

Response of the League of European Research Universities to the proposed draft amendments to the Rules of Participation for Horizon 2020

General comments

As was stated before on several occasions, LERU strongly supports the **reimbursement rate** of 100% direct costs and 20% indirect costs, as proposed by the European Commission, because the full reimbursement of direct costs has many advantages and would mean a true simplification for the beneficiaries. The flat rate of 20% for indirect cost reimbursement is acceptable, although a very minimum. LERU is pleased that the 100% reimbursement of direct costs is maintained in Christian Ehler's proposal for universities that are not using a full costing method. LERU also very much supports the proposal of accepting VAT as an eligible cost for those institutions that cannot recover it elsewhere as is foreseen by the European Commission in their proposals for the next Multi Annual Financial Framework and supported by Christian Ehler through the amendment of article 23 (2a).

LERU is pleased with the proposal to reimburse universities also at 100+20% for their share in *close-to-market actions* as we were concerned about the sustainability of university's participation in these actions if they were to be reimbursed at only 70+20%.

As a number of universities have put a lot of efforts and resources in moving to using a *full costing method* for EC projects, and as full costing is important as a management tool for universities, LERU welcomes the reintroduction of an option for full cost declaration. LERU questions however the upper funding limit of 70% as this is a five percent decrease compared to FP7 and would lead to a financial loss of about 1,4% for the universities concerned compared to the current situation in FP7.

In general the reimbursement rates proposed by Christian Ehler are favourable to universities, in particular the ones that are not using a full costing method. It is however also clear that having different rates for different partners will, again, result in *more complexity and less simplification* (compared to the EC's proposal), although simplification was and is a key target of this new framework programme. This will in particular be the case for project coordinators: not being able to build on previous experiences with FP7 rules, it will inevitably lead to a learning period for them.

LERU very much supports the proposal for a *flat rate to cover management costs*. We do however propose to change the amendment so that it is clear that the percentage of the flat rate is based on the total budget of the project and that 7% is a minimum instead of a fixed rate. In some cases, in particular for projects with a large number of partners, or projects including clinical trials, the coordinators' costs exceed 7%.

In general LERU is pleased with the increased use of the **usual accounting practices** of the beneficiaries as proposed by Christian Ehler in his amendments to the Rules of Participation, e.g. to determine the annual productive hours (art. 25 par.3).

LERU also very much welcomes the **limitation of exceptions to the Rules of Participation** and the emphasis on a single set of rules as proposed in the amendment of Recital 6.

Mr. Ehler proposes to limit the **time to grant** to 6 months, with a prolongation of one month in exceptional cases. First of all, LERU demands clarification of the definition of the term 'time-to-grant'. At the

moment it is not clear whether it is the time between the deadline for submission and award decision or the time between award decision and start of the project.

Although LERU certainly supports the idea of reducing the time to grant as much as possible, we would like to warn against limiting it too strictly. A short time frame could put at risk the EC's ability to organise and manage a careful evaluation process for each proposal, thus potentially jeopardising the objective of funding scientific excellence in H2020. Another important worry is that a strictly limited time to grant will lead to too little time for grant agreement negotiations. Already in FP7 there is an increased pressure on universities to finish grant agreement negotiations in a very brief period, which is particularly problematic for projects with a large number of partners. LERU fears these problems would increase significantly when strictly limiting the time to grant to six months. In particular for institutions, such as, but not only, the LERU members, which are likely to manage a large number of H2020 projects these strict deadlines would be very burdensome and could lead to very disadvantageous grant agreements.

Detailed comments

1. LERU believes the proposed amendment (16) to Article 2 - paragraph 1 - point 4 on the inclusion of 'sideground' is likely to raise many problems on what should be included, how it should be included etc.. LERU therefore suggests the following change:

European Commission

(4) 'background' means any data, know-how and/or information whatever their form or nature as well as any rights such as intellectual property rights which are (i) held by participants prior to their accession to the action **and** (ii) identified by the participants in accordance with Article 42;

Ehler proposal

(4) 'background' means any data, know-how and/or information whatever their form or nature as well as any rights such as intellectual property rights which are (i) held by participants prior to their accession to the action, (ii) **generated outside the action and brought into the action by the owning participant, (iii) are needed for carrying out the indirect action or for using the results of the indirect action, and (iv)** identified by the participants in accordance with Article 42;

LERU suggestion

(4) 'background' means any data, know-how and/or information whatever their form or nature as well as any rights such as intellectual property rights which are (i) held by participants prior to their accession to the action, (ii) **and are needed for carrying out the indirect action or for using the results of the indirect action, and (iii)** identified by the participants in accordance with Article 42;

2. LERU supports the definition of 'close-to-market-activities' and its inclusion as proposed in the amendment (17) to Article 2, paragraph 1, point 5a (new).
3. LERU does not support the proposed amendment (18) to Article 2, paragraph 1, point 7 and suggests to keep the EC text.
4. LERU supports the definition of 'exploit/exploitation' and its inclusion as proposed in the amendment (19) to Article 2, paragraph 1, point 7a.
5. LERU strongly supports the definition of 'fair and reasonable conditions' and its inclusion a proposed in the amendment (20) to Article 2, paragraph 1, point 7b.

6. LERU does not entirely support the proposed amendment (23) to Article 2, paragraph 1, point 15. We suggest the following change to the amendment:

European Commission

(15) 'results' means any data, knowledge and **information** whatever their form or nature, whether or not they can be protected, which are generated in the action as well as any attached rights, including intellectual property rights;

Ehler proposal

(15) 'results' means any data, knowledge, **information, artefacts and other tangible outputs**, whatever their form or nature, whether or not they can be protected, which are generated in the action as well as any attached rights, including intellectual property rights **such as copyright, design rights, patent rights, plant variety rights of similar forms of protection, with exception of publications which describe, interpret, or analyse data, knowledge or information generated as a direct result of Horizon 2020 funding;**

LERU suggestion

(15) 'results' means any data, knowledge, **information, artefacts and other tangible outputs**, whatever their form or nature, whether or not they can be protected, which are generated in the action as well as any attached rights, including intellectual property rights **such as copyright, design rights, patent rights, plant variety rights or similar forms of protection.**

7. LERU strongly agrees to the proposed amendment (28) for Article 3.
8. LERU does not believe the proposed amendment (32) for Article 8 - paragraph 3 is useful and we therefore propose to keep the EC text.
9. LERU questions the proposed amendment (34) for Article 10 - subparagraph 1 a (new) as restrictions to funding a certain number of projects are mostly budget related. We would therefore suggest not to add this proposed subparagraph and keep the text as it was proposed by the EC.
10. LERU supports the proposed amendment (38) for Article 14 - paragraph 3 a (new).
11. LERU questions the proposed amendment (47) for Article 19 - paragraph 2. In theory we support the idea behind this, but we wonder whether it will be feasible in practice.
12. LERU supports the proposed amendment (59) for Article 22 - paragraph 5 c (new).
13. LERU does not support the proposed amendment (66) to Article 28 and suggests keeping the EC text.
14. LERU agrees with the motivation for the proposed amendment (73) for Article 38 - paragraph 2 - subparagraph 1, but not with the wording of the proposed amendment. We suggest the following:

European Commission

Where participants in an action have jointly generated results and where **their** respective **share** of the work

Ehler proposal

Where participants in an action have jointly generated results and where **these results are not attributable to the** respective

LERU suggestion

Where participants in an action have jointly generated results and where **it is not possible to separate such**

cannot be ascertained, they shall have joint ownership of those results. The joint owners shall establish an agreement regarding the allocation and terms of exercise of that joint ownership in accordance with their obligations under the grant agreement

shares of the work of the participants, they shall have joint ownership of those results. The joint owners shall establish an agreement regarding the allocation and terms of exercise of that joint ownership in accordance with their obligations under the grant agreement.

joint invention, design or work for the purpose of applying for, obtaining and/or maintaining the relevant patent protection or any other intellectual property right, they shall have joint ownership of those results. The joint owners shall establish an agreement regarding the allocation and terms of exercise of that joint ownership in accordance with their obligations under the grant agreement.

15. LERU does not support the proposed wording of the amendment (74) for Article 38 - paragraph 2 - subparagraph 2. We propose the following rephrasing of the amendment:

European Commission

Unless otherwise agreed in the joint ownership agreement, each joint owner shall be entitled to ***grant non-exclusive licences to third parties to exploit the jointly owned results, without any right to sub-licence, subject to the following conditions:***

Ehler proposal

Unless otherwise agreed in the joint ownership agreement, each joint owner shall be entitled to ***use their jointly owned results on a royalty-free basis, without requiring the prior consent of the other joint owner(s).***

LERU suggestion

Unless otherwise agreed in the joint ownership agreement, each joint owner shall be entitled to use their jointly owned ***foreground for non-commercial purposes such as internal research and training activities*** on a royalty-free basis, and without requiring the prior consent of the other joint owner(s).

16. LERU agrees with the principle behind the proposed amendment (80) for Article 39 - paragraph 2 - subparagraph 2. We agree with the concept of a time limit, but we question whether the proposed 45 days' limit is practical.
17. LERU agrees with the principle behind the proposed amendment (86) for Article 40 - paragraph 2 - subparagraph 4, but finds the wording of the amendment not clear.
18. LERU supports the proposed amendment (87) for Article 40 - paragraph 3.
19. LERU considers the proposed amendment (93) to Article 43 - paragraph 3 too far reaching and proposes to keep the EC text.
20. LERU agrees with the proposed amendment (95) for Article 45 - paragraph 3.

21. LERU does not agree with the proposed amendment (96) for Article 45 - paragraph 4. There must be some time limit. Giving access in perpetuity is not possible. We therefore propose to keep the EC text.
22. LERU supports the proposed amendment (102) for Article 49 a (new), in particular paragraph 8.