

## **Joint Opinion on the Proposal for a Regulation laying down the rules for the participation and dissemination in Horizon 2020**

(hereinafter: "RfP regulation")

Brussels, 16<sup>th</sup> of May 2012

HRK and CPU consider the proposal of the European Commission a valuable and promising first step towards opening EU funding of research and innovation for a wider participation and raising efficiency of the programme implementation, thus working towards realising the ambitious EU 2020 goals. However, they still see the need for some important amendments in order to reconcile the proposed participation rules with practical needs of universities and other publicly funded research institutions.

- (1) Universities in Germany and France have been making considerable investments in establishing full-cost accounting in their institutions. Many of them are actively participating in the EU-sponsored project EUIMA of the European University Association (EUA) which is promoting full costing. The **possibility to declare full costs** incurred in EU funded research projects has been an important driver in this context – especially when bearing in mind the particular financial and legal situation of publicly financed research institutions – and would continue to foster transparency and accountability of public spending.

→ Therefore the "possibility to declare costs actually incurred which is limited to non-profit legal entities" (mentioned as such in the explanatory memorandum of the proposed RfP regulation) should be added to Art. 22 and Art. 24.

- (2) Calculations conducted throughout the university sector in Europe on the basis of real projects have shown that in many cases the 20% flat rate is far too low to **cover the actual indirect costs**. Financial losses in comparison to FP7 could therefore be very high. The proposed flat rate of 20% should therefore be understood as a funding model that is not fixed for the whole period of H2020, but open to a review and adaptation to reality.

→ Art. 24 should therefore state the clear intention to evaluate and – when appropriate – to adapt the level of the flat rate for indirect costs to ensure that no publicly financed research organisation in Europe will be prevented from participating in H2020 due to insufficient financial resources. This examination procedure should be part of the interim evaluation defined in Art. 26(1a) of the regulation establishing Horizon 2020 (2011/0401).

- (3) According to the European Commission **the reimbursement rate for the direct costs** of either 100% (research) or 70% (innovation) shall no longer apply to activities but entire projects. Albeit conceived as a means to further simplify the programme structure, the gains in simplification may very well be outweighed by its detrimental effect on the participation of universities in projects close to the market (e.g. demonstration, prototyping, experimental development projects). It is therefore crucial that research activities continue to be funded as such, irrespective of the general project orientation and other activities undergone therein. Furthermore, the proposal states that the maximum rate for reimbursement of direct costs shall be merely fixed in the (annual) work programmes or work plans. This would significantly reduce the planning capability of potential participants.

→ Art. 22(3) should therefore be modified in such a way that the reimbursement rate of the eligible costs shall be applied per “activity” and not “action”. It should also establish the reimbursement rates of 100% for research and 70% for innovation activities as the standard procedure. Any deviation from this model must be well justified and bases on exceptional cases mentioned in the same Article.

- (4) It is unfortunate that the European Commission has not provided in the legislative proposal for Horizon 2020 a **list of the instruments** intended for the implementation of the framework programme. Such a list should contain some first information on the individual instruments e.g. on its objectives, eligibility criteria, financial allocations and its area of application (mainstream or niche instrument?). It should be annexed to the regulation establishing Horizon 2020 (2011/0401) similar to the way the European Commission has proceeded with regard to the proposal on the 7<sup>th</sup> Framework Programme for Research.

→ Given the need for a general description of *all* available instruments in the H2020 regulation, there is no need to make any references to only *some* of the available instruments in the RfP regulation. Chapter IV (“prizes and procurement”) should therefore be deleted and integrated in the annex document suggested above.

- (5) A **single set of participation rules** is highly desirable as an important step towards making Horizon 2020 a simplified and more accessible funding programme compared to its predecessor. Therefore, participation rules should apply to all activities and stakeholders funded out of the EU budget for research and innovation. Exemptions must be few and limited to detailed circumstances laid out in the RfP regulation.

→ In this respect, the notion of “specific operation needs” in Art. 1(3) is defined far too vaguely and should be either deleted or amended by a list of concrete exceptional cases. The same requirement applies to Art. 47 which offers in its proposed version a scope for derogations from the common access rights to

background and results that is too broad. Moreover, derogations on such important issues should always be defined in the same Article of the regulation and not be delegated to the individual grant agreement (cf. 7).

- (6) The term “**fair and reasonable conditions**”, mentioned at multiple occasions in the proposal, is not defined properly. The only reference can be found in Art. 43(4), describing such conditions merely as “royalty-free” with regard to access rights to background and results. Possible financial terms are not mentioned at all – which could very well undermine the principle of fair compensation. Indeed, industrial partners tend to grant each other royalty-free access rights while receiving compensation such as cross-licences. From the standpoint of academic partners, however, who are not directly exploiting the results, in the vast majority of cases compensation can only be financial.

→ The definition of “fair and reasonable conditions” used in the legal framework of the 7th research framework programme (Art. 2(3); (EC) No 1906/2006) should be integrated in Art.2 of the current proposal for the RfP regulation. Art. 43(4) should be deleted.

- (7) German and French universities are committed to a responsible management of intellectual property rights that is in line with the principles of the EU state aid framework. Therefore they regret that the definition of “**background**” proposed in the RfP regulation is not as precise as the one applied in the legal base of the 7<sup>th</sup> research framework programme which is limiting “background” to what is actually needed for activities implemented through a collaborative research project.

→ The definition of background laid out in Art 2(4) should be complemented by “(iii) needed for carrying out the indirect action or for using the results of the indirect action” (similar to FP7).

- (8) The proposal reveals a tendency towards leaving important definitions and decisions to the individual **grant agreements** thus increasing uncertainty for participants and undermining the necessary efforts to streamline and simplify participation rules. This is especially relevant for obligations on exploitation and dissemination.

→ The circumstances under which “additional exploitation obligations” can be laid down in the grant agreement (Art. 40(2)) as well as the scope of such obligations should be specified in the same paragraph. Otherwise the sentence should be deleted. In the same way the reporting obligation on dissemination and exploitation (Art. 40(3)) should be explained in detail, particularly with regard to the question how long the obligation will be in force for each participant.