EARTO Analysis of EC Regulation Proposal establishing the Space Programme of the Union and the European Union Agency for the Space Programme

29 June 2018

EARTO welcomes the EC legislative proposal establishing a Space Programme and hereby would like to congratulate the EC for simplifying and streamlining the existing Union acquis by combining in a single text and harmonising almost all rules. Especially, EARTO would like to **highlight the importance of a ringfenced dedicated €16 billion budget** for Space activities. The willingness to reach synergies with other EU funding Programmes such as Horizon Europe is welcomed.

The way the European Commission decided to consolidate the space programme makes sense, considering that it will focus on the development of services and applications for the benefit of the community whereas research and innovation in space technologies will be covered by Horizon Europe. EARTO believes the "Space Situational Awareness SSA" will require some research, in particular the activities related to Space Weather. Further information will be needed to understand the purpose of including "asteroids" as space hazards: if it implies to deviate them for a potential impact with the Earth or if other goals are pursued. In this sense, we believe some research will also be necessary. In addition, EARTO Members (RTOs) develop services and applications for end-users thanks to Copernicus and Galileo: here the space programme will allow them to continue offering high quality applications to end-users and for the benefit of the society.

Topic	Space Programme Article	Analysis	Text Changes (if needed)
Dual-use goods	**Whereas 2** The space sector's development has historically been linked to security. In many cases, the equipment, components and instruments used in the space sector are dual-use goods. The possibilities that space offers for the security of the Union and its Member States should therefore be exploited.	In this context, RTOs capabilities to develop technologies in one market and adapt them to another is an asset to be further utilize. In addition, the dual-use components and goods require an excellent understanding of the applications targeted and master the technologies in order to fulfil the requirements of both space and security.	
Space hubs and access to risk finance	**Whereas 5** The emergence of a business- and innovation-friendly model should be supported at European, regional and national levels by establishing space hubs that bring together the space, digital and user sectors. The Union should foster the expansion of Union-based space companies to help them succeed, including by supporting them in accessing risk finance in view of the lack, within the Union, of appropriate access to private equity for space start-ups and by creating innovation partnerships (first contract approach).	This is in line with the development of innovation hubs and should be supported. Please see EARTO paper recommending the development of a pan-European strategy to strengthen and foster the development of European innovation hubs, in which RTOs have a key role to play.	

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Synergies	**Whereas 8** The Programme shares similar objectives with other Union programmes, notably Horizon Europe, InvestEU Fund, European Defence Fund and Funds under Regulation (EU) **[**Common Provisions Regulation]. Therefore, cumulative funding from those programmes should be foreseen, provided they do cover the same cost items, in particular through arrangements for complementary funding	Looking for synergies to maximise the impact of the different EU Programmes can only benefit the success of the Programmes.	
	Whereas 10 Coherence and synergies between Horizon Europe and the Programme will foster a competitive and innovative European space sector. […] Breakthrough solutions in Horizon Europe will be supported by data and services made available by the Programme to the research and innovation community.		
	Article 22 (1) An action that has received a contribution from another Union programme may also receive a contribution under the Programme, provided that the contributions do not cover the same costs.		
Contracts	**Whereas 16** Contract prices cannot always be forecast accurately and it should therefore be possible to conclude contracts without stipulating a firm fixed price and to include clauses to safeguard the financial interests of the Union	Clarification needed once the Financial Regulation and more information about related clauses to safeguard the financial interests of the Union are fixed.	
Assets created or developed	**Article 9 - Ownership and use of assets** 1. The Union shall be the owner of all tangible and intangible assets created or developed under the Programme's components. To that aim, the Commission shall take the necessary steps to ensure that relevant contracts, agreements and other arrangements relating to those activities which may result in the creation or development of such assets contain provisions ensuring such an ownership regime regarding those assets. 2. Paragraph 1 shall not apply to the tangible and intangible assets created or developed under the Programme's components, where the activities which may result in the creation or development of such assets: (a) are carried out pursuant to grants or prizes fully financed by the Union; (b) are not fully financed by the Union, or (c) relate to the development, manufacture or use of PRS receivers incorporating EUCI, or components of such receivers.	The "principle of Union ownership" in Art 9.1 is an issue. The IPR policy of RTOs is based on developing IP in publicly funded projects and maintaining ownership of them. They must be able to the greatest possible extent to use the results for further projects linked also to other possible fields of application in the future. Having a full and up-to-date IP pool is key for them to successfully fulfil their public tasks. Experience shows that, a customer (here: the EU) does oftentimes not need full ownership of all results of a project (even in procurement projects). In that respect, the exceptions under Art 9.2 are important, but not sufficient. The starting point should not be a general Union ownership principle, but to the contrary, the ownership of the beneficiaries. Same applies in in other programmes as well. From that, tailor-made exceptions can be made where they are duly justified in individual projects, or calls. Art 9.6, for example, already contains a more flexible approach and should be a better starting point than the strict principle in Art 9.1. Deletion of the principle in 9.1 seems the appropriate action. In the end, wherever substantial rights are to be granted in Results, costs (direct and indirect) must be covered in full to allow unencumbered participation of RTOs.	**Delete Art. 9, Nr 1, sentence 1.** 1. ~~**The Union shall be the owner of all tangible and intangible assets created or developed under the Programme's components.**~~ **Substitute** possibly with a more flexible wording, such as: **The Union shall receive sufficient rights in all tangible and intangible assets created or developed under the Programme's components to fulfil the purposes of this Regulation.** **Further, it should be made clear that this can only apply to procurement, not to grants.**

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Absence of guarantee	**Article 10 - Absence of guarantee** The services, data and information provided by the Programme's components shall be provided without any express or implied guarantee as regards their quality, accuracy, availability, reliability, speed and suitability for any purpose. To that aim, the Commission shall take the necessary steps to ensure that the users of those services, data and information are informed, in an appropriate manner, of the absence of any such guarantee.	This limitation of liability/denial of guarantee is understandable. From a perspective of a provider of components that went into the services, data and information provided by the Programme, it is beneficial to know that the Programme excludes liability to users, as this means less risk of the Programme invoking possible rights of recourse. EARTO assumes that this limitation will also work to the benefit of EARTO members as far as they act as technology providers, irrespective of whether ownership of results is vested in the Union or in the providers. [Side note: On the other side, as a possible user of the Programme's services, data or information, certainly EARTO members would be happy about a decent liability coverage, but it is clear that one cannot have it all. The role of technology provider is stronger in EARTO members]	
Cost reimbursement	**Article 16 - Cost-reimbursement contracts** 1. The contracting authority may opt for a full or partial cost-reimbursement based contract under the conditions laid down in paragraph 3. The price to be paid shall consist in the reimbursement of all direct costs actually incurred by the contractor in performing the contract, such as expenditure on labour, materials, consumables, and use of the equipment and infrastructures necessary to perform the contract, indirect costs and either a profit, or an incentive fee compensation based on achieving objectives in respect of performance and delivery schedules. 2. Cost reimbursement contracts shall stipulate a maximum ceiling price.	Art 16 is located under Title III, chapter I – "Procurement". The option of partial cost reimbursement seems misplaced in this context. In any procurement activity, due to the nature of procurement, substantial rights are to be granted to the Union. If "partial cost reimbursement" means that less than full cost, i.e. only a certain percentage should be covered by a tender, with the provider assuming the rest from own funds, then this is a structural problem. RTOs, and possibly any other reasonable service provider, cannot accept part funding for providing full service, for legal, economic and policy reasons. If "partial cost reimbursement" is meant to mean something else than assumed above, then this should be further explained. In the end, wherever substantial rights are to be granted in Results, costs (direct and indirect) must be covered in full to allow unencumbered participation of RTOs.	**Text change in Article 16.1:** The contracting authority may opt for a full ~~**or partial**~~ cost-reimbursement based contract under the conditions laid down in paragraph 3.
Grants for pre-commercial procurement	**Article 20 - Grants for pre-commercial procurement and procurement of innovative solutions** Actions may involve or have as their primary aim pre-commercial procurement or public procurement of innovative solutions that shall be carried out by beneficiaries which are contracting authorities or contracting entities as defined in Directives 2014/24/EU, 2014/25/EU and 2009/81/EC of the European Parliament and of the Council	Art 20 speaks of "Grants for pre-commercial procurement". After all, it seems to be the same instrument as existing under H2020 under the name "pre-commercial procurement". Again, the conditions are problematic with regard to rights to be granted to the EU. The rights to be given away by the contractor are lesser than under the general EU ownership principle (see Title I above) but still significant: No full transfer, no exclusivity, but full user rights including a right to sublicense. This is a range of rights that an EARTO member (and possibly most other reasonable economic actors) can only provide against full coverage of all costs. As this however is listed under "Grants" (presumably belonging to	**The user rights to be granted to the EU should be deleted, as in all activities under "Grants".**

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		Art. 9.2.a), it will fall under the financing scheme of Art 18. As, at least in many cases, a 100% direct plus 25% flat for indirect costs is not actually a full cost coverage, it will be against basic legal principles, or policies, of many RTOs to participate in this kind of project. In the end, wherever substantial rights are to be granted in Results, costs (direct and indirect) must be covered in full to allow unencumbered participation of RTOs. If the EU should require user rights, even in results from a grant they financed, they should be obliged to procure those – either by procuring the results from the grant project in a subsequent procurement act, or by starting with a procurement project instead of a grant in the first place.	

EARTO and its experts remain of course ready to further discuss these recommendations with the European Institutions' representatives.

RTOs - Research and Technology Organisations
From the lab to your everyday life. RTOs innovate to improve your health and well-being, your safety and security, your mobility and connectivity. RTOs' technologies cover all scientific fields. Their work ranges from basic research to new products and services' development. RTOs are non-profit organisations with public missions to support society. To do so, they closely cooperate with industries, large and small, as well as a wide array of public actors.

EARTO - European Association of Research and Technology Organisations
Founded in 1999, EARTO promotes RTOs and represents their interest in Europe. EARTO network counts over 350 RTOs in more than 20 countries. EARTO members represent 150.000 highly-skilled researchers and engineers managing a wide range of innovation infrastructures.

EARTO Working Group EU Space Research *is composed of 25 EU Affairs Specialists working within our membership to elaborate and to voice consolidated positions of RTOs and address them to the European Space Agency and the EC.*

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