EARTO CONTRIBUTION TO THE TRIALOGUE NEGOTIATIONS

Proposal for a Regulation of the European Parliament and of the Council Laying Down the Rules for Participation and Dissemination in Horizon 2020 - The Framework Programme for Research and Innovation (2014-2020)

EARTO takes the opportunity of the Trialogue negotiations between Commission, Council and Parliament to comment upon key issues where the views of the three institutions differ as well as upon matters that in our view have so far not been adequately addressed. We limit ourselves to a small number of items that we consider of particular importance.

The present paper relates to the Rules for Participation.

A separate paper deals with the Horizon 2020 Establishing Regulation.

EARTO has produced several positions during the past several months relating to different aspects of the Horizon 2020 proposals:

EARTO Press Statement on Horizon 2020 – December 2011 - link

Comments on the European Commission's Horizon 2020 Proposals – February 2012 - link

EARTO Position on the Proposed Funding Model for Horizon 2020 – May 2012 - link

EARTO Position on the EP Rapporteurs' Recommendations on Horizon 2020 – June 2012 - link

EARTO Comments on the Horizon 2020 Specific Programme – November 2012 - link

EC's Proposal	ITRE Committee Amendments	Council's PGA	EARTO's Comments
	AMD 27 **(15b) In accordance with Regulation (EU, Euratom) o 966/2012, these rules for the participation and dissemination should provide the basis for a wider acceptance of the usual accounting practices of the beneficiaries and to accept beneficiaries' usual accounting practices in establishing eligible costs. For this purpose, the requirements of audit certificates, including the certificates on methodology, should be adapted appropriately. The Commission should establish to the greatest possible extent a single audit approach, leaving sufficient flexibility for the acknowledgement of usual accounting practices, with due regard to nationally accepted accounting practices.**		We welcome Parliament's references to "beneficiaries usual accounting practices" and "nationally accepted accounting practices". Explicit and specific reference is thus made to the Financial Regulation, which reinforces legal certainty for beneficiaries.
	AMD 31 ***(19b) All research and innovation build on the capacity of scientists, research institutions, businesses and citizens to openly access, share and use scientific information. However, intellectual property rights must be respected.***		While Open Access is desirable, there must be limits. Parliament is right to cite IPR considerations. Mention might also be made here of security and privacy concerns, as in AMD 116 (Art. 40).

	AMD 37 ***(4a) 'needed access' means:*** ***(i) in the context of the implementation of the action, access that is needed because, without the grant of access rights, carrying out the tasks assigned to the recipient party would be impossible, significantly delayed, or require significant additional financial or human resources.*** ***(ii) in the context of the use of own results, access that is needed because, without the grant of such access rights, the use of own results would be technically or legally impossible.***		The specification of "needed access" is welcome and corresponds to a request of the DESCA Consortium.
		(5a) *'close-to-market action'* means an action primarily consisting of activities directly aiming at producing plans and arrangements or designs for new, altered or improved products, processes or services. For this purpose they may include prototyping, testing, demonstrating, piloting, large-scale product validation and market replication;	Parliament and Council have offered different wordings. It is not evident what real differences in practice the different wordings imply. EARTO's advice is to devise a final wording which aligns as closely as possible with the corresponding State Aid Framework definition(s), in the interests of policy consistency.
	AMD 38 ***(5a) 'experimental development'' means the acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills aiming at developing new, altered or improved products, processes or services, including activities such as prototyping, experimental production, testing, demonstrating, piloting, and market replication;***		

	(10a) 'non-profit legal entity' means a legal entity which by law is not allowed to have a lucrative aim or which has a legal or statutory obligation not to distribute profits or which is recognised as such by national, Union or international authorities;	**(10a) *'non-profit legal entity'* means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members;**	Here, too – cf. (5a) preceding – EARTO's advice is to align the definition as closely as possible with the corresponding State Aid Framework definition(s), in the interests of policy consistency. Taking the State Aid Framework definition of a "research organization" as reference, an appropriate definition could be: *"non-profit legal entity" means an entity, irrespective of its legal status (organised under public or private law) or way of financing, which by virtue of its articles of association or statutory obligation does not seek to generate a profit (surplus of income over expenditure) or which whenever a profit is generated does not distribute any element of that profit to shareholders, members or other parties and which employs that profit solely for the fulfillment of its original purposes as defined by its articles of association or by law*. It should be noted that the wording proposed by Council is insufficient to the extent that there are recognized "non-profit organizations" which have neither a legal form specifically conferring a non-profit status nor shareholders or members to which they might distribute profits. They would thus, in a strict interpretation, not be covered by the proposed definition.

	AMD 60 ***Article 4a*** ***Guidance and information for potential participants*** (…) ***2. The following documents shall be drawn up in close cooperation with all relevant stakeholders and the Member States and adopted by the Commission by means of implementing acts:*** (…) ***(b) standard model grant agreement;***		The original Commission proposal, and the amended versions from Council and Parliament, are not sufficiently explicit as to when reference is to the model grant agreement and when to the individual grant agreement to be signed between the Commission and the beneficiary or beneficiaries. It would be wise, therefore, to thoroughly scrutinise the final draft in this sense and to specify in each case "model" or "individual". EARTO strongly welcomes the stipulation that there shall be a model grant agreement – see Article 16 below.
Article 14 ***Selection and award criteria***	*Article 14* ***Selection and award criteria***	*Article 14* ***Selection and award criteria*** **2a. The criterion of impact may be given a higher weighting for proposals for close-to-market actions.**	It cannot be emphasized enough that H2020 is an innovation programme. Thus intended impact is a critical criterion and should in the list of evaluation criteria contained in Article 14 be listed in first place. With respect to the Council's proposed wording, EARTO would accordingly propose the following modification: *The criterion of impact shall have at least equal weighting with the criterion of excellence and may be given a higher weighting, in particular for proposals for close-to-market actions*
Article 16 ***Grant agreement***	*Article 16* ***Grant agreement*** **AMD 86** ***-1. The Commission shall, in close cooperation with the Member States, draw up model grant agreements taking into account the characteristics of the funding scheme concerned. If a significant modification of the model grant***	*Article 16* ***Grant agreement***	EARTO welcomes the proposal, made by both Council and Parliament, that there shall be a model grant agreement, to be drawn up by the Commission in close cooperation with the Member States. It is essential that beneficiaries have knowledge of the contractual terms and conditions generally applying to grant agreements in advance of making their proposals for actions to be funded by H2020.

	agreement proves necessary, the Commission shall, in close cooperation with Member States, revise it as appropriate. ***-1a. At the latest at the date of publication of the first call for proposals, the Commission or the relevant funding body shall make available the model grant agreement.*** *[no change]*	1. The Commission or the relevant funding body shall enter into a grant agreement with the participants. **The removal or substitution of an entity before signature of the grant agreement shall be duly justified.** **1a. The Commission shall, in close cooperation with Member States, draw up model grant agreements between the Commission or the relevant funding body and the participants in accordance with this Regulation. If a significant modification of the model grant agreement proves necessary, the Commission shall, in close cooperation with Member States, revise it as appropriate.**	

	AMD 88 ***Article 17a*** ***Time to grant*** ***1. The Commission or the relevant funding body shall ensure that the average time between the deadline for proposals as established by the call for proposals and the signature of the grant agreement, or where applicable the grant decision (the 'time to grant'), shall be a maximum period of six months. This time may be prolonged by one additional month in exceptional cases or if requested by the consortium.*** ***2. The cumulative time taken by the Commission to complete their internal process including preparation of all relevant information and documentation, evaluation and signature of grant agreements shall be no more than 60 working days.*** ***Participants shall be given no less than 60 working days cumulatively to prepare all relevant information and documentation required.*** ***3. Where appropriate to the nature of any specific call, due consideration shall be given to a two-stage evaluation procedure in order to reduce the costs of preparing proposals which are unsuccessful. For two-stage procedures, the average time to grant shall be nine months. There shall be consistency in the format of the outline of proposals where a two-stage procedure is used and applicants shall have sufficient time to prepare stage two of the bid.*** ***4. The Commission shall endeavour***		EARTO welcomes Parliament's intent to fix minimum delays for time-to-grant. It is, however, difficult for us to form a view on the time periods specified in Parliament's amendment for lack of detailed knowledge of what is practically feasible in the administration of the Framework Programme. We would therefore warmly welcome an honest negotiation between Commission, Council and Parliament during the Trialogue with the aim of setting minimum (target) delays which are reasonable for both beneficiaries and the Commission.

	to make decisions or requests for information as promptly as reasonably practicable. The Commission shall avoid obliging participants to re-draft or renegotiate parts of an initial successful bid, unless there is a reasonable and justified reason for doing so. ***5. Participants shall be given reasonable amounts of time to prepare information and documentation required for projects.*** ***6. Repetitive elements of the application, grant agreement or supporting documents shall be avoided. The Commission shall refrain from asking participants for information which is already available within the administration, unless it needs to be updated, or for facts or data which the Commission can verify easily and free of charge in an authenticated, electronically accessible database (e.g. company data).*** ***7. The Commission shall seek, where possible, to avoid timing calls in such a way that they require potential participants to submit documentation during standard academic and business vacation periods.***		

	AMD 89 ***Article 17b*** ***Time to Pay*** ***1. Participants who have delivered the work which they were contracted to do, shall be paid in a timely fashion.*** ***2. The Commission shall ensure that participants receive money owed to them within 30 days of the necessary paperwork being submitted to the Commission. The Commission shall notify the project coordinator and participants of any irregularities or additional paperwork within two weeks of information being submitted to the Commission. If no such notification is received, the Commission shall be liable to the pay amounts owed.*** ***3. The Commission shall put in place measures to ensure that project coordinators distribute project money promptly, fairly and in accordance with the grant agreement and that money is shared among partners in proportion to what is owed to each partner. Unless agreed between all participants, project coordinators shall not withhold or phase prefinancing payments without the approval of the project officer, in particular for SMEs. Such arrangements shall be made clear in consortium agreements and have the approval of the project officer.*** ***4. Once a payment has been made to the project coordinator, the Commission shall notify the participants of the amount that has been paid and the date on which the payment was made.***		Our preceding comments concerning Article 17a apply.

	5. If one or more partner(s) have not completed the work they have been contracted to do or they have not submitted the required information or documentation to the project coordinator or the Commission, it shall not prevent the project coordinator from submitting documentation to the Commission on behalf of other partner(s) or the Commission from issuing payment to other partner(s). ***6. Where new partners enter into a project after the grant agreement has been negotiated, such entry shall not alter the amount of funding allocated to the original partners unless agreed by the original partners or unless the amount of work required by them will be significantly different.*** ***7. The Commission shall implement a hierarchical auditing process to ensure that the beneficiaries' auditors comply with an approved standard and comply with the auditing requirements of Horizon 2020. The Commission shall refrain from asking for extra information once an audit has already been submitted*** ***8. The Commission shall report on its payment performance by producing semi-annual statistics that present payment times for completed work. Payment times shall be defined as the time from final sign-off of the completed project by both the project coordinator and project officer (this time period itself to be no longer than one month from project completion date) to the availability of cleared funds in the participant's bank account.***		Parliament's proposal regarding a "hierarchical auditing process" is welcome for placing responsibility on the Commission to provide beneficiaries' auditors with clear instructions as to the conduct of audits.

Article 20 ***Consortium***	*Article 20* ***Consortium*** **AMD 97** ***The coordinator shall be the principal point of contact between the members of the consortium, represent the consortium in relations with the Commission or the relevant funding body and monitor the compliance by members of the consortium with their obligations under the grant agreement.***	*Article 20* ***Consortium***	EARTO recommends removal of the requirement that consortium coordinators ***monitor the compliance by members of the consortium with their obligations under the grant agreement.*** It is unrealistic to expect coordinators to "police" the behavior of project partners in relation to all of their obligations under the grant agreement. The proposed amendment would render coordinators liable to the Commission and expose them to claims for damages in cases of non-compliance by a consortium member. Such a provision will further demotivate participants from assuming the role of coordinator (already significantly demotivated by the removal in H2020 of FP7's full reimbursement of coordination costs).
Bly	*Article 22* ***Funding of the actions*** **AMD 99** *[no change]* *[no change]*	*Article 22* ***Funding of the actions*** *[no change]* (a) Resources made available by third parties to the participants by means of financial transfers or contributions in kind free of charge, **the value of which has been declared as eligible costs by the participant,** provided that they have been contributed by the third party specifically to be used in the action;	EARTO strongly welcomes the wording proposed by the Council. The Commission proposal would make it impossible for a beneficiary to raise external funding to help cover the unfunded parts (ineligible costs as well as eligible costs in excess of the EU contribution) of an action: every € received from a third party in relation to the action (including costs not funded by the EU) would be deducted by the Commission from the eligible costs. It should be noted that the Council's text is consistent with the Financial Regulation, which refers to "financial contributions specifically assigned by the donors to the financing of the eligible costs".

Article 22 ***Funding of the actions*** 3. A single reimbursement rate of the eligible costs shall be applied per action for all activities funded therein. The maximum rate shall be fixed in the work programme or work plan. 4. The Horizon 2020 grant may reach a maximum of 100 % of the total eligible costs, without prejudice to the co-financing principle. 5. The Horizon 2020 grant shall be limited to a maximum of 70 % of the total eligible costs for the following actions:	*Article 22* ***Funding of the actions*** **AMD 99** 3. ~~A single~~ ***For*** reimbursement ~~rate~~ of ~~the~~ eligible costs ~~shall be applied per action for all activities funded therein. The~~***, the following*** maximum rate***s*** shall ~~be fixed in the work programme or work plan.~~ ***apply:*** * (see table below) 4. ***For a non-profit participant or an SME participant,*** the Horizon 2020 grant may reach a maximum of 100 % of the total ***direct*** eligible costs, without prejudice to the co-financing principle. ***4a. For a non-profit participant or an SME participant that has opted to determine its indirect eligible costs based on indirect costs actually incurred in accordance with Article 24(2), the Horizon 2020 grant shall amount to 70% of total eligible costs.*** ***For an industry participant, the Horizon 2020 grant shall be limited to a maximum of 70 % of the direct eligible costs, without prejudice to the co-financing principle.*** ***For an industry participant that has opted to determine its indirect eligible costs based on indirect costs actually incurred in accordance with Article 24(2), the Horizon 2020 grant shall amount to 50% of total eligible costs.*** ~~5. The Horizon 2020 grant shall be limited to a maximum of 70 % of the total eligible costs for the following actions:~~	*Article 22* ***Funding of the actions*** *[no change]* *[no change]* *[no change]*	EARTO strongly welcomes Parliament's proposal that beneficiaries should have an option to claim reimbursement on the basis of their actually incurred costs. The single flat rate reimbursement proposed by the Commission (100%/20%) or Council (100%/25%) is a welcome simplification which will probably meet the needs of a very large majority of H2020 participants, and so the Commission will have achieved a very high degree of simplification. However there are a number of major potential H2020 participants, including most RTOs, many universities and businesses, for which the proposed flat rate is grossly uneconomic and so will cause them to limit their participation in H2020, to the detriment of the programme[1]. For these participants, which tend to be larger organizations with sophisticated accounting systems, the risk of error in declaring eligible costs actually incurred is practically zero. EARTO proposes that the rate for non-profit organizations be raised from 70% to 75%, in line with FP7 practice and consistent with H2020's maintenance of the FP7 rate (50%) for industry. At the Competitiveness Council meeting in October 2012, at which the Council reached its PGA, the Commission suggested that organisations with high indirect costs could declare some of those costs as direct costs. The Commission promised guidance based on best practice as to how this could be done.

[1] Thus all of the main stakeholder organisations – BUSINESSEUROPE, EARTO, EUA, Science Europe – call for an option on actual-cost reimbursement.

(a) actions primarily consisting of activities such as prototyping, testing, demonstrating, experimental development, piloting, market replication;	~~(a) actions primarily consisting of activities such as prototyping, testing, demonstrating, experimental development, piloting, market replication;~~	(a) ~~actions primarily consisting of activities such as prototyping, testing, demonstrating, experimental development, piloting, market replication~~ **close-to-market actions**;	Three months after that Competitive-ness Council meeting, no guidance has yet been given. Moreover, at a meeting with stakeholders on 22nd January 2013 specifically to discuss this matter, the Commission made no concrete proposals and indicated that guidance might become available within a further two to three months, i.e. perhaps in April or later. RTOs have considerable experience of analytical cost accounting, including the project-related attribution of infra-structure costs. They know the limits in practice of "transferring" such indirect costs to direct costs ➔link. They are highly sceptical whether the Commission would accept any practicable method which would allow the transfer of indirect costs to direct costs beyond practices which are already current today (for example under FP7). They are concerned that any proposal from the Commission could relate only to methods which are in principle technically feasible but in practice impossible or uneconomic to implement and which could become the object of incessant audit scrutiny and dispute. A critical requirement for engaging in any such practices would, therefore, be an absolute guarantee of legal certainty by the Commission. **Accordingly, EARTO strongly requests Council and Parliament to demand of the Commission that it produces its written guidance on how indirect costs can be transferred, with legal certainty, to direct costs before taking any final Trialogue decision on the cost-reimbursement model for H2020.**

(b) programme co-fund actions	~~(b)~~ ***5. Regarding*** programme co-fund actions***, the applicable rate shall be fixed in the work programme.*** ***For programme co-fund actions and other indirect actions that consist mainly in large-scale experimental development activities, the applicable rate may be a maximum of 35% of direct eligible costs.*** ***For the purposes of this Regulation and in accordance with Article [119] of Regulation (EU, Euratom) _o 966/2012, co-funding may take the form of cumulative financing from separate budget lines in justified cases provided for in the work programme, without prejudice to the avoidance of double-funding of the same cost item.***	*[no change]* **For close-to-market actions, as an exception to paragraph 3 of this Article, the Horizon 2020 grant may reach a maximum of 100% of the total eligible costs for non-profit legal entities, without prejudice to the co-financing principle.**	***large-scale*** should be either defined or removed
6. The reimbursement rates determined in this Article shall also apply in the case of actions where flat rate, scale of unit or lump-sum financing is fixed for the whole or part of an action.	*[no change]* ***6a. In cases where money allocated to a project has not been spent, the Commission shall provide the appropriate means to allow money to be returned to the Horizon 2020 budget.*** ***6b. Regarding the validation process that is used to verify the type of participant, the records of the unique registration facility in the Participant Portal shall be used. For entities that have been validated in previous framework programmes, no repeated validation shall be necessary, unless the entity's legal status has changed or, in case of SMEs, a company no longer falls within the SME definition.***	*[no change]*	EARTO strongly welcomes Parliament's proposal, which offers significant simplification.

Table linked to EP amendment 99 on Article 22, paragraph 3			
Type of Activity	Method of cost calculation	Type of participant	
		University/ RTOs/SMEs/Others	Industry
Research & Development & Experimental development	direct eligible costs + flat rate (Article 24)	100%+20%	70% +20%
	full costs (Article 24)	70%	50%

Article 23 ***Eligibility of costs***	*Article 23* ***Eligibility of costs*** **AMD 101** ***2a. Value added tax ('VAT') paid by, and which cannot be refunded to, the beneficiary according to the applicable national legislation, shall be considered as an eligible cost.***	*Article 23* ***Eligibility of costs***	EARTO welcomes Parliament's reference to the eligibility of non-refundable VAT, in line with the provisions of the Financial Regulation.
Article 24 ***Indirect costs***	*Article 24* ***Indirect costs*** **AMD 102** ***1a. Alternatively, a participant may opt to determine its indirect eligible costs based on indirect costs that are actually incurred in direct relationship with the eligible costs attributed to the project, according to the beneficiary's usual cost accounting practices. In this case the reimbursement rates for full costs calculation stipulated in Article 22(3) shall apply.***	*Article 24* ***Indirect costs***	EARTO welcomes Parliament's stipulation ***according to the beneficiary's usual cost accounting practices***, which is consistent with Parliament's AMD 27, provides clarification, and augments legal certainty for beneficiaries.

		Article 24a ***Evaluation of the funding levels*** **The interim evaluation of Horizon 2020 shall include an evaluation of the impact of the various features introduced with the new funding levels laid down in Articles 22a, 23 and 24, with the aim to evaluate whether the new approach has led to undesired situations adversely affecting the attractiveness of the Framework programme.**	Council's proposal with regard to the mid-term evaluation of Horizon 2020 follows from the Competitiveness Council meeting of last October at which the Council PGA was reached. The proposed "attractiveness evaluation" will come three or more years too late, and changes considered necessary or desirable will require still further time to implement. In the meantime, key players will have reduced their participation in H2020, to the programme's detriment.
Article 25 ***Annual productive hours*** 3. The grant agreement shall contain the minimum requirements for the time recording system as well as the number of annual productive hours to be used for the calculation of the hourly personnel rates.	*Article 25* ***Annual productive hours*** **AMD 104** 3. The grant agreement shall contain***:*** ***(i)*** the minimum requirements for the time recording system ~~as well as~~***;*** ***(ii) the method for establishing*** the number of annual productive hours to be used for the calculation of the hourly personnel rates ***taking into account the participant's usual accounting practices***.	*Article 25* ***Annual productive hours*** 3. The grant agreement shall contain**:** **(a)** the minimum requirements for the time recording system ~~as well as~~**;** **(b) the option to choose between** the **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 **taking account of the participant's usual accounting practices**.	The variant proposed by Council would seem to refer to the <u>model</u> grant agreement (rather than to the individual grant agreement) since it is difficult to imagine an individual grant agreement offering an option to choose between a fixed number of productive hours and the method for establishing the number of productive hours. It should be noted that the phrases in English **taking account of** and ***taking into account*** have no certain meaning. Better to take the more precise approach employed elsewhere in the RfP and to specify "in accordance with".
th	*Article 29* ***Certificates on the methodology*** **AMD 109** 1. Participants that calculate and claim direct personnel costs on the basis of scale of unit costs may ***or participants that claim indirect eligible costs actually incurred shall*** submit to the Commission a certificate on the methodology. ~~That methodology~~ ***The Commission*** shall ~~comply~~ ***accept such a certificate where it complies*** with	*Article 29* ***Certificates on the methodology*** *[no change]*	

	the conditions set out in ***Article 24(1a) or*** Article 27(2) ~~and meet the requirements of grant agreement.~~ 2. Where the Commission accepts a certificate on the methodology, it shall be valid for all actions financed under Regulation (EU) No XX/XX [Horizon 2020] and the participant shall calculate and claim costs on its basis. ***Once the Commission has accepted a certificate on the methodology, it shall not be possible to attribute to the beneficiary any error related to the beneficiary methodology.***	2. Where the Commission accepts a certificate on the methodology, it shall be valid for all actions financed under Regulation (EU) No XX/XX [Horizon 2020] and the participant shall calculate and claim costs on its basis. **Once the Commission has accepted a certificate on the methodology, it shall not attribute any systemic or recurrent error to the accepted methodology.**	EARTO welcomes the stipulation by both Council and Parliament that a methodology once certified by the Commission may not subsequently be challenged by the Commission. The wording proposed by Council would seem more precise than that proposed by Parliament.
Article 30 ***Certifying auditors*** 2. Upon request by the Commission, the Court of Auditors or the European Anti-fraud Office (OLAF), the auditor who delivers the certificate on the financial statements and on the methodology shall grant access to the supporting documents and audit working papers on the basis of which a certificate on the financial statements was issued.	*Article 30* ***Certifying auditors*** **AMD 110** 2. ***The Commission and the Court of Auditors shall accept the certificates referred to in paragraph 1, unless they can provide evidence to the participant that the methodology does not comply with the principles laid down in [Art. 117a 2d] of Regulation (EU, Euratom) No 966/2012.*** ***In particular, the Commission shall not challenge the compliance, established ex ante, of the participant's usual cost accounting practices by ex post controls.*** Upon request by the Commission, the Court of Auditors or the European Anti-fraud Office (OLAF), the auditor who delivers the certificate on the financial statements and on the methodology shall grant access to the supporting documents and audit working papers on the basis of which a certificate on the financial statements was issued.	*Article 30* ***Certifying auditors*** *[no change]*	EARTO welcomes the amendment proposed by Parliament, which provides participants with legal certainty. We presume that ***[Art. 117a 2d] of Regulation (EU, Euratom) No 966/2012*** refers to Art. 126 2d of the final, agreed text of the Financial Regulation.

Article 40 ***Exploitation and dissemination of Results*** With regard to dissemination of other results, including research data, the grant agreement may lay down the terms and conditions under which open access to such results shall be provided, in particular in ERC frontier research or in other appropriate areas.	*Article 40* ***Exploitation and dissemination of results*** **AMD 116** **(…)** ***Costs related to open access to research publications that result from research funded under Horizon 2020, published during or after the duration of a project, shall be eligible for reimbursement.*** With regard to dissemination of ~~other results, including~~ research data, the grant agreement may lay down the terms and conditions under which open access to such results shall be provided, in particular in ERC frontier research or in other ~~appropriate~~ areas ***of major societal interest, taking into account constraints pertaining to privacy, national security or intellectual property rights.*** ***The work programme shall indicate if dissemination of research data through open access is required.***	*Article 40* ***Exploitation and dissemination of results*** With regard to dissemination of other results, including research data, the grant agreement may**, in the context of open access to and preservation of research data,** lay down the terms and conditions under which open access to such results shall be provided, in particular in ERC **and FET** frontier research or in other appropriate areas**, taking into account the legitimate interests of the participants and any restrictions due to the protection of intellectual property and security rules. In such case, the work programme or work plan shall indicate if dissemination of research data through open acess is required.**	See our comments on AMD 31 above. The wordings proposed by both Council and Parliament appear problematic. The data which a research action will generate cannot be known in advance and hence IPR, privacy, national security etc. considerations cannot be anticipated in advance. Thus the **work programme or work plan** cannot plausibly stipulate that open access is required.