

**PRESENTATION TO THE EUROPEAN PARLIAMENT
CONT COMMITTEE HEARING**

*"EFFICIENCY AND EFFECTIVENESS OF THE 7TH RESEARCH FRAMEWORK PROGRAMME:
IMPLEMENTATION AND CONTROL SYSTEMS AND PROPOSALS FOR REFORM"*
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**Chairman, Honourable Members of Parliament, Ladies and
Gentlemen,**

I thank you for the invitation to address you on issues relating to the
implementation and control of the Seventh Framework Programme.

There are indeed matters that require attention, and I believe that
Parliament can be instrumental in helping to find necessary improvements.

Before I address these matters, however, it is perhaps appropriate that I
should briefly introduce the organisations which I represent here today.

EARTO AND RTOs

SLIDE 1

EARTO is the European Association of Research and Technology
Organisations – RTOs as we call them for short – and the Association
represents approximately 350 such organisations from across the EU and
associated countries.

RTOs – to give a simplified definition – are mission-oriented research
organisations undertaking mostly applied research. The major RTOs are
government-sponsored organisations with a general mission of helping to
tackle issues of social relevance (including what are often referred to today
as “grand challenges”) and to support economic competitiveness by
working with enterprises both large and small.

It may be helpful for you if I name some of the better-known RTOs which
EARTO represents, which you can see listed on the slide. You also see there
numbers which indicate that RTOs are major players in the Framework
Programme.

SIMPLIFICATION SO FAR IN FP7

SLIDE 2

Let us now turn to the issue of today.

There are specific problems of implementation of the FP that can be solved by technical improvements. But there are others that are ultimately the consequence of an underlying systemic problem, and until that problem has been resolved no real improvement will be possible. I shall address that underlying systemic problem shortly.

FP7 has seen some improvements – simplifications – even if some of them are still subject to teething problems. They include the **Single Registration Facility** and **new electronic administrative tools**, and also the reduction in the number of **audit certificates** which beneficiaries must provide.

It is too early to fully judge the **Guarantee Fund**. It has reduced the need for bank guarantees, but does not appear to have facilitated a greater project coordinator role for SMEs and smaller research organisations, which was one of the objectives.

Other promised simplifications in FP7 are not welcome, and some have failed.

The Commission believes that the greater use of **flat rates, lump sums, unit costs etc. – let us call them “fixed amounts” for the sake of simplicity** – would be a major simplification. They may be a simplification for the Commission, but they would **NOT** be a simplification for most FP participants. Most FP participants - large and small enterprises, RTOs, and, increasingly, universities - operate full-cost accounting systems. When, for example, they make a journey for the purposes of an FP project, the price of the plane ticket, the hotel etc. are entered into the organisation's accounts at real cost. When the Commission reimburses on a fixed-amount basis, the amount received does not equal the amount spent, so a further accounting operation is necessary in order to reconcile the amount spent and the amount received. Thus fixed amounts mean additional accounting effort for contractors.

Full-cost accounting is transparent, well-established and the simplest system for the great majority of FP contractors. That said, the limited and optional use of fixed amounts for small value items, e.g. *per diem* reimbursements, would probably be acceptable for many beneficiaries.

SLIDE 3

Methodology certification, another major simplification of FP7, has been largely a failure so far. There are two certification procedures. One allows FP contractors to use average personnel costs, provided the method

employed for calculating those costs meets criteria set by the Commission. But the criteria which the Commission has set are so stringent that practically no enterprise and practically no RTO can meet them.

This is confirmed in the Commission Communication on Simplification due to be published in the next day or two, and which is already circulating in draft form. It tells us that about 90% of organisations using average personnel costs cannot meet the strict criteria set by Commission. **In other words: a measure that was intended to facilitate the use of average personnel costs in practice prohibits their use by the overwhelming majority of FP beneficiaries.**

I am not sure whether the **Research Executive Agency** was intended as a simplification, but I see no evidence that it has brought improvement and some indication that matters have got worse.

JUMP SLIDE 4

WHAT FURTHER SIMPLIFICATIONS WOULD BE DESIRABLE? SLIDE 5

I have been asked to say what further simplifications would be welcome. I am rather hesitant to respond, given the limited progress made so far. But let me nevertheless make two proposals which could bring major improvement.

First, we need an **authoritative and single interpretation of FP rules**, applied consistently across all DGs and by all Commission officers. It is confusing and discriminatory that different DGs, and even different Project Officers in the same DG, can make different interpretations of the same rules. The solution would seem to be a **high-level body, spanning all of the relevant DGs, which, at the launch of an FP would issue interpretations and guidance, binding on all Commission services and officials**, and which during the course of an FP could perhaps also function as a kind of appeals tribunal to which contractors could turn when they believed that the rules had been wrongly applied.

Second, it would be a major simplification for everybody - Commission and beneficiaries alike - if **costs could be declared according to usual accounting practices, perhaps as approved by some suitable national authority**, e.g. a public auditing body or a national research council. Yes, this would mean that different standards would apply for different countries. But that should be accepted, and indeed might even encourage a benevolent competition towards improved national research funding practices! If necessary, the Commission could perhaps perform system audits to ensure that national practices met certain minimum standards.

But I wish now to address the underlying systemic problem which, I believe, inhibits all real progress on simplification.

A CLIMATE OF DISTRUST

We have experienced a curious circumstance over the past several years which approximates to an **inter-institutional systemic breakdown**. The implementation of the FP is governed essentially by the Rules of Participation. The Legislator - that is Parliament and Council – sovereignly established those Rules. The Executive, i.e. the Commission, implemented those Rules as it believed the Legislator intended. The European Court of Auditors made a different interpretation of what the Legislator had intended, and during many years repeatedly criticised the Commission's interpretation and application of those Rules. Underlying the Court's criticism was, and still is today, a 2% maximum tolerance of error, which while perhaps suitable for the auditing of public procurement expenditure is inappropriate for the control of intrinsically high-risk research activities.

Repeated criticism finally led the Commission to abandon its own earlier interpretation of the Rules and to apply instead the Court's stricter definitions. Sadly, the Commission decided then not just to "fix the future", i.e. FP7, but also to "clean up the past", i.e. FP6.

The Commission's ex-post audit campaign is having disastrous consequences. It is:

- destroying confidence among FP participants in the Commission as a competent and reliable funder of research;
- substantially increasing the administrative burden on FP participants,
- and, in consequence, is undermining EU research policy by rendering participation in the FP less and less attractive.

A climate of deep distrust has formed, which must be stopped as a matter of urgency. Otherwise, more and more organisations will further reduce their participation in the Framework Programme or will withdraw entirely.

The "inter-institutional control culture", if I may call it that, which has grown up around the FP has become dysfunctional. It has reached proportions that make efficient and effective management of Europe's flagship research programme practically impossible. That is the issue which must now be addressed.

A key part of the response must be to regain the confidence of present and future FP participants. You are probably aware that two FP6 participants have already begun legal proceedings against the Commission as a consequence of ex-post FP6 audits. I fear that more will soon follow unless something is done...

... and quickly, for time is short. The Commission's ex-post audit campaign has arrived at the critical point where large numbers of recovery orders and demands for liquidated damages could soon be issued. If that happens, I

predict that there will be many more legal proceedings brought against the Commission.

Then, the presently embittered atmosphere will turn truly toxic. And that at the very time when we all - legislators and stakeholders - are invited to share in debate and decision

- about preparing the next generation of European research and innovation policies
- about EU2020 and an "Innovation Union"
- about Joint Programming and "Addressing the Grand Challenges"
- and more besides ...

I invite you to listen most carefully to the following arguments.

When it launched its retrospective audits of FP6 contracts, the Commission consciously decided to apply more stringent definitions of eligible costs than it had previously. In so doing, the Commission **retrospectively and unilaterally changed its (operational) definition of eligible costs**. This breaches a fundamental principle of contract law and, indeed, "breach of contract" would be the basis of future legal actions against the Commission. This is the opinion of a group of experts I contract law.

If the Commission denies that it retrospectively and unilaterally changed its (operational) definition of eligible costs, then it must accept that it **systematically led FP6 participants into wrong-doing**, by repeatedly accepting, over a period of many years, and without objection, their cost statements, and by making corresponding payments to them.

Do not imagine that it is just a few Commission officials who were negligent in processing a handful of cost statements. I know of several research organisations among the many FP6 participants now accused of systematic errors. They together participated in more than 5,000 FP6 projects. Each FP project on average generates three cost statements, so 5,000 projects means 15,000 cost statements. Each FP6 cost statement was signed off by at least two Commission officials – a Project Officer and a Financial Officer – which means 30,000 Commission signatures. Evidently, we are talking about probably hundreds of individual Commission officials. The only possible conclusion is of a massive management failure on the part of the Commission in the processing of FP6 cost claims, as a consequence of which **FP6 participants were systematically – of course, not intentionally – but, nevertheless, were systematically led into wrong-doing**.

Finally, I would ask you to consider that the FP6 audit campaign has become **disproportionate**. It would be instructive to perform a cost-benefit analysis, where the cost should also include the effort and expense incurred by contractors in servicing the needs of auditors, including the recalculation of project accounts. I should be extremely surprised if for

€100 of cost, the Commission ultimately obtained even €10 in recoveries and liquidated damages. **Ex-post FDP6 audits are doing more damage to EU research and to EU research policy than they will do good for the EU budget!**

The essential fact is this: the great majority of FP6 contractors accused now of errors were not responsible for those errors. **It is unacceptable that they should be made to pay for errors produced elsewhere in the system.** They are victims of collateral damage from an inter-institutional conflict.

I therefore wish to invite all of the Institutions to agree together to cease all ex-post auditing of FP6 projects and consequent actions.

The sole exception should be cases where fraud, or grossly negligent management of FP funds, has been found or for which there is *prima facie* evidence.

SLIDE 8

If we proceed in this way, we shall also have the means to ensure the more efficient management of FP7, for the substantial audit resources built up by the Commission during the past three years or so, could then be focussed on the present FP. My further proposal, therefore, is that the **Commission should perform "real-time auditing" in FP7.** What I mean is that when a contractor submits its first FP7 final cost statement, the Commission should perform an on-site audit. In this way, any misinterpretations of the rules or inconsistent accounting practices could be identified and corrected at the outset.

But this alone will not be enough. Simultaneously we need an agreement between Commission, Parliament and Council on a more realistic level of tolerable risk in relation to research: that, together with real-time auditing, would go a long way to ensuring the efficient and effective implementation of FP7.

END

MATERIAL FOR QUESTIONS AND ANSWERS

PRINCIPLES

The FP is an incentive programme

Research has a real economic cost of research. That has to be the point of departure

Chopping priorities, exceptions etc. means excluding categories of research or actors

One-size-fits-all cannot work

RESEARCH EXECUTIVE AGENCY

Problems of communication. Our document sent February 10th.

Recognition of SME associations as SMEs – 90% subscription income criterion.

SINGLE AUDIT

TNO document that one audit cannot create legitimate exceptions about the future, i.e. no legal certainty. "If we don't get you this time, we will next time".

JTIs

Problems with some.

IPR-handling, e.g. in IMI

Overhead cap at 20% of direct costs

MS funding in Artemis and ENIAS

RESULTS-BASED FUNDING

Attractive in principle.

But is it possible in the current control-minded context?

A MORE RADICAL SOLUTION?

We should perhaps be thinking in terms of an overall solution which is both much bigger, but also simpler, than what we have been discussing so far.

It would be to establish a fully-fledged, mission-driven programme management agency operating at arm's length.

You give it a mission, perhaps formulated in terms of green growth and addressing grand challenges, and you may give it targets, e.g. quadruple public and private investment in alternative energy research within five years.

You then monitor it at a macro level: is it achieving its mission? And not so much how it is goes about achieving its targets at a micro level: the instruments, the funding levels, the IP rules.

There are many examples at national level in Europe and elsewhere in the world – and they work!.