

EARTO Analysis of EC Regulation Proposal: Establishing Horizon Europe & its Rules for Participation

25 June 2018

EARTO and its members welcome the European Commission's proposal for Horizon Europe, which is in continuity with Horizon 2020 and builds on the successes of the previous Framework Programmes. To strengthen such proposal even further, EARTO has hereby made a detailed analysis of the European Commission's proposal for the Regulation establishing Horizon Europe and its Rules for Participation.

Such analysis is organised in three distinctive parts:

- [General aspects](#)
- [Financial aspects](#)
- [Legal aspects](#)

Please also note that EARTO has made a detailed analysis of the all HEU Basic Acts as proposed by the European Commission. For more information, please see the following documents:

- [EARTO Key Recommendations on Establishing Horizon Europe](#)
- [EARTO Analysis of EC Proposal - Specific Programme implementing Horizon Europe](#)

Regulation on HEU Rules for Participation – General Aspects			
Topic	HEU Article	Analysis	Text Changes for HEU
Budget	<p>Article 9 – Budget</p> <p>1. The financial envelope for the implementation of the Framework Programme for the period 2021 – 2027 shall be EUR 94 100 000 000 in current prices for the specific programme referred to in Article 1(3)(a) and, in addition, the amount for the specific programme referred to in Article 1(3)(b), as laid down in Regulation.... establishing the European Defence Fund.</p> <p>2. The indicative distribution of the amount referred to in paragraph 1, first half sentence, shall be: (...)</p>	<p>§1 EARTO and its member strongly encourage the EU co-legislators to scale-up Horizon Europe's overall budget to at least €120bn, which is the bare minimum amount needed to ensure continuity, build on the successes of Horizon 2020 and scale up previous investments, while at the same time covering new activities such as a mission-oriented approach, the funding of the new Key Enabling Technologies of the future, the creation of new Public Private Partnerships in crucial sectors, or the extra R&I activities in the food and agriculture cluster due to the budget cuts in the Common Agriculture Policy.</p> <p>§2 EARTO members also support a reinforcement of excellent cross-border multi-disciplinary collaborative applied RD&I by strengthening the budget share of HEU Pillar II to 60%. The strongest aspect of the EU Framework Programme is its focus on excellence and cross-border multi-disciplinary collaboration across a variety of RD&I actors. It is an indispensable element to build long-term trust-based partnerships between all RD&I actors which have real impact on job creation and economic growth. Within the EIC, the budget allocation should also be set in favour of the</p>	

		<p>EIC Pathfinder instrument as a further support to building stronger innovation ecosystems.</p> <p>In addition, EARTO members also call on the co-legislators to strengthen and secure the role of Key Enabling Technologies under Pillar II by ring-fencing their budget. Supporting the development of such technologies at the forefront of RD&I is crucial for Europe to be able to keep on top of the innovation race with third countries and safeguard our economic growth and employment.</p>	
Missions	<p>Article 7 - Missions</p> <p>1. Missions shall be programmed within the pillar 'Global Challenges and Industrial Competitiveness', but may also benefit from actions carried out within other parts of the Programme.</p> <p>2. The missions shall be implemented in accordance with Article 5 of the Specific Programme. Evaluation shall be carried out in accordance with Article 26.</p> <p>3. Missions shall:</p> <p>(a) have a clear EU-added value and contribute to reaching Union priorities;</p> <p>(b) be bold and inspirational, and hence have wide societal or economic relevance;</p> <p>(c) indicate a clear direction and be targeted, measurable and time-bound;</p> <p>(d) be centered on ambitious but realistic research and innovation activities;</p> <p>(e) spark activity across disciplines, sectors and actors;</p> <p>(f) be open to multiple, bottom-up solutions.</p>	<p>There is now no limitation on how much of the budget in Pillar II can be spend on the missions. However, there is much unknown about the practicalities of the missions, so they should be introduced carefully and gradually, to ensure that they deliver the expected impact. A budget cap should be introduced for the missions.</p> <p>The criteria given for missions are vague enough that all seems possible, this article leave the EC al the leeway to implement a new instrument without much discussions on how those should be effectively implemented.</p> <p>Besides, considering the novelty of missions and the fact that no pilot was done within the current FP, the first years of Horizon Europe should be regarded as a de facto pilot. This means that the missions will need more and earlier evaluation than just the interim evaluation.</p> <p>In addition, there is now no limitation on how much of the budget in Pillar II can be spend on the missions. However, there is much unknown about programming via missions. To ensure the gradual introduction, budget caps should be introduced for the missions.</p>	<p>Add to Article 7(1): <u>In the first two years of the programme, no more than 10% of the annual budget of each Cluster should be programmed through specific calls for implementing the missions. For the 3rd & 4th years, this percentage should not be higher than 15% for each Cluster. For the last three years of the programme, and only after a positive evaluation of the mission selection and management process, this percentage may be increase to a maximum of 20%.</u></p> <p>Add after Article 47 (1): (2) <u>A full evaluation of the missions, covering both their focus, performance, Board appointment, governance shall be carried out by 31 December 2021. This evaluation will take place before any decision is taken on creating new missions, continuing/terminating or redirecting current missions.</u></p>
Industry participation	<p>Preamble (11) - Full engagement of industry in the Programme, at all levels from the individual entrepreneur and small and medium-sized enterprises to large scale enterprises, should constitute one of the main channels through which the Programme's objectives are to be realised, specifically towards the creation of sustainable jobs and growth. Industry should contribute to the perspectives and priorities established through the strategic planning process which should support the development of work programmes. Such engagement by industry should see its participation in the actions supported at levels at least commensurate with those under the previous framework programme Horizon 2020 established by Regulation (EU) No 1291/2013 of the European Parliament and the Council¹³ ('Horizon 2020').</p>	<p>EARTO fully supports the incentives put forward to achieve the full engagement of Industry in HEU. The promotion of European Industries' competitiveness should be set as key objective for HEU, especially in the clusters of Pillar II. HEU needs to maximise the participation of industries of all sizes to strengthen Europe's RD&I ecosystems and value chains allowing our industries to 1) better absorb and scale up mature technologies into new solutions, products and services, maximising impact for society as well as 2) better face today's challenges in terms of digitalisation, sustainability, etc.</p> <p>A reference to the EU Industrial Policy Strategy which provides some recommendations on fostering Key Enabling Technologies should be added.</p>	<p>Add in Preamble: <u>(10) Reflecting the EU Industrial Policy Strategy Objectives to unlock the potential of Europe's strategic sectors like Key Enabling Technologies, the Specific Programme's action should provide important contributions in tackling these objectives.</u></p>

	<p>Preamble (12) It is important to support industry to stay or become world leader in innovation, digitisation and decarbonisation, notably through investments in key enabling technologies that will underpin tomorrow's business. The Programme's actions should be used to address market failures or sub-optimal investment situations, in a proportionate manner, without duplicating or crowding out private financing and have a clear European added value. This will ensure consistency between the actions of the programme and EU State aid rules, avoiding undue distortions of competition in the internal market.</p>		
Synergies	<p>Preamble (15) The Programme should seek synergies with other Union programmes, from their design and strategic planning, to project selection, management, communication, dissemination and exploitation of results, to monitoring, auditing and governance. With a view to avoiding overlaps and duplication and increasing the leverage of Union funding, transfers from other Union programmes to Horizon Europe activities can take place. In such cases they will follow Horizon Europe rules.</p> <p>Article 11 - Complementary and combined funding Actions awarded a Seal of Excellence certification, or which comply with the following cumulative, comparative, conditions: (a) they have been assessed in a call for proposals under the Programme; (b) they comply with the minimum quality requirements of that call for proposals; (c) they may not be financed under that call for proposals due to budgetary constraints, may receive support from the European Regional Development Fund, the Cohesion Fund, the European Social Fund+ or the European Agricultural Fund for Rural Development, in accordance with paragraph 5 of Article [67] of Regulation (EU) XX [Common Provisions Regulation] and Article [8] or Regulation (EU) XX [Financing, management and monitoring of the Common Agricultural Policy], provided that such actions are consistent with the objectives of the programme concerned. The rules of the Fund providing support shall apply.</p>	<p>EARTO welcome the efforts undertaken to foster the synergy of funds between programmes. In the EC legislative proposal for the Cohesion Funds programme, the provision enabling Members States and regions to transfer up to 5% of their Cohesion Funds to other EU programmes such as HEU is a key advancement in the area of joint programming and synergy of funds.</p>	
Research Infrastructures	<p>Article 2 - Definitions</p> <p>1. 'research infrastructures' mean facilities that provide resources and services for the research communities to conduct research and foster innovation in their fields. This definition includes the associated human resources, and it covers major equipment or sets of instruments; knowledge-related facilities such</p>	<p>EARTO very much welcomes and strongly support the EC proposal approach to further develop a clear policy and supporting instrument to industrially-oriented research infrastructures within HEU Pillar II. Those infrastructures are not covered by current ESFRI activities and require an adapted policy and related instrument.</p>	

	as collections, archives or scientific data infrastructures; computing systems, communication networks, and any other infrastructure, of a unique nature and open to external users, essential to achieve excellence in research and innovation. Where relevant, they may be used beyond research, for example for education or public services and they may be 'single sited', 'virtual' or 'distributed';		
Partnerships	Article 8 - European Partnerships 1. Parts of Horizon Europe may be implemented through European Partnerships. The involvement of the Union in European Partnerships may take any of the following forms: (...)	EARTO supports the continuity of public private partnerships, as efficient instruments for excellent industry-led collaborative research in Europe. If Europe wants to continue building on the previous investments made since FP7, both by the public and private sector, an evolution is needed rather than a revolution.	
EIC Pathfinder	Article 20 - Calls for proposals – (2) For EIC Pathfinder transition activities: (a) the launch and the content of the calls for proposals shall be determined with regard to objectives and budget established by the work programme in relation with the concerned portfolio of actions; (b) grants for a fixed amount not exceeding EUR 50,000 may be awarded without a call for proposals to carry out urgent coordination and support actions for reinforcing the portfolio's community of beneficiaries or assessing possible spin-offs or potential market creating-innovation.	EARTO very much support the efforts made by the EC to insert within the new EIC instrument the efforts done by EU RTOs regarding the set-up of deep-tech start-ups which represent a great untapped potential. See EARTO Paper on How to Exploit the Untapped Potential of RTOs' Deep-Tech Start-ups in Europe - 12 April 2017 - link	Add in Article 9 (2c): EUR 13 500 000 000 for Pillar III 'Open Innovation' for the period 2021-2027, of which (1) EUR 10 500 000 000 for the European Innovation Council, (a) of which, at least, EUR 8 000 000 for the EIC Pathfinder (b) EUR 500 000 000 for European Innovation Ecosystems; (2) EUR 3 000 000 000 for the European Institute of Innovation and Technology (EIT);

Regulation on HEU Rules for Participation – Financial Aspects			
Topic	HEU Article	Analysis	Text Changes for HEU
Common Set of Rules across Horizon Europe	Preamble (38) Common rules across the Programme should ensure a coherent framework which facilitates participation in programmes financially supported by the budget of the Programme, including participation in programmes managed by funding bodies such as the EIT, joint undertakings or any other structures under Article 187 TFEU, and participation in programmes undertaken by Member States pursuant to Article 185 TFEU. Flexibility to adopt specific rules should be ensured when justified.	Having a common set of rules across the Horizon Europe programme with common reporting tools and templates and common requirements will ensure further simplification of the programme and lower the administrative burden for beneficiaries following the implementation of different rules for different EU programmes. See EARTO Recommendations for FP9 Rules for Participation: Funding Rules - 19 March 2018 - link	
Acceptance of the usual cost accounting practices	Preamble (47) In accordance with the Financial Regulation, the Programme should provide the basis for a wider acceptance of the usual cost accounting practices of the beneficiaries as regards personnel costs and unit costs for internally invoiced goods and services.	The future funding rules need to reflect even further beneficiaries' accounting practices and cost categories, among others on elements such as work force (salaries and productive hours), infrastructures (equipment and platforms), consumables, and other cost categories (direct and indirect). Indeed, the real costs of RTOs' infrastructures, which are the backbone of dynamic RD&I ecosystems and key for EU cross-border collaborative research in FPs, need to be accounted for. Accordingly, EARTO members very much support the simplification of the funding rules so that such costs can be calculated in accordance with beneficiaries' usual accounting practices by allowing and simplify the claims of infrastructure costs. EARTO believes that this should be possible as RTOs already abide by the national accounting practices and are audited and controlled by their national/regional authorities. EARTO members are ready to work with the European Commission and the European Court of Auditors to achieve an efficient and sustainable implementation of such article. See EARTO Recommendations for FP9 Rules for Participation: Funding Rules - 19 March 2018 - link Text changes: reference to Large Research Infrastructures needs to be added (see EC Explanatory Memorandum for the HEU Regulation p. 7)	Add in Preamble (47): In accordance with the Financial Regulation, the Programme should provide the basis for a wider acceptance of the usual cost accounting practices of the beneficiaries as regards personnel costs and unit costs for internally invoiced goods and services, <u>which would also cover the equivalent to Horizon 2020 large research infrastructures.</u>
Personnel costs	Preamble (48) The current system of reimbursement of actual personnel costs should be further simplified building on the project-based remuneration approach developed under Horizon 2020 and further aligned to the Financial Regulation.	Further simplification of the reimbursement of personnel cost, on the basis of the approach developed within Horizon 2020, is very much welcome. However, it is crucial to note that having only flat rates or lump sums personnel cost categories for all activities cannot cover the reimbursement of personnel costs.	
Funding Rates		EARTO members welcome the continuity from Horizon 2020 with regards to the funding rates, which will help make a smooth transition between the two programmes.	

Indirect Costs	<p>Article 31 - Indirect costs</p> <p>1. Indirect eligible costs shall be determined by applying a flat rate of 25 % of the total direct eligible costs, excluding direct eligible costs for subcontracting, financial support to third parties and any unit costs or lump sums which include indirect costs.</p> <p>Where appropriate, indirect costs included in unit costs or lump sums shall be calculated using the flat rate set out in paragraph 1, except for unit costs for internally invoiced goods and services which shall be calculated on the basis of actual costs, in accordance with the beneficiaries' usual costs accounting practices.</p>	<p>RTOs appreciate the simplification brought by the flat rate approach for indirect costs. However, such flat rates do not reflect the real costs of RTOs, for instance for their infrastructures, which are the backbone of dynamic RD&I ecosystems and key for EU cross-border collaborative research in FPs. HEU rules for participation need to take into account that RTOs' infrastructures are of many different types, sizes, etc. Recognising this issue, the EC has offered improvement in H2020 by setting up the Large Research Infrastructures (LRI) scheme with much welcomed ex-ante assessment, and by allowing internal invoicing. However, both schemes would need further improvements to better cover those infrastructures' costs: access to the LRI scheme is today too limited, and real simplification still needs to be visible during the auditing process for internal invoicing. Accordingly, EARTO members very much support the revision and simplification of the funding rules so that such costs can be calculated in accordance with beneficiaries' usual accounting practices by allowing and simplifying the claims of infrastructure costs with the reasonable use of allocation keys.</p> <p>See EARTO Recommendations for FP9 Rules for Participation: Funding Rules - 19 March 2018 - link</p> <p>With such interpretation in mind, the second part of Art.31 (1) is not clear enough and can lead to misunderstandings.</p> <p>Text changes: wording needs to be clarified and reference to Large Research Infrastructures needs to be added (see EC Explanatory Memorandum for the HEU Regulation p. 7).</p>	<p>Change Article 31 - Indirect costs</p> <p>1. Indirect eligible costs shall be determined by applying a flat rate of 25 % of the total direct eligible costs, excluding direct eligible costs for subcontracting, financial support to third parties and any unit costs or lump sums which include indirect costs.</p> <p>2. Where appropriate, indirect costs included in unit costs or lump sums shall be calculated instead of using the flat rate set out in paragraph 1, indirect costs can be determined by unit costs for internally invoiced goods and services which would also cover the equivalent to Horizon 2020 large research infrastructures and which shall be calculated on the basis of actual costs, in accordance with the beneficiaries' usual costs accounting practices.</p>
	<p>2. However, if provided for in the work programme, indirect costs may be declared in the form of a lump sum or unit costs.</p>	<p>Prior to any expansion of the lump-sum approach, a thorough evaluation of the returns on experience on the H2020 pilots needs to be carried out by the EC and FP beneficiaries. This evaluation needs to analyse the financial and operational impact of the lump-sum approach, in a representative manner. It also needs to take into account the objective of the FP to be "best placed to take on high-risk and long-term R&I" (see Explanatory Memorandum for the HEU Regulation p.3).</p> <p>See EARTO Inputs - Towards Lump-Sums within FP9 - 15 September 2017 - link</p>	
Eligible Costs	<p>Article 32 - Eligible costs</p>	<p>EARTO members welcome the continuity from Horizon 2020 with regards to the eligible costs, which will help make a smooth transition between the two programmes.</p>	
Audits	<p>Preamble (52) A wider cross-reliance on audits and assessments – including with other Union programmes – should be envisaged, in order to reduce administrative burden for beneficiaries of Union funds. Cross reliance should be explicitly provided for by considering also other elements of assurance such as systems and processes audits.</p>	<p>The FP needs to be further simplified by reducing the audit burden. One way to achieve such simplification is to ensure efficient cross reliance on audits between the different EU programmes, in accordance with the Article 127 of the Financial Regulation.</p> <p>See EARTO Recommendations for FP9 Rules for Participation: Funding Rules - 19 March 2018 - link</p>	<p>Add in Preamble (52) <u>In accordance with Article 127 of the Financial Regulation</u>, a wider cross-reliance on audits and assessments – including with other Union programmes – should be envisaged implemented, in order to reduce administrative burden for</p>

			beneficiaries of Union funds. Cross reliance should be explicitly provided for by considering also other elements of assurance such as systems and processes audits.
	<p>Article 48 - Audits</p> <p>1. The control system for the Programme shall ensure an appropriate balance between trust and control, taking into account administrative and other costs of controls at all levels, especially for beneficiaries.</p> <p>2. The audit strategy for the Programme shall be based on the financial audit of a representative sample of expenditure across the Programme as a whole. The representative sample shall be complemented by a selection based on an assessment of the risks related to expenditure. Actions that receive joint funding from different Union programmes shall be audited only once, covering all involved programmes and their respective applicable rules.</p>	EARTO members particularly appreciate the implementation of a balanced approach between trust and control with regards to the audits and control system. Such approach, in line with the European Court of Auditors' view, would enable to have a more cost-efficient audit system, taking into account the costs of control for both beneficiaries and EU institutions.	
	<p>3. In addition, the Commission or funding body may rely on combined systems reviews at beneficiary level. These combined reviews shall be optional for certain types of beneficiaries and shall consist in a systems and process audit, complemented by an audit of transactions, carried out by a competent independent auditor qualified to carry out statutory audits of accounting documents in accordance with Directive 2006/43/EC34. They may be used by the Commission or funding body to determine overall assurance on the sound financial management of expenditure and for reconsideration of the level of ex-post audits and certificates on financial statements.</p>	<p>EARTO Members very much support this system and process audit approach coupled with an audit of transaction. This would give the possibility for certain types of beneficiaries to benefit from an improved ex-ante assurance and legal certainty.</p> <p>See EARTO Recommendations for FP9 Rules for Participation: Funding Rules - 19 March 2018 - link</p>	
	<p>4. In accordance with Article 127 of the Financial Regulation, the Commission or funding body may rely on audits on the use of Union contributions carried out by other persons or entities, including by other than those mandated by the Union Institutions or bodies.</p>	<p>The FP needs to be further simplified by reducing the audit burden. One way to achieve such simplification is to ensure efficient cross reliance on audits between the different EU programmes, in accordance with the Article 127 of the Financial Regulation.</p> <p>See EARTO Recommendations for FP9 Rules for Participation: Funding Rules - 19 March 2018 - link</p>	<p>Change text in 4:</p> <p>4. In accordance with Article 127 of the Financial Regulation, the Commission or funding body may shall rely on audits on the use of Union contributions carried out by other certified persons or entities, including by other than those mandated by the Union Institutions or bodies.</p>
	<p>5. Audits may be carried out up to two years after the payment of the balance.</p>	EARTO members welcome the continuity from Horizon 2020 on this, and believe that the audit delay of two years after the payment of the balance is fair.	

<p>Mutual Insurance Mechanism</p>	<p>Preamble (49) The participant Guarantee Fund set up under Horizon 2020 and managed by the Commission has proved to be an important safeguard mechanism which mitigates the risks associated with the amounts due and not reimbursed by defaulting participants. Therefore, the Beneficiary Guarantee Fund, renamed Mutual Insurance Mechanism ("the Mechanism") should be continued and enlarged to other funding bodies in particular to initiatives pursuant to Article 185 of the TFEU. The Mechanism should be opened to beneficiaries of any other directly managed Union programme.</p> <p>Article 33 - Mutual Insurance Mechanism</p> <p>1. A Mutual Insurance Mechanism (the 'Mechanism') is hereby established which shall replace and succeed the fund set up in accordance with Article 38 of Regulation (EC) No 1290/2013. The Mechanism shall cover the risk associated with non-recovery of sums due by the beneficiaries:</p> <p>(a) to the Commission under Decision No 1982/2006/EC,</p> <p>(b) to the Commission and Union bodies under "Horizon 2020",</p> <p>(c) to the Commission and funding bodies under the Programme. The coverage of the risk regarding funding bodies referred to in point (c) of the first subparagraph may be implemented through an indirect coverage system set out in the applicable agreement and taking into account the nature of the funding body.</p> <p>2. The Mechanism shall be managed by the Union, represented by the Commission acting as executive agent. The Commission shall set up specific rules for the operation of the Fund.</p> <p>3. Beneficiaries shall make a contribution of 5 % of the Union funding for the action. On the basis of periodic evaluations, this contribution may be raised by the Commission up to 8% or may be reduced under 5%. The beneficiaries' contribution to the Mechanism may be offset from the initial pre-financing and be paid to the Fund on behalf of the beneficiaries.</p> <p>4. The contribution of the beneficiaries shall be returned at the payment of the balance.</p> <p>5. Any financial return generated by the Mechanism shall be added to the Mechanism. If the return is insufficient, the Mechanism shall not intervene and the Commission or funding body</p>	<p>EARTO members experienced many difficulties with regards to the Guarantee Fund within H2020, with some cases pending several years after the end of a project. Prior to any expansion of such fund, EARTO members believe that clarification and standardisation is required as to when such fund can be used and by whom.</p> <p>Besides, raising the sum up to 8% should be limited to projects with high risks only (not for FP typical collaborative actions). A change in the funding of the Mechanism during the Programme should only be implanted on future calls.</p>	
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	<p>shall recover directly from beneficiaries or third parties any amount owed.</p> <p>6. The amounts recovered shall constitute revenue assigned to the Mechanism within the meaning of Article 21(4) of the Financial Regulation. Once all grants whose risk is covered directly or indirectly by the Mechanism are completed, any sums outstanding shall be recovered by the Commission and entered into the budget of the Union, subject to decisions of the legislative authority.</p> <p>7. The Mechanism may be opened to beneficiaries of any other directly managed Union programme. The Commission shall adopt modalities for participation of beneficiaries of other programmes.</p>		
Annual productive hours	No text available on this in HEU	<p>The H2020 article on Annual Productive Hours has not been included in the HEU rules for participation. However, such article is crucial since if not included this can have a negative impact on beneficiaries' financing rate.</p> <p>It is important to note that setting a fixed number of productive hours is not feasible for most RTOs if the number does not take into consideration 1) usual accounting practices 2) type of organisation (RTO, SME etc.) and 3) country. If a fixed number should be created it should take these 3 issues into account, for instance with a country and organisation coefficient. Indeed, the number of productive hours varies from country to country depending on national regulation, working time, vacation, maternity leave, etc.</p>	<p>Add text similar to Article 31 of H2020 Rules for Participation: "Annual productive hours 1. Eligible personnel costs shall cover only the actual hours worked by the persons directly carrying out work under the action. Evidence regarding the actual hours worked shall be provided by the participant, usually through a time recording system. 2. For persons working exclusively for the action, no time recording is required. In such cases, the participant shall sign a declaration confirming that the person concerned has worked exclusively for the action. 3. The grant agreement shall contain: (a) the minimum requirements for the time recording system; (b) the option to choose between a fixed number of annual productive hours and the method for establishing the number of annual productive hours to be used for the calculation of the hourly personnel rates, <u>taking account of (i) the participant's usual accounting practices, (ii) the type of organisation and (iii) the country of the beneficiary.</u>"</p>
Cascade Funding	No text available on this in HEU	A specific article should be included in HEU to foster the use of the Cascade Funding scheme, which is key to support SME's access to the FP.	<p>Add an article specifically covering Cascade Funding: In H2020, the legal basis for Cascade Funding is Art.21 (3) of H2020 Rules for</p>

			Participation, which covers Third Parties in general. However, the implementation of cascade funding needs more clarity. This needs to be improved in HEU. Indeed, the amount of financial support to third parties should be considered in pre-financing calculation for the duration of the action/project. It shall not cause financial risks to coordinators or beneficiaries under which the third parties are carrying out work.
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Regulation on HEU Rules for Participation – Legal Aspects			
Topic	HEU Article	Analysis	Text Changes for HEU
Definitions	<p>Article 2 (4) 'open access' means the practice of providing online access to research outputs resulting from actions funded under the Programme, in particular scientific publications and research data, free of charge to the end-user;</p>	<p>The concept of "Open Science" is often associated with "free of charge access for all", thereby sacrificing the crucial element of shared Value Capture required for Open Innovation. In a balanced approach to "Open Science", the emphasis should therefore be on the availability and wide dissemination of technology rather than on the absence of pricing.</p> <p>The long-standing experience of RTOs shows that industry is usually only willing to invest in R&D leading to a competitive edge over entities that have chosen not to invest. This requires a protection by IPR of certain results. Where this concerns "Open Data", the focus should be on optimum use of research data, which should be looked at in terms of an optimal allocation of the costs and benefits of the research effort, thereby attaining a maximum societal impact of the public research funding spent.</p> <p>Research data should be "Open" where reasonably possible and "Restricted" where reasonably required. With regards to data sharing, relevant privacy and security interests, as well as IPR, confidentiality, global economic competitiveness and other legitimate interests, need to be addressed. An unbalanced European Open Science policy not taking into account this recommendation will be working against any effective European Open Innovation policy, with the potential to boost European competitiveness and growth.</p> <p>See EARTO Paper on Open X - 18 November 2015 - link</p> <p>Besides, the term "research outputs" seems to be encompassing both the concept of "scientific publications" and "research data" but it is not defined anywhere. EARTO members suggest to check the consistency of the terminology used within the HEU basic acts and streamline. For example, there are inconsistencies in art. 10 "open access and open data" referring only to publications and in Art. 10 para.3 the terminology of "open access to research outputs" is then use (same in preamble (5)).</p>	<p>Change text: Art.2 (4) 'open access' means the practice of providing online access to research outputs scientific publications and research data resulting from actions funded under the Programme, in particular scientific publications and research data, free of charge to the end-user. With regard to research data, relevant privacy and security interests, as well as IPR, confidentiality, European Union global economic competitiveness and other legitimate interests, need to be addressed, following the principle "as open as possible, as closed as necessary"; and according to the "robust opt-outs" (as quoted in page 12, line 3).</p>

	<p>Article 2 (9) “background” means any data, know-how or information whatever its form or nature, tangible or intangible, including any rights such as intellectual property rights, that is: (i) held by beneficiaries prior to their accession to the action; (ii) identified by the beneficiaries in writing in any manner as needed for implementing the action or for exploiting its results;</p>	<p>The definition of « Background » was restructured in a certain manner from H020 RfP Art.2 (4). Overall, EARTO members would consider the modification to be rather on the positive side. From the H2020 definition, "(ii) needed for carrying out the action or for exploiting the results of the action; and (iii) identified by the participants in accordance with Article 45" was changed into the HEU (ii). According to this new (ii), "need" is no longer a requirement by itself, only "identification as needed" is the requirement.</p> <p>It is however not clear from the text that (i) and (ii) are cumulative criteria, this ought to be added.</p> <p>Besides, potentially negative/risky aspect: HEU says Background must be « identified by the beneficiaries in writing in any manner » whereas in H2020 it was «in a written agreement » (cf Art. 45 RfP). To avoid that any written mention of Background is already conceived as a valid identification as Background (e.g. a listing in the proposal), we suggest a clarifying addition in the text.</p>	<p>Change text: Art.2 (9) “background” means any data, know-how or information whatever its form or nature, tangible or intangible, including any rights such as intellectual property rights, that is: (i) held by beneficiaries prior to their accession to the action; and (ii) identified by the beneficiaries in writing in any manner in a written agreement as needed for implementing the action or for exploiting their results;</p>
	<p>Article 2 (18) “results” means any tangible or intangible effect of the action, such as data, knowhow or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights;</p>	<p>Similar to H2020 article, only wording effect less clear than outputs, would go back to previous statement.</p>	<p>Use same writing that in H2020: Article 2 (18) “results” means any tangible or intangible output of the action, such as data, knowhow or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights;</p>
<p>Open Access</p>	<p>Preamble (5) Open science, including open access to scientific publications and research data, has the potential to increase the quality, impact and benefits of science and to accelerate the advancement of knowledge by making it more reliable, more efficient and accurate, better understandable by society and responsive to societal challenges.</p> <p>Provisions should be laid down to ensure that beneficiaries provide open access to peer-reviewed scientific publications, research data and other research outputs in an open and non-discriminatory manner, free of charge and as early as possible in the dissemination process, and to enable their widest possible use and re-use.</p>	<p>With regards to data sharing, there is a need to ensure coherence and alignment between the different articles within the HEU Basic Acts, according to the principle highlighted in the Council Conclusion of May 2016: “as open as possible, as closed as necessary”.</p> <p>EU policy makers should take great care to balance the envisaged benefits from “openness” for society at large against the proven needs of the existing technology marketplace, the latter requiring a clear competitive edge as well as clear return on its investments in innovation activities, where collaborative research plays a crucial role.</p> <p>The concept of “Open Science” is often associated with “free of charge access for all”, thereby sacrificing the crucial element of shared Value Capture required for Open Innovation. In a balanced approach to “Open</p>	<p>Change text in Preamble (5): Open science, including open access to scientific publications and research data, as well as optimal dissemination and exploitation of knowledge, in a balanced approach, has the potential to increase the quality, impact and benefits of science and to accelerate the advancement of knowledge by making it more reliable, more efficient and accurate, better understandable by society and responsive to societal challenges. Provisions should be laid down to ensure that incentivise beneficiaries to provide open access to peer-reviewed scientific publications, and and other research outputs in an open and non-discriminatory manner, free of charge and as early as possible in the dissemination process, and to enable their widest possible use and re-use, when relevant,</p>

	<p>More emphasis should in particular be given to the responsible management of research data, which should comply with the FAIR principles of 'Findability', 'Accessibility', 'Interoperability' and 'Reusability', notably through the mainstreaming of Data Management Plans.</p> <p>Where appropriate, beneficiaries should make use of the possibilities offered by the European Open Science Cloud and adhere to further open science principles and practices.</p>	<p>Science", the emphasis should therefore be on the availability and wide dissemination of technology rather than on the absence of pricing.</p> <p>Research data should be "Open" where reasonably possible and "Restricted" where reasonably required. With regards to data sharing, relevant privacy and security interests, as well as IPR, confidentiality, global economic competitiveness and other legitimate interests, need to be addressed. An unbalanced European Open Science policy not taking into account this recommendation will be working against any effective European Open Innovation policy, with the potential to boost European competitiveness and growth.</p> <p>Besides, the term "research outputs" seems to be encompassing both the concept of "scientific publications" and "research data" but it is not defined anywhere. EARTO members suggest to check the consistency of the terminology used within the HEU basic acts and streamline.</p> <p>EARTO members support any incentive given to the exploitation and dissemination of technology. This links to the concept of "open innovation and "value capture", under conditions that enable each partner of the collaboration to capture a share of the economic value created in common, as part of a business and exploitation plan and a roadmap clearly defined. This is usually attained by licensing research results to industry, against a fee (or royalties) that is proportional to their contribution to the project and to the commercial use made of such results. RTOs therefore support and comply with the FAIR principle and support the responsible management of research data by mainstreaming the use of data management plans within the Framework Programme.</p> <p>See EARTO Paper on Open X - 18 November 2015 - link</p> <p>In the last paragraph, the European Open Science Cloud not being operational yet, only incentives should be given at this stage in the basic act.</p>	<p><u>according to the principle "as open as possible, as closed as necessary" and according to the "robust opt-outs" (as quoted in page 12, line 3).</u></p> <p>Open access to scientific publications resulting from research funded under the Programme shall be ensured in accordance with Article 35(3). Open access to research data shall be ensured in line with the principle 'as open as possible, as closed as necessary', in accordance with Article 35(3) <u>and according to the "robust opt-outs". When appropriate, open science practices beyond open access to other research outputs scientific publications and research data</u> shall be encouraged.</p> <p>More emphasis should in particular be given to the responsible management of research data, which should comply with the FAIR principles of 'Findability', 'Accessibility', 'Interoperability' and 'Reusability', notably through the mainstreaming of Data Management Plans.</p> <p>Where appropriate, beneficiaries should may make use of the possibilities offered by the European Open Science Cloud and adhere to further open science principles and practices.</p>
	<p>Article 10 - Open access and open data</p> <p>1. Open access to scientific publications resulting from research funded under the Programme shall be ensured in accordance with Article 35(3). Open access to research data shall be ensured in line with the principle 'as open as</p>	<p>With regards to data sharing, there is a need to ensure coherence and alignment between the different articles within the HEU Basic Acts, according to the principle highlighted in the</p>	<p>Change Article 10 - Open access and open data:</p> <p>1. Open access to scientific publications resulting from research funded under the Programme shall be ensured in accordance with Article 35(3). Open access to research data shall be ensured in</p>

	<p>possible, as closed as necessary'. Open access to other research outputs shall be encouraged.</p> <p>2. Responsible management of research data shall be ensured in line with the principles 'Findability', 'Accessibility', 'Interoperability' and 'Reusability' (FAIR).</p> <p>3. Open science practices beyond open access to research outputs and responsible management of research data shall be promoted.</p>	<p>Council Conclusion of May 2016: "as open as possible, as closed as necessary".</p> <p>This is already the case for this article. Reference to article 35(3) also for Open Data, so as to link to the reference to "taking into account the legitimate interests of the beneficiaries".</p> <p>Besides, the term "research outputs" seems to be encompassing both the concept of "scientific publications" and "research data" but it is not defined anywhere. EARTO members suggest to check the consistency of the terminology used within the HEU basic acts and streamline.</p>	<p>line with the principle 'as open as possible, as closed as necessary', <u>in accordance with Article 35(3) and according to the "robust opt-outs" (as quoted in page 12, line 3). Open access to other research outputs shall be encouraged.</u></p> <p>2. Responsible management of research data shall be ensured in line with the principles 'Findability', 'Accessibility', 'Interoperability' and 'Reusability' (FAIR).</p> <p>3. <u>When appropriate</u>, open science practices beyond open access to <u>research outputs scientific publications and research data</u> and responsible management of research data shall be promoted.</p>
Ownership and protection of results	<p>Article 34 - Ownership and protection</p> <p>1. Beneficiaries shall own the results they generate. They shall ensure that any rights of their employees or any other parties in relation to the results can be exercised in a manner</p> <p>2. Beneficiaries having received Union funding shall adequately protect their results if protection is possible and justified, taking into account all relevant considerations, including the prospects for commercial exploitation. When deciding on protection, beneficiaries shall also consider the legitimate interests of the other beneficiaries in the action.</p>	<p>§2 With regards to data sharing, there is a need to ensure coherence and alignment between the different articles within the HEU Basic acts.</p>	<p>Article 34 - Ownership and protection</p> <p>2. Beneficiaries having received Union funding shall adequately protect their results if protection is possible and justified, taking into account all relevant considerations, including the prospects for commercial exploitation <u>and any other legitimate interests, such as data protection rules, privacy and security rules or as well as intellectual property rights, confidentiality, or European Union global economic competitiveness.</u> When deciding on protection, beneficiaries shall also consider the legitimate interests of the other beneficiaries in the action.</p>
Exploitation and dissemination of results	<p>Preamble (50) Rules governing the exploitation and dissemination of results should be laid down to ensure that beneficiaries protect, exploit, disseminate and provide access to those results as appropriate. More emphasis should be given to exploiting the results, in particular in the Union. Beneficiaries should update their plans regarding the exploitation and dissemination of their results during and after the end of the action.</p>	<p>EARTO members support any incentive given to the exploitation and dissemination of technology. This links to the concept of "open innovation and "value capture", under conditions that enable each partner of the collaboration to capture a share of the economic value created in common, as part of a business and exploitation plan and a roadmap clearly defined. This is usually attained by licensing research results to industry, against a fee (or royalties) that is proportional to their contribution to the project and to the commercial use made of such results.</p> <p>With regards to data sharing, there is a need to ensure coherence and alignment between the different articles within the HEU Basic acts.</p>	<p>Preamble (50) Rules governing the exploitation and dissemination of results should be laid down to ensure that beneficiaries protect, exploit, disseminate and provide access to those results as appropriate, <u>taking into consideration the legitimate interests of the beneficiaries and any other constraints, such as data protection rules, privacy and security rules or as well as intellectual property rights, confidentiality, or European Union global economic competitiveness.</u> More emphasis should be given to exploiting the results, in particular in the Union. Beneficiaries should update their plans regarding the exploitation and dissemination of their results during and after the end of the action. <u>Beneficiaries shall update their plans regarding the exploitation and dissemination of their results during and for a period of two years after the end of the action.</u></p>

<p>Article 35 - Exploitation and dissemination</p> <p>1. Beneficiaries having received Union funding shall use their best efforts to exploit their results, in particular in the Union. Exploitation may be done directly by the beneficiaries or indirectly in particular through the transfer and licensing of results in accordance with Article 36. The work programme may provide for additional exploitation obligations. If despite a beneficiary's best efforts to exploit its results directly or indirectly no exploitation takes place within a given period as identified in the grant agreement, the beneficiary shall use an appropriate online platform as identified in the grant agreement to find interested parties to exploit those results. If justified on the basis of a request of the beneficiary, this obligation may be waived.</p> <p>3. Beneficiaries shall ensure that open access to scientific publications applies under the terms and conditions laid down in the grant agreement. In particular, the beneficiaries shall ensure that they or the authors retain sufficient intellectual property rights to comply with their open access requirements. Open access to research data shall be the general rule under the terms and conditions laid down in the grant agreement, but exceptions shall apply if justified, taking into consideration the legitimate interests of the beneficiaries and any other constraints, such as data protection rules, security rules or intellectual property rights. The work programme may provide for additional obligations to adhere to open science practices.</p> <p>4. Beneficiaries shall manage all research data in accordance with the terms and conditions laid down in the grant agreement and shall establish a Data Management Plan. The work programme may provide for additional obligations to use the European Open Science Cloud for storing and giving access to research data.</p> <p>7. For the purposes of monitoring and dissemination by the Commission or funding body, the beneficiaries shall provide any requested information regarding the exploitation and dissemination of their results. Subject to the legitimate interests of the beneficiaries, such information shall be made publicly available.</p>	<p>§1 The period to "judge" the exploitation cannot be provided in the grant agreement but should be linked to exploitation and dissemination plan that can be updated. Further the consequences should be modified.</p> <p>§3 With regards to data sharing, there is a need to ensure coherence and alignment between the different articles within the HEU Basic Acts, according to the principle highlighted in the Council Conclusion of May 2016: "as open as possible, as closed as necessary".</p> <p>§4 The European Open Science Cloud not being operational yet, only incentives should be given at this stage in the basic act. Giving access is conditional to the conditions with respect to data sharing and open access (see issues raised above and proposed wording).</p> <p>§7 Similar to H2020: Adding reference to grant agreement as it was the case in the H2020 article would provide more legal certainty.</p>	<p>Article 35 – Exploitation and dissemination</p> <p>1. Beneficiaries having received Union funding shall use their best efforts to exploit their results, in particular in the Union. Exploitation may be done directly by the beneficiaries or indirectly in particular through the transfer and licensing of results in accordance with Article 36. The work programme may provide for additional exploitation obligations. If despite the beneficiary's best efforts to exploit its results directly or indirectly <u>as outlined in its (updated) Dissemination and Exploitation plan, such beneficiary shall inform the Funding Authority. After such notification the Funding Authority shall consult the beneficiary and investigate the reasons for the lack of exploitation. After such consultation, this obligation shall be waived if justified e.g. exploitation of results is not yet possible or reasonable given the circumstances, by beneficiary. If not so waived, the Funding Authority may investigate whether third party(ies) are interested in the exploitation of the results subject to the obligations detailed in this agreement (e.g. access rights)</u> (similar to what applies in article 36 below).</p> <p>3. Beneficiaries shall ensure that open access to scientific publications applies under the terms and conditions laid down in the grant agreement. In particular, the beneficiaries shall ensure that they or the authors retain sufficient intellectual property rights to comply with their open access requirements. Open access to research data shall be the general rule under the terms and conditions laid down in the grant agreement, <u>following the principle "as open as possible, as closed as necessary" and according to the "robust opt-outs" (as quoted in page 12, line 3)</u>. Exceptions shall apply if justified, taking into consideration the legitimate interests of the beneficiaries and any other constraints, such as data protection rules, <u>privacy and</u> security rules <u>or as well as</u> intellectual property rights, <u>confidentiality, or European Union global economic competitiveness</u>. The work programme may provide for additional obligations to adhere to open science practices.</p>
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<p>Transfer and licensing</p>	<p>Article 36 - Transfer and licensing</p> <p>2. Unless agreed otherwise in writing for specifically-identified third parties or unless impossible under applicable law, beneficiaries that intend to transfer ownership of results shall give advance notice to any other beneficiary that still has access rights to the results. The notification must include sufficient information on the new owner to enable a beneficiary to assess the effects on its access rights. Unless agreed otherwise in writing for specifically-identified third parties, a beneficiary may object to the transfer if it can show that the transfer would adversely affect its access rights. In this case, the transfer may not take place until agreement has been reached between the beneficiaries concerned.</p> <p>3. Beneficiaries may grant licences to their results or otherwise give the right to exploit them, if this does not affect compliance with their obligations.</p> <p>4. Where this is justified, the grant agreement shall lay down the right to object to transfers of ownership of results, or to grants of an exclusive licence regarding results, if: (a) the beneficiaries generating the results have received Union funding; (b) the transfer or licence is to a legal entity established in a non-associated third country; and (c) the transfer or licence is not in line with Union interests. If the right to object</p>	<p>§3 & §4: HEU text differs from H2020 one with regards to exclusive licenses.</p> <p>§3 In H2020 rules, there was a specific reference to the possibility of granting exclusive licences, which has disappeared from the HEU rules</p> <p><i>(H2020 RfP Art.44(2) "Provided that access rights to the results can be exercised, and that any additional exploitation obligations are complied with by the participant which owns the results, the latter may grant licences or otherwise grant the right to exploit them to any legal entity, including on an exclusive basis. Exclusive licences for results may be granted subject to consent by all the other participants concerned that they will waive their access rights thereto.")</i></p> <p>SMEs and start-ups need sectorial exclusive licenses in order to develop and compete. When a beneficiary is a non-profit legal entity, it should keep the possibility to grant a sectorial exclusive license to a for profit participant of the project.</p> <p>§4 the right to object to transfers of ownership or grant of an exclusive licence should be possible when cumulating the three following conditions, as it was already the case in H2020:</p> <ul style="list-style-type: none"> - beneficiaries generating the results have received Union funding; - and transfer or licence is to a legal entity established in a non-associated third country; 	<p>Article 36 - Transfer and licensing</p> <p>2. Unless agreed otherwise in writing for specifically-identified third parties or unless impossible under applicable law, beneficiaries that intend to transfer ownership of results shall give advance notice to any other beneficiary that still has access rights to the results or still may request the granting of access rights. The notification must include sufficient information on the new owner to enable a beneficiary to assess the effects on its access rights. Unless agreed otherwise in writing for specifically-identified third parties, a beneficiary may object to the transfer if it can show that the transfer would adversely affect its access rights. In this case, the transfer may not take place until agreement has been reached between the beneficiaries concerned.</p> <p>3. Beneficiaries may grant licences to their results or otherwise give the right to exploit them, including, when the beneficiary is a non-profit entity, on an exclusive basis, if this does not affect compliance with their obligations. Exclusive licences for results may be granted by beneficiaries which are non-profit legal entities to other beneficiaries, subject to consent before the beginning of the project, by all the other participants concerned that they will waive their access rights thereto and subject that</p>

	<p>applies, the beneficiary shall give advance notice. The right to object may be waived in writing regarding transfers or grants to specifically identified legal entities if measures safeguarding Union interests are in place.</p>	<p>- and transfer or licence is not in line with Union interests</p>	<p>the licensee exploits the results in the European Union.</p> <p><u>Take out §4 and replace by previous H2020 Art.44(3):</u> "With regard to results which are generated by participants that have received Union funding, the grant agreement may provide that the Commission or the relevant funding body may object to transfers of ownership or to grants of an exclusive licence to third parties established in a third country not associated with Horizon 2020, if it considers that the grant or transfer is not in accordance with the interests of developing the competitiveness of the Union economy, or is inconsistent with ethical principles or security considerations. In such cases, the transfer of ownership or grant of exclusive licence shall not take place unless the Commission or the relevant funding body is satisfied that appropriate safeguards will be put in place. Where appropriate, the grant agreement shall provide that the Commission or the relevant funding body is to be notified in advance of any such transfer of ownership or grant of an exclusive licence. The grant agreement shall lay down time-limits in this respect.</p>
<p>Public Procurement</p>	<p>Article 2 - Definitions</p> <p>6. 'pre-commercial procurement' means the procurement of research and development services involving risk-benefit sharing under market conditions, and competitive development in phases, where there is a clear separation of the research and development services procured from the deployment of commercial volumes of end products;</p> <p>7. 'public procurement of innovative solutions' means procurement where contracting authorities act as a launch customer for innovative goods or services which are not yet available on a large-scale commercial basis, and may include conformity testing.</p>	<p>Public procurement of R&I remains underused in Europe compared to other parts of the world, despite efforts undertaken via Horizon 2020 to support such instrument. This is mainly due to the separation of EU public procurement of R&I into 2 distinct phases: the research and development phase and the one for the deployment of commercial volumes of end products. This is not the case in other countries such as the US.</p> <p>Having only one call for tender for both phases would provide additional incentives for companies to take part in the RD&I phase since they are assured to get an opportunity to recover part of their RD&I investment in the commercialisation phase by bringing their innovation to the market. Indeed, one of the most crucial stages of development of innovative SMEs/start-ups is to get their first commercial orders, which then facilitates the obtaining of venture capital and gives confidence to bankers.</p> <p>See:</p>	

		<ul style="list-style-type: none"> - EARTO Answer to EC Consultation on Public Procurement of R&I - 22 December 2017 - link - EARTO Paper on How to Boost Pre-Commercial Procurement in Horizon 2020 - 14 April 2016 - link - EC Commissioned study, ENIRI - "State aid support schemes for RDI in the EU's international competitors in the fields of Science, Research and Innovation" (p.622-625) - link 	
	<p>Article 22 - Pre-commercial procurement and procurement of innovative solutions</p> <p>1. 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/EU31, 2014/25/EU32 and 2009/81/EC33.</p> <p>2. The procurement procedures:</p> <p>(a) shall comply with the principles of transparency, non-discrimination, equal treatment, sound financial management, proportionality and competition rules;</p> <p>(b) for pre-commercial procurement, may provide for specific conditions such as the place of performance of the procured activities being limited to the territory of the Member States and of associated countries;</p> <p>(c) may authorise the award of multiple contracts within the same procedure (multiple sourcing);</p> <p>and (d) shall provide for the award of the contracts to the tender(s) offering best value for money while ensuring absence of conflict of interest.</p> <p>3. The contractor generating results in pre-commercial procurement shall own at least the attached intellectual property rights. The contracting authorities shall enjoy at least royalty-free access rights to the results for their own use and the right to grant, or require the participating contractors to grant, non-exclusive licences to third parties to exploit the results for the contracting authority under fair and reasonable conditions without any right to sub-license. If a contractor fails to commercially exploit the results within a given</p>	<p>EARTO members believe the conditions highlighted in <i>italic bold</i> in Art.22(3) go against a sound intellectual property (IP) policy for pre-commercial procurement (PCP) in H2020 and undermines the number and quality of answers to PCP calls for tender.</p> <p>EARTO members would welcome a rule which implies that IP ownership remains with the employer of the inventor². This would also be necessary when one of the R&D providers is an SME, as SMEs need sectorial exclusivity in order to develop and to compete. Additionally, if the SME is a start-up, the proposed modification would be even more important, as venture capitalists tend to invest more in start-ups which own the intellectual property and are not obliged to give access to third parties, or have a sectorial exclusive license from a public research organisation or any other R&D provider³.</p> <p>The proposed change would allow RTOs participating in PCP, for example as R&D provider or a subcontractor of a R&D provider, to:</p> <ul style="list-style-type: none"> • Keep ownership of the foreground IP it created, e.g. when the foreground IP created in the PCP is new or an improvement of a RTO's background IP. • Possibly grant an exclusive sectorial license on such IP to the industrial company being the R&D provider. • Develop the IP in other sectors, creating the possibility in turn to complete their public mission by licensing exclusively the IP again to other industrial companies in other specific fields and allow further use of such IP increasing its value under such public procurement. <p>See:</p> <ul style="list-style-type: none"> - EARTO Paper on How to Boost Pre-Commercial Procurement in Horizon 2020 - 14 April 2016 - link - EARTO Response to the European Commission Public Consultation on the EU 	<p>3. The contractor generating results in pre-commercial procurement shall own at least the attached intellectual property rights. The contracting authorities shall enjoy at least royalty-free access rights to the results for their own use and the right to grant, or require the participating contractors to grant, non-exclusive licences to third parties to exploit the results for the contracting authority under fair and reasonable conditions without any right to sub-license. If a contractor fails to commercially exploit the results within a given period after the pre-commercial procurement as identified in the contract, the contracting authorities shall consult with the contractor and investigate the reasons for such lack of exploitation. After such consultation, the contracting authority can require it to transfer any ownership or license of the results to the contracting authorities.</p>

	<p>period after the pre-commercial procurement as identified in the contract, the contracting authorities can require it to transfer any ownership of the results to the contracting authorities.</p>	<p>State Aid Framework for R&D&I - February 2014 - link</p>	
<p>Blended finance</p>	<p>Article 2 – Definitions</p> <p>21. "reimbursable advance" means the part of a Horizon Europe or EIC blended finance corresponding to a loan under Title X of the Financial Regulation, but that is directly awarded by the Union on a non-profit basis to cover the costs of activities corresponding to an innovation action, and to be reimbursed by the beneficiary to the Union under the conditions provided for in the contract;</p> <p>25. "Horizon Europe or EIC blended finance" means a single financial support to an innovation and market deployment action, consisting in a specific combination of a grant or a reimbursable advance with an investment in equity;</p> <p>Article 41 - Blending operations</p> <p>Blending operations decided under this Programme shall be implemented in accordance with the InvestEU Programme and Title X of the Financial Regulation.</p> <p>Article 42 - Horizon Europe and EIC Blended finance</p> <p>1. The grant and reimbursable advance components of Horizon Europe or EIC blended finance shall be subject to Articles 30 to 33.</p> <p>2. EIC blended finance shall be implemented in accordance with Article 43. The support under the EIC blended finance may be granted until the action can be financed as a blending operation or as a financing and investment operation fully covered by the EU guarantee under InvestEU. By derogation from Article 209 of the Financial Regulation, the conditions laid down in paragraph (2) and, in particular, paragraph (a) and (d), do not apply at the time of the award of EIC blended finance</p> <p>3. Horizon Europe blended finance may be awarded to a programme co-fund where a joint programme of Member States and associated countries provides for the</p>	<p>If Horizon Europe includes a "reimbursable advances" or "blended finances" scheme, it is strictly confined to the EIC Accelerator programme, focussed on very high TRL and with a specific type of beneficiaries that are able to work with such schemes ("legal entity qualifying as a startup, an SME or as a mid-cap").</p> <p>In general, EARTO members support the EU Competitiveness Council conclusions of 1st December 2017, stressing that "grants should continue to be the main form of funding in the FP". Indeed, RTOs experiences with Repayable Advances scheme show that those are not an appropriate scheme for RD&I support.</p> <p>Using the Repayable Advances scheme (compared to the current Competitive Grants scheme) would negatively impact Technology Transfer best practices and results. This could for example force beneficiaries to transfer a part of the royalties of the licenses they grant at the end of the projects to the funding agency, the European Commission in this case. Then the funding agency might be tempted to fund only projects in themes where royalty levels are high, to the detriment of all others, going against the public interest by giving preference to projects that appear to offer the greatest prospects of financial return by royalties to the neglect of others that yield equal or even greater social benefits. Such situation already exists. In France, some public research organisations are involved in some projects at high Technology Readiness Level (TRL) financed by public program agencies with the repayable advances scheme. The results are generally weak and the incentives for the respondents to apply are often low. See EARTO Background Note on Repayable Advances - 20 February 2018 - link</p> <p>Besides, with regards to blended finances, most publicly funded research organisations such as RTOs are legally forbidden to take on loans. This needs to be well accounted for in the text and such blended finance schemes need to be limited to the parts of the</p>	<p>Provisions in the text should make clear that such schemes cannot be extended to the rest of the programme, as this would be very detrimental to the impact and success of the FP.</p> <p>In any case, "reimbursable advances" could only apply to for profit beneficiaries. It cannot apply to non-profit legal entities.</p>

	<p>deployment of financial instruments in support of selected actions. The evaluation and selection of such actions shall be made in accordance with Articles 19, 20, 23, 24, 25 and 26. The implementation modalities of the Horizon Europe blended finance shall comply with Article 29, by analogy Article 43(9) and with additional conditions defined by the work programme.</p> <p>4. Repayments including reimbursed advances and revenues of Horizon Europe and EIC blended finance shall be considered as internal assigned revenues in accordance with Articles 21(3)(f) and 21(4) of Financial Regulation.</p> <p>5. Horizon Europe and EIC blended finance shall be provided in a manner that does not distort competition.</p>	<p>programme that are strictly targeted towards specific types of beneficiaries (legal entity qualifying as a startup, an SME or as a mid-cap), where no publicly funded organisation can be expected to be involved in.</p> <p>See EIB Report - Access to Finance for Research and Technology Organisations and their Academic and Industrial Partners - 29 March 2017 - link</p>	
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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.

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