REA) for their benefit under this Grant Agreement in order to return this amount to the REA and to recover the total amount received from the REA for the benefit of the researcher under the Grant Agreement.

  There are not many real cases when a researcher would not return to the beneficiary's premises (return host organization). These cases are always **handled case-by-case** by the REA and the responsible project officer (based on the

[12] List of ICPC countries can be found in the actual People Work Programme which can be downloaded from CORDIS.
[13] Other third countries are countries that are neither EU Member States nor third countries associated to FP7 (associated countries).
[14] For a list of FP7 associated countries, see ftp://ftp.cordis.europa.eu/pub/fp7/docs/third_country_agreements_en.pdf

researcher's reasons for the non-fulfilment of their obligation to carry out the reintegration period). Based on our experience, in exceptional cases and if duly justified (e.g. in cases when a fellow receives a substantially better position which would significantly improve their career prospects due to the newly established collaboration or for serious personal or family reasons or long-term sickness that may have a direct effect on the implementation of the project), the REA may decide in favour of the researcher. On the other hand, it is not acceptable for a beneficiary (return host institution) to refuse to reintegrate a fellow following the outgoing phase. Were that to happen, the beneficiary would be obliged to return the total amount received from the REA for the benefit of the researcher under the Grant Agreement.

- IIF

  There is a possible return phase of up to one year in IIF projects for researchers from the International Cooperation Partnership Countries (ICPC). This phase of the project is not mandatory. It aims to contribute to the establishment of a sustainable cooperation between the respective organizations in the ICPCs and European organizations. If there is a return phase foreseen, this must be clearly stated during the proposal stage, and the return host organization must be identified. In case of a return phase, the REA signs a separate Grant Agreement with the return host organization which commits itself to ensure an effective return of the researcher. The return phase will normally commence no later than 6 months after the termination of the incoming phase.

  A researcher may abandon the reintegration phase at the end of the incoming phase. In such case the host organization must inform the REA and provide a final report and a cost statement for the period during which the fellow worked. The REA will then terminate the contract prematurely.

3.5. Secondments

Definitions

Secondment period: the period spent by a researcher on the premises of a partner institution as indicated in Annex I to the Grant Agreement. This applies especially to IOF, IRSES, ITN, and IAPP projects.

Beneficiary **home** organization: the sending beneficiary organization of which a researcher is a staff member or the beneficiary organization at which they are newly recruited.

Beneficiary **host** organization: the receiving beneficiary organization which is hosting the seconded staff member-researcher for the secondment period on its premises.

- IAPP

  By default, costs for seconded researchers are added during the negotiation to the host organization. During the implementation of the project, secondment is usually paid by the host organization. However, the REA also allows the secondment to be paid by the home organization (using the country correction factor of the host

organization country). If a fellow is being paid by their home organization, this information should be stated in a periodic report or in email correspondence.

- IOF

  The REA sends all EU contributions given in the Grant Agreement to a **European host institution** (i.e. a legal entity established in Member States or Associated Countries) **which is solely responsible** for claiming costs in the Grant Agreement and for submitting the Form C. A third country partner cannot submit the Form C for claiming their own costs. Thus, the European contractual partner may pay the researcher[15] salary, or it may send the money to the third party institution in accordance with their agreement and only for the benefit of the researcher. The costs of research activities in the third country organization should be reimbursed by the European partner to the third country partner in accordance with the agreement between the two institutions. A **Partnership Agreement is therefore very important** in IOF projects, too.

- IRSES

  IRSES is a coordinated joint programme of researcher exchanges for short periods of time (for a maximum of 12 months). The seconded researchers should be **the home organization's own staff**, which should, in accordance with Annex III of the Grant Agreement, **continue to pay the salaries** of the researchers during the period of their secondment. It should also be noted that only European beneficiaries mentioned in the Grant Agreement may claim costs (flat rates) from the REA. Therefore, they should also claim the costs for the incoming secondments in their institution from the third party beneficiaries.

- ITN

  A researcher appointed to a project in Multi-Partner ITNs and IDPs by one network partner may spend a period of secondment on the premises of another network partner. A secondment period must **not** represent **more than 30% of** their **recruitment period.**[16] On the other hand, the duration of the secondment must be sufficiently long to allow the fellow to fully benefit from the research training and knowledge transfer activities. The shortest effective secondment duration is typically several weeks. Normal practice during secondments is that the home (original appointing) organization continues to pay the salary of the researcher (including travel and subsistence expenses, e.g. accommodation costs, flight tickets). The fellow remains employed by the home organization (beneficiary).

  For EID, every recruited researcher must be employed by either both beneficiaries (in this case both pay the salary of the researcher) or employed by one of them and seconded to another for at least 50% of the duration of the project (in this case it is the sending institution which pays the researcher).

[15] According to the REA's experience, this is the most common case because it is **always the European host institution which is responsible to the REA** for the fulfilment of all contractual obligations, incl. submitting the Form C as well as the correct implementation of the project.

[16] The entire period for which the researcher has been recruited by the beneficiary in order to work on the ITN project.

More information

REA Model Grant Agreements: http://cordis.europa.eu/fp7/find-doc_en.html
CORDIS - documents: http://cordis.europa.eu/fp7/find-doc_en.html
Participant Portal: http://ec.europa.eu/research/participants/portal/page/home#
Guide for Applicants: http://ec.europa.eu/research/participants/portal/page/people
Frequently Asked Questions
http://ec.europa.eu/research/index.cfm?pg=faq&lg=en
http://ec.europa.eu/research/mariecurieactions/about-mca/faq/index_en.htm

Marie Curie Financial Guidelines: http://ec.europa.eu/research/mariecurieactions/index_en.htm

Employment of foreign researchers in research and development (brochure in Czech, targeted at Czech host organizations): http://vydavatelstvi.vscht.cz/katalog/uid_isbn-978-80-7080-804-7/anotace/

4. List of abbreviations / Seznam zkratek

REA - Research Executive Agency – Výkonná agentura pro výzkum

ITN – Initial Training Network - Školicí sítě

EID – European Industrial Doctorate – Evropský průymslový doktorát

IDP – Innovative Doctoral Programmes – Inovativní doktorský program

IEF - Intra-European Fellowship for Career Development - Evropské stáže

CIG – Career Integration Grant – Reintegrační grant

COFUND - Co-funding of Regional, National and International Programmes - Kofinancování regionálních, národních a mezinárodních programů

IAPP – Industry-Academia Partnerships and Pathways - Společné projekty akademických organizací a podniků

IOF – International Outgoing Fellowship for Career Development - Stáže ve třetích zemích pro evropské výzkumné pracovníky

IIF – International Incoming Fellowship - Stáže pro výzkumné pracovníky ze třetích zemí

IRSES – International Research Staff Exchange Scheme - Mezinárodní výměnné stáže

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