



EUROPEAN COMMISSION

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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**laying down the rules for the participation and dissemination in 'Horizon 2020 – the  
Framework Programme for Research and Innovation (2014-2020)'**

(Text with EEA relevance)

{SEC(2011) 1427-Volume 2}

{SEC(2011) 1428-Volume 2}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The set of proposals for "Horizon 2020" fully supports the Europe 2020 strategy, which identified research and innovation as central to achieving the objectives of smart, sustainable and inclusive growth. They consist of proposals for a Framework Programme "Horizon 2020", a single set of Rules for Participation and Dissemination, a single Specific Programme to implement "Horizon 2020", as well as a separate proposal for the parts of "Horizon 2020" corresponding to the Euratom Treaty.

Designed to support the Europe 2020 Flagship Initiative "Innovation Union"<sup>1</sup>, the basic principle of "Horizon 2020" and these rules is to adopt a much more strategic approach to research and innovation. All policy instruments and measures are designed to contribute to research and innovation and to further develop the European Research Area whereby knowledge, researchers and technology circulate freely, and to accelerate the commercialisation and diffusion of innovation across the Single Market.

The rules proposed were drawn up with the twofold aim of:

- Ensuring a single and sufficiently flexible regulatory framework which will render participation easier, create a more coherent set of instruments covering both research and innovation and increase the scientific and economic impact while avoiding duplication and fragmentation.
- Simplifying the terms and procedures from the perspective of the participants to ensure the most efficient implementation, taking into account the need for easy access for all participants.

The following new features have been introduced into the rules for participation and dissemination in order to apply the above principles and to bring the rules into line with the characteristics and objectives of the new framework programme:

- The rules will apply to all components of "Horizon 2020", including initiatives under Articles 185 and 187 TFEU, actions currently falling within the scope of the Competitiveness and Innovation Programme as well as the EIT activities. The necessary flexibility corresponding to the different nature of the research and innovation actions is ensured by appropriate derogations and by allowing to set out specific participation details in the work programmes;
- The rules for participation relating to the Union funding are based on the revised Regulation of the European Parliament and the Council on the financial rules applicable to the annual budget of the Union<sup>2</sup> which has streamlined and rendered more efficient the way in which Union policies can be implemented.

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<sup>1</sup> COM (2010) 546 final, 6.10.2010.

<sup>2</sup> OJ L, , p.

- The financial provisions relating to the Union funding in the form of grants have been clarified and simplified. Thus, they are now establishing a single funding rate depending for each type of action funded under "Horizon 2020" with no differentiation among participants. Enhanced use of lump sums, flat rates and scale of unit costs is also proposed.
- For direct costs, these rules provide for a broad acceptance of the usual accounting practices of grant beneficiaries, subject to a minimum number of boundary conditions. The grant agreement will include further simplification provisions allowing beneficiaries to gain legal certainty on the eligibility of the costs charged to actions under "Horizon 2020". Those simplification provisions will include, among others, a clear definition of the time recording requirements and objective references regarding the annual productive hours.
- For indirect costs, the calculation is radically simplified; the reimbursement foresees a flat rate based on total direct eligible costs of participants with a possibility to declare costs actually incurred which is limited to non-profit legal entities.
- Rules applying to the new forms of funding allow for more flexibility, such as those related to prizes to be awarded for the achievement of pre-specified targets or those related to public pre-commercial procurement and procurement of innovative solutions as well as those related to the financial instruments.
- Given its demonstrated efficiency as a safeguard mechanism, the participants' Guarantee Fund set up under the Seventh Framework Programme will be renewed for the entire duration of "Horizon 2020" with clearer rules and the possibility to extend it to cover risks undertaken in actions under the EURATOM Framework Programme.
- The rules regarding intellectual property, exploitation and dissemination have been modelled on the widely acknowledged Seventh Framework Programme provisions with further improvements and clarifications. Specific new emphasis has been put on open access to research publications and an opening was made for experiments with open access to other results. The enlarged scope and new forms of funding as well as the need for flexibility in this area of the rules has been taken into account by the possibility to lay down additional or specific provisions where appropriate. Access rights for the European Union, and in the field of security research also for Member States, have been foreseen.

Furthermore, the participation of legal entities established in third countries and of international organisations in actions under "Horizon 2020" will be streamlined and stimulated, in line with the objectives of international cooperation set out in the Treaty, based on mutual benefits and taking into account the conditions for the participation of European Union entities to third countries' programmes.

Within the clear and stable framework, participants will enjoy further flexibility to determine the most appropriate internal arrangements for the implementation of their actions. This should encourage and facilitate the participation of all research stakeholders, including small research units, particularly SMEs.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The preparation of the proposal took full account of the responses to an extensive public consultation based on a Green Paper, "From challenges to opportunities: towards a common strategic framework for Union research and innovation funding", COM(2011)48. Views were expressed by the European Council, Member States and a wide range of stakeholders from industry, academia and civil society.

The consultations carried out have identified the following obstacles:

- The most important one from the participant's perspective is the complexity of administrative procedures along with the administrative burden.
- Participants also find very burdensome to apply different sets of rules depending on the Union research and innovation programme and called for a greater consistency of rules between instruments.
- The last issue is the need to introduce a risk/trust balance. Currently too many procedures, in particular regarding financial controls, appear to be designed exclusively to ensure a very low risk of errors, but also result in control mechanisms perceived as rigid and excessive.

The basic principles established by these rules have been reviewed through a formal Impact Assessment.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **1.1. Legal base**

Horizon 2020 legislative package integrates research and innovation activities in a seamless way in order to achieve the policy objectives.

The Rules for Participation and dissemination will be based on the TFEU Titles "Industry" and "Research and technological development and space" (Articles 173, 183 and 188).

### **1.2. Subsidiarity and proportionality principles**

The Horizon 2020 package has been designed to maximise EU added value and impact, focusing on objectives and activities that cannot be efficiently realised by Member States acting alone. The Rules for participation and dissemination are intended to facilitate the implementation of Horizon 2020 proposal and therefore the subsidiary analysis presented with therein applies.

The principle of proportionality is satisfied inasmuch as the proposed simplification and rationalisation ensure that EU action would not go beyond the minimum necessary to achieve the objectives of ensuring the implementation of the Horizon 2020.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union ("TFEU"), and in particular Articles 173, 183 and the second paragraph of Article 188 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Court of Auditors<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" (Horizon 2020) was adopted by Regulation [X] of the European Parliament and of the Council of [X] establishing Horizon 2020 – The Framework Programme for Research and Innovation<sup>3</sup>. That Regulation needs to be complemented by rules for participation and dissemination.
- (2) Horizon 2020 should be implemented with a view to contributing directly to creating industrial leadership, growth and employment in Europe and should reflect the strategic vision of the Commission Communication of 6 October 2010 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Europe 2020 Flagship Initiative Innovation"<sup>4</sup> whereby the Commission engages to radically simplify access of participants.
- (3) Horizon 2020 should support the achievement and functioning of the European Research Area in which researchers, scientific knowledge and technology circulate

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> COM (2010) 546 final, 6.10.2010.

freely, by strengthening cooperation between the Union and the Member States, notably through application of a coherent set of rules.

- (4) The rules for the participation and dissemination should adequately reflect the recommendations of the European Parliament, as summarised in the "Report on simplifying the implementation of the Research Framework Programmes"<sup>5</sup>, and Council with regard to the simplification of the administrative and financial requirements of the research framework programmes. The rules should give continuity to the simplification measures already implemented under Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)<sup>6</sup> and progress further in reducing the administrative burden for participants and the complexity of the financial provisions in order to decrease financial errors. The rules should also duly consider the concerns and recommendations from the research community resulting from the debate initiated by the Commission Communication of 29 April 2010 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Simplifying the implementation of the research framework programmes",<sup>7</sup> and the subsequent Green Paper of 9 February 2011 "From Challenges to Opportunities: Towards a Common Strategic Framework for EU Research and Innovation funding"<sup>8</sup>.
- (5) In order to ensure coherence with other Union funding programmes, Horizon 2020 should be implemented in accordance with Regulation (EU) No. XX/XX of the European Parliament and of the Council of [...] on the financial rules applicable to the annual budget of the Union,<sup>9</sup> and the Delegated Commission Regulation (EU) No. X/X of [...] amending the detailed rules for the implementation of the Financial Regulation<sup>10</sup>.
- (6) An integrated approach should be ensured by bringing together activities covered by the Seventh Framework Programme for research, the Competitiveness and Innovation Framework Programme and the European Institute of Innovation and Technology (the EIT) to make participation easier, create a more coherent set of instruments and increase the scientific and economic impact while avoiding duplication and fragmentation. Common rules should apply in order to ensure a coherent framework which should facilitate the participation in programmes receiving Union financial contribution from the budget of Horizon 2020, including the participation in programmes managed by the EIT, joint undertakings or any other structures under Article 187 TFEU or participation in programmes undertaken by Member States pursuant to Article 185 TFEU. However, flexibility to adopt specific rules should be ensured when justified by the specific needs of the respective actions and with Commission consent.

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<sup>5</sup> Report of the Committee on Industry, Research and Energy of 6 October 2010, rapporteur: Maria da Graça Carvalho, P7 TA(2010)0401.

<sup>6</sup> OJ L 412, 30.12.2006, p.1.

<sup>7</sup> COM (2010) 187.

<sup>8</sup> COM (2011) 48.

<sup>9</sup> OJ L, , p.

<sup>10</sup> OJ L, , p

- (7) Actions which fall within the scope of this Regulation should respect fundamental rights and observe the principles acknowledged in particular by the Charter of Fundamental Rights of the European Union. Such actions should be in conformity with any legal obligation and with ethical principles, which include avoiding any kind of plagiarism.
- (8) In line with the objectives of international cooperation as set out in Articles 180 and 186 TFEU, the participation of legal entities established in third countries and of international organisations should be promoted. The implementation of these rules should be in conformity with the measures adopted in accordance with Articles 75 and 215 TFEU and be in compliance with international law. Moreover, the implementation of these rules should duly take into account conditions for the participation of Union entities in third countries' programmes.
- (9) These rules for the participation and dissemination should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access by all participants, notably small and medium-sized enterprises, through simplified procedures. The financial assistance from the Union could be provided through different forms.
- (10) Handling of confidential data and classified information should be governed by all the relevant Union legislation, including the Institutions' internal rules, such as Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure<sup>11</sup> which lays down the provisions on security of European Union classified information.
- (11) It is necessary to establish the minimum conditions for participation, both as a general rule and with regard to the specificities of the actions under Horizon 2020. In particular, rules should be laid down regarding the number of participants and their place of establishment. In the case of an action without the participation of an entity established in a Member State, the attainment of the objectives laid down in Articles 173 and 179 TFEU should be pursued.
- (12) It is appropriate to establish the terms and conditions for providing Union funding for participants in actions under Horizon 2020. In order to reduce the complexity of the existing funding rules and have a higher flexibility in the project implementation, a simplified cost reimbursement system should be adopted with enhanced use of lump sums, flat rates and scale of unit costs. For simplification purposes, a single reimbursement rate should be applied for each type of action with no differentiation according to the type of participant.
- (13) Specific challenges in the area of research and innovation should be addressed through new forms of funding such as prizes, pre-commercial procurement and public procurement of innovative solutions which require specific rules.
- (14) In order to maintain a level playing field for all undertakings active in the internal market, funding provided by Horizon 2020 should be designed in accordance with State aid rules so as to ensure the effectiveness of public spending and prevent market

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<sup>11</sup> OJ L 317, 3.12.2001, as amended by Decision 2006/548/EC, Euratom (OJ L 215, 5.8.2006).

distortions such as crowding-out of private funding, creating ineffective market structures or preserving inefficient firms.

- (15) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle.
- (16) The participant Guarantee Fund set up under Regulation No 1906/2006/EC of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)<sup>12</sup> and managed by the Commission has proved to be an important safeguard mechanism which mitigates the risks associated to the amounts due and not reimbursed by defaulting participants. Therefore, a new participant Guarantee Fund (the Fund) should be established. In order to ensure a more efficient management and a better coverage of participants' risk, the Fund should cover actions under the programme set up under Decision No 1982/2006/EC, under the programme set up by Council Decision of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)<sup>13</sup>, under the programme set up by Council Decision [...] of X 2011 establishing the Framework Programme of the European Atomic Energy Community (2012-2013) as well as actions under Regulation (EU) No XX/XX [Horizon 2020] and Regulation (Euratom) No XX/XX of the Council on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020- the Framework Programme for Research and Innovation [Euratom H2020]<sup>14</sup>. Programmes managed by entities other than Union bodies should not be covered by the Fund.
- (17) In order to enhance transparency, the names of experts that have assisted the Commission or relevant funding bodies in application of this Regulation should be published. Where the publication of the name would endanger the security or integrity of the expert or would unduly prejudice his or her privacy, the Commission or funding bodies should be able to refrain from the publication of such names.
- (18) Personal data relating to the experts should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>15</sup>.
- (19) Rules governing the exploitation and dissemination of results should be laid down to ensure that the participants protect, exploit and disseminate those results as appropriate, in particular the possibility of additional exploitation conditions in the European strategic interest.
- (20) For reasons of legal certainty and clarity, Regulation (EC) No 1906/2006 should be repealed.

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<sup>12</sup> OJ L 391, 30.12.2006, p.1.

<sup>13</sup> OJ L 54, 22.2.2007, p. 21

<sup>14</sup> OJ L...

<sup>15</sup> OJ L 8, 12.1.2001, p. 1.

HAVE ADOPTED THIS REGULATION:

## **Title I**

# **INTRODUCTORY PROVISIONS**

### *Article 1*

#### **Subject matter and scope**

1. This Regulation lays down specific rules for the participation in indirect actions undertaken under Regulation (EU) No XX/XX of the European Parliament and of the Council [Horizon 2020], including the participation in indirect actions funded by funding bodies in accordance with Article 9(2) of that Regulation.

This Regulation also lays down the rules governing the dissemination of results.

2. Subject to the specific rules laid down in this Regulation, the relevant rules of Regulation (EU) No XX/2012 of the European Parliament and of the Council [the Financial Regulation] and Commission Regulation (EU) No XX/2012 [its Delegated Regulation] shall apply.
3. A funding body may establish rules which depart from those laid down in this Regulation or Regulation (EU) No XX/2012 [the Financial Regulation] if this is provided for in the basic act or, subject to the consent of the Commission, if its specific operating needs so require.
4. This Regulation shall not apply to direct actions carried out by the Joint Research Centre (JRC).

### *Article 2*

#### **Definitions**

1. For the purposes of this Regulation, the following definitions apply:

(1) '*access rights*' means rights to use results or background under the terms and conditions laid down in accordance with this Regulation;

(2) '*affiliated entity*' means any legal entity that is under the direct or indirect control of a participant, or under the same direct or indirect control as the participant, or is directly or indirectly controlling a participant;

(3) '*associated country*' means a third country which is party to an international agreement with the Union, as identified in Article 7 of Regulation (EU) No XX/XX [Horizon 2020];

(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;

(5) '*basic act*' means a legal act adopted by the Union institutions in the form of a regulation, a directive or a decision within the meaning of Article 288 TFEU which provides a legal basis for the action;

(6) '*coordination and support action*' means an action consisting primarily of accompanying measures such as dissemination, awareness raising and communication, networking, coordination or support services, policy dialogues and mutual learning exercises and studies, including design studies for new infrastructure;

(7) '*dissemination*' means the public disclosure of the results by any appropriate means (other than resulting from protecting or exploiting the results), including by publishing in any medium;

(8) '*funding body*' means a body or authority, other than the Commission, to which the Commission has entrusted budget implementation tasks in accordance with Article 9(2) of Regulation (EU) No XX/XX [Horizon 2020];

(9) '*international European interest organisation*' means an international organisation, the majority of whose members are Member States or associated countries, and whose principal objective is to promote scientific and technological cooperation in Europe;

(10) '*legal entity*' means undertakings, research centres and universities, encompassing any natural person, or any legal person created under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations;

(11) '*participant*' means any legal entity carrying out an action or part of an action under Regulation (EU) No XX/XX [Horizon 2020] having rights and obligations with regard to the Union or another funding body under the terms of this Regulation;

(12) '*programme co-fund action*' means an action funded through a grant the main purpose of which is supplementing individual calls or programmes funded by entities, other than Union bodies, managing research and innovation programmes;

(13) '*pre-commercial procurement*' means procurement of research and development services involving risk-benefit sharing under market conditions, and competitive development in phases, where there is a separation of the research and development phase from the deployment of commercial volumes of end-products;

(14) '*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 conformance testing;

(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;

(16) '*work programme*' means the document adopted by the Commission for the implementation of the specific programme in accordance with Article 5 of Decision No XX/XX/EU of the Council [Specific programme H2020];

(17) ‘*work plan*’ means the document similar to the Commission work programme adopted by funding bodies entrusted with part of the implementation of Horizon 2020 in accordance with Article 9(2) of Regulation (EU) No XX/XX [Horizon 2020].

2. For the purposes of point (2) of paragraph 1, control may take any of the forms set out in Article 7.
3. For the purposes of this Regulation an entity which does not have legal personality under the applicable national law is assimilated to a legal entity provided that the conditions set out in Regulation (EU) No XX/2012 [the Financial Regulation] are complied with.
4. For the purposes of this Regulation, grant recipients shall not be considered funding bodies.
5. For the purposes of point (12) of paragraph 1, actions may also include complementary activities of networking and coordination between programmes in different countries.

### *Article 3*

#### **Confidentiality**

Subject to the conditions established in the implementing agreements, decisions or contracts, any data, knowledge and information communicated as confidential in the frame of an action shall be kept confidential, taking due account of any rules regarding the protection of classified information.

### *Article 4*

#### **Information to be made available**

1. Without prejudice to Article 3, the Commission shall, upon request, make available to the Union institutions and bodies, any Member State or associated country, any useful information in its possession on results of a participant that has received Union funding, provided that both the following conditions are met:
  - (a) the information concerned is relevant to public policy;
  - (b) the participants have not provided sound and sufficient reasons for withholding the information concerned.

In actions under the activity 'Secure societies' within the specific objective 'Inclusive, innovative and secure societies', the Commission may make available to Union institutions and bodies or Member States' national authorities any useful information in its possession on results of a participant that has received Union funding.

2. The provision of information pursuant to paragraph 1 shall not be deemed to transfer to the recipient any rights or obligations of the Commission or of the participants. However, the recipient shall treat any such information as confidential unless it

becomes public or is made available publicly by the participants, or unless it was communicated to the Commission without restrictions concerning confidentiality. The Commission rules on security shall apply regarding classified information.

## **Title II**

# **RULES FOR THE PARTICIPATION**

### **Chapter I**

## **GENERAL PROVISIONS**

#### *Article 5*

#### **Forms of funding**

In accordance with Article 10 of Regulation (EU) XX/2012 [Horizon 2020], funding may take one or several of the forms of provided for by Regulation (EU) No XX/2012 [Financial Regulation], in particular grants, prizes, procurement and financial instruments.

#### *Article 6*

#### **Legal entities that may participate in actions**

1. Any legal entity regardless of its place of establishment and international organisations may participate in an action provided that the conditions laid down in this Regulation have been met as well as any conditions laid down in the relevant work programme or work plan.
2. The relevant work programme may restrict the participation in Horizon 2020 or parts thereof of legal entities established in third countries where conditions for the participation of legal entities from Member States in the third country's research and innovation programmes are considered prejudicial to the Union's interests.
3. The relevant work programme or work plan may exclude entities not able to provide satisfactory security guarantees, including as regards personnel security clearance if justified by security reasons.
4. The JRC may participate in actions with the same rights and obligations as a legal entity established in a Member State.

#### *Article 7*

#### **Independence**

1. Two legal entities shall be regarded as independent of each other where neither is under the direct or indirect control of the other or under the same direct or indirect control as the other.

2. For the purposes of paragraph 1, control may, in particular, take either of the following forms:
  - (a) the direct or indirect holding of more than 50 % of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
  - (b) the direct or indirect holding, in fact or in law, of decision making powers in the legal entity concerned.
3. However, the following relationships between legal entities shall not in themselves be deemed to constitute controlling relationships:
  - (a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50 % of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
  - (b) the legal entities concerned are owned or supervised by the same public body.

## **Chapter II GRANTS**

### **SECTION I AWARD PROCEDURE**

#### *Article 8*

#### **Conditions for participation**

1. The following minimum conditions shall apply:
  - (a) at least three legal entities shall participate in an action;
  - (b) each of the three shall be established in a Member State or associated country;
  - (c) no two of the three may be established in the same Member State or associated country;
  - (d) all three legal entities shall be independent of each other within the meaning of Article 7.
2. For the purposes of paragraph 1, where one of the participants is the JRC, or an international European interest organisation or an entity created under Union law, it shall be deemed to be established in a Member State or associated country other than any Member State or associated country in which another participant in the same action is established.

3. By way of derogation from paragraph 1, in the case of European Research Council (ERC) frontier research actions, the SME instrument, programme co-fund actions and in justified cases provided for in the work programme or work plan, the minimum condition shall be the participation of one legal entity established in a Member State or associated country.
4. By way of derogation from paragraph 1, in the case of coordination and support actions and training and mobility actions, the minimum condition shall be the participation of one legal entity.
5. Work programmes or work plans may provide for additional conditions according to specific policy requirements or to the nature and objectives of the action, including *inter alia* conditions regarding the number of participants, the type of participant and the place of establishment.

#### *Article 9*

#### **Eligibility for funding**

1. The following participants are eligible for funding from the Union:
  - (a) any legal entity established in a Member State or associated country, or created under Union law;
  - (b) any international European interest organisation;
  - (c) any legal entity established in a third country identified in the work programme.
2. In the case of a participating international organisation or in the case of a participating legal entity established in a third country, neither of which are eligible for funding according to paragraph 1, funding from the Union may be granted provided that at least one of the following conditions is fulfilled:
  - (a) the participation is deemed essential for carrying out the action by the Commission or the relevant funding body;
  - (b) such funding is provided for under a bilateral scientific and technological agreement or any other arrangement between the Union and the international organisation or, for entities established in third countries, the country in which the legal entity is established.

#### *Article 10*

#### **Calls for proposals**

Without prejudice to the other cases provided for in Regulation (EU) No XX/2012 [Financial Regulation] and in Regulation (EU) No XX/2012 [Delegated Regulation], calls for proposals shall not be issued for coordination and support actions and programme co-fund actions to be

carried out by legal entities identified in the work programmes provided that the action does not fall under the scope of a call for proposals.

#### *Article 11*

##### **Joint calls with third countries or with international organisations**

1. Joint calls for proposals with third countries or their scientific and technological organisations and agencies or with international organisations may be launched to jointly fund actions. Proposals shall be evaluated and selected through joint evaluation and selection procedures to be agreed upon. Such evaluation and selection procedures shall ensure compliance with the principles set out in Title VI of Regulation (EU) XX/2012 [Financial Regulation] and involve a balanced group of independent experts appointed by each party.
2. Legal entities receiving funding from the Union shall conclude a grant agreement with the Union or the relevant funding body. That grant agreement shall include the description of work to be done by those participants and by the participating legal entities from the third countries involved.
3. Legal entities receiving funding from the Union shall conclude a coordination agreement with the participating legal entities receiving funding from the relevant third countries or international organisations.

#### *Article 12*

##### **Proposals**

1. Where appropriate, proposals shall include a draft plan for the exploitation and dissemination of the results.
2. Any proposal for research on human embryonic stem cells shall include, as appropriate, details of licensing and control measures that will be taken by the competent authorities of the Member States as well as details of the ethical approvals that will be provided. As regards the derivation of human embryonic stem cells, institutions, organisations and researchers shall be subject to strict licensing and control in accordance with the legal framework of the Member States involved.
3. A proposal which contravenes ethical principles or any applicable legislation, or which does not fulfil the conditions set out in Decision No XX/XX/EU [specific programme], the work programme or work plan or in the call for proposals may be excluded from the evaluation, selection and award procedures at any time.

#### *Article 13*

##### **Ethics review**

The Commission shall systematically carry out ethics reviews for proposals raising ethical issues. This review shall verify the respect of ethical principles and legislation and, in the case

of research carried out outside the Union, that the same research would have been allowed in a Member State.

#### *Article 14*

##### **Selection and award criteria**

1. The proposals submitted shall be evaluated on the basis of the following award criteria:
  - (a) excellence;
  - (b) impact;
  - (c) quality and efficiency of the implementation.
2. The sole criterion of excellence shall apply for proposals for ERC frontier research actions.
3. The work programme or work plan shall lay down further details of the application of the award criteria laid down in paragraph 1, and specify weightings and thresholds.
4. Proposals shall be ranked according to the evaluation results. The selection shall be made on the basis of this ranking.
5. The Commission or the relevant funding body shall verify the financial capacity in advance only for coordinators when the requested funding from the Union for the action is equal or superior to EUR 500 000, unless where, on the basis of available information, there are grounds to doubt the financial capacity of the coordinator or other participants.
6. The financial capacity shall not be verified for legal entities whose viability is guaranteed by a Member State or an associated country and for higher and secondary education establishments.

#### *Article 15*

##### **Evaluation review procedure**

1. The Commission or the relevant funding body shall provide an evaluation review procedure for applicants who consider that the evaluation of their proposal has not been carried out in accordance with the procedures set out in these rules, the relevant work programme or work plan and the call for proposals.
2. A request for review shall relate to a specific proposal, and shall be submitted by the coordinator of the proposal within 30 days of the date when the Commission or the relevant funding body informs the coordinator of the evaluation results.

3. The Commission or the relevant funding body shall be responsible for the examination of this request. This examination shall only cover the procedural aspects of the evaluation, and not the merit of the proposal.
4. An evaluation review committee composed of Commission staff or of the relevant funding body staff shall provide an opinion on the procedural aspects of the evaluation process. It shall be chaired by an official of the Commission or of the relevant funding body, from a department other than the one responsible for the call for proposals. The committee may recommend one of the following:
  - (a) re-evaluation of the proposal;
  - (b) confirmation of the initial opinion.
5. On the basis of that recommendation a decision shall be taken by the Commission or the relevant funding body and notified to the coordinator of the proposal.
6. The review procedure shall not delay the selection process of proposals which are not the subject of requests for review.
7. The review procedure shall not preclude any other actions the participant may take in accordance with Union law.

#### *Article 16*

#### **Grant agreement**

1. The Commission or the relevant funding body shall enter into a grant agreement with the participants.
2. The grant agreement shall establish the rights and obligations of the participants, of the Commission or the relevant funding bodies. It shall also establish the rights and obligations of legal entities which become participants during the implementation of the action.
3. The grant agreement may establish rights and obligations of the participants with regard to access rights, exploitation and dissemination, additional to those laid down in this Regulation.
4. The grant agreement shall, where appropriate, reflect the general principles laid down in Commission Recommendation on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers<sup>16</sup>.
5. The grant agreement shall, where appropriate, contain provisions ensuring the respect of ethical principles, including the establishment of an independent ethics board and the right of the Commission to carry out an ethics audit.

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<sup>16</sup> C(2005) 576 final, 11.3.2005

6. Specific grants for actions may form part of a framework partnership according to the provisions of Regulation (EU) No XX/2012 [the Financial Regulation] and Regulation (EU) No [the Delegated Regulation].

#### *Article 17*

#### **Grant decisions**

Where appropriate the Commission, in accordance with Article X of Regulation (EU) No XX/2012 [Financial Regulation], or the relevant funding body may adopt grant decisions instead of entering into grant agreements. The provisions of this Regulation referring to grant agreements shall apply *mutatis mutandis*.

#### *Article 18*

#### **Secure electronic system**

The Commission or the relevant funding body may establish a secure electronic system for exchanges with the participants. A document submitted by means of this system, including grant agreements, shall be deemed to be the original of that document where the user identification and password of the participant's representative have been used. Such identification shall constitute the signature of the document concerned.

## **SECTION II IMPLEMENTATION**

#### *Article 19*

#### **Implementation of the action**

1. The participants shall implement the action in compliance with all the conditions and obligations set out in this Regulation, Regulation (EU) No XX/2012 [Financial Regulation], Regulation (EU) No [the Delegated Regulation], Decision (EU) No XX/XX [the specific programme], the work programme or work plan, the call for proposals and the grant agreement.
2. Participants shall make no commitments which are incompatible with the grant agreement. Where a participant fails to comply with its obligations regarding the technical implementation of the action, the other participants shall comply with the obligations without any additional Union funding unless the Commission or funding body expressly relieves them of that obligation. The financial responsibility of each participant shall be limited to its own debt, subject to the provisions relating to the Fund. The participants shall ensure that the Commission or funding body is informed of any event which might affect the implementation of the action or the interests of the Union.
3. The participants shall implement the action and shall take all necessary and reasonable measures to that end. They shall have the appropriate resources as and

when needed for carrying out the action. Where it is necessary for the implementation of the action, they may call upon third parties, including subcontractors, to carry out certain elements of the action or may use resources made available by third parties by means of contributions in kind according to the conditions set out in the grant agreement. The participant shall retain sole responsibility towards the Commission or the relevant funding body and towards the other participants for the work carried out.

4. The award of subcontracts for carrying out certain elements of the action shall be limited to the cases provided for in the grant agreement.
5. Third parties other than subcontractors may carry out part of a participant's work under the action, provided that the third party and the work to be carried out by it are identified in the grant agreement.

Costs incurred by these third parties may be deemed eligible if the third party meets all the following conditions:

- (a) it is eligible for funding if it were a participant;
  - (b) it is an affiliated entity or has a link to a participant in the framework of a legal structure covering a collaboration not limited to the project;
  - (c) it is identified in the grant agreement;
  - (d) it abides by the rules applicable to the participant under the grant agreement with regard to eligibility of costs and control of expenditure.
6. Third parties may also make available resources to a participant by means of contributions in kind to the action. Costs incurred by third parties in relation to their in-kind contributions which are made free of charge are eligible for funding provided they meet the conditions established in the grant agreement.
  7. The action may involve financial support to third parties under the conditions established in Regulation (EU) No XX/2012 [Financial Regulation] and Regulation (EU) No XX/2012 [Delegated Regulation]. The amounts referred to in Article [127(2)(c)] of Regulation (EU) XX/2012 [the Financial Regulation] may be exceeded where it is necessary to achieve the objectives of an action.
  8. The action carried out by participants which are contracting authorities within the meaning of Directives 2004/17/EC<sup>17</sup>, 2004/18/EC<sup>18</sup> and 2009/81/EC<sup>19</sup> of the European Parliament and of the Council may involve or have as primary aim pre-commercial procurement and procurement of innovative solutions, where provided for in a work programme or a work plan and required for its implementation. In such a case, the rules set out in Article 35(2) and in Article 49(2) and (3) shall apply to the procurement procedures carried out by the participants.

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<sup>17</sup> OJ L 134, 30.4.2004, p. 1.

<sup>18</sup> OJ L 134, 30.4.2004, p. 114.

<sup>19</sup> OJ L 216, 20.8.2009, p. 76.

9. Participants shall comply with national legislation, regulations and ethical rules in the countries where the action will be carried out. Where appropriate, participants shall seek the approval of the relevant national or local ethics committees prior to the start of the action.
10. Work using animals shall be carried out in accordance with Article 13 TFEU and shall comply with the requirement to replace, reduce and refine the use of animals for scientific purposes in accordance with Union legislation and in particular with Directive 2010/63/EU of the European Parliament and the Council<sup>20</sup>.

#### *Article 20*

#### **Consortium**

1. The members of any consortium wishing to participate in an action shall appoint one of them to act as coordinator which shall be identified in the grant agreement.
2. The members of a consortium participating in an action shall conclude an internal agreement (the consortium agreement), except in duly justified cases provided for in the work programme or work plan or call for proposals.
3. The consortium may propose to add or remove a participant in accordance with the respective provisions of the grant agreement, provided that this change is in conformity with the conditions for participation, does not adversely affect the implementation of the action and is not contrary to the principle of equal treatment.

### **SECTION III FORMS OF GRANTS AND FUNDING RULES**

#### *Article 21*

#### **Forms of grants**

Grants may take any of the forms provided for in Article [116] of Regulation (EU) No XX/2012 [the Financial Regulation].

#### *Article 22*

#### **Funding of the action**

1. The funding for an action shall not exceed the total eligible costs minus the receipts of the action.
2. The following shall be considered as receipts of the action:

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<sup>20</sup> OJ L 276, 20.10.2010,p.33.

- (a) Resources made available by third parties to the participants by means of financial transfers or contributions in kind free of charge, provided that they have been contributed by the third party specifically to be used in the action;
  - (b) Income generated by the action, except income generated by the exploitation of the results of the action;
  - (c) Income generated from the sale of assets purchased under the grant agreement up to the value of the cost initially charged to the action by the participant.
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:
  - (a) actions primarily consisting of activities such as prototyping, testing, demonstrating, experimental development, piloting, market replication;
  - (b) programme co-fund actions.
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.

### *Article 23*

#### **Eligibility of costs**

1. Conditions for eligibility of costs are defined in Article X of Regulation (EU) No xx [the Financial Regulation/Delegated Regulation]. Costs incurred by third parties under the action may be eligible according to the provisions of this Regulation and of the grant agreement.
2. Ineligible costs are those not complying with the above conditions in particular provisions for possible future losses or charges, exchange losses, costs related to return on capital, costs reimbursed in respect of another Union action or programme, debt and debt service charges and excessive or reckless expenditure.

### *Article 24*

#### **Indirect costs**

1. Indirect eligible costs shall be determined by applying a flat rate of 20% of the total direct eligible costs, excluding direct eligible costs for subcontracting and the costs

of resources made available by third parties which are not used on the premises of the beneficiary, as well as financial support to third parties.

2. By way of derogation from paragraph 1, indirect costs may be declared in the form of a lump sum or scale of unit costs when provided for in the work programme or work plan.

#### *Article 25*

#### **Annual productive hours**

1. Eligible personnel costs shall only cover the actual hours worked by the persons directly carrying out work under the action. The evidence regarding the actual hours worked shall be provided by the participant, normally 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 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 26*

#### **Personnel costs of the owners of small and medium-sized enterprises and natural persons without salary**

The owners of small and medium-sized enterprises who do not receive a salary and other natural persons who do not receive a salary may charge personnel costs on the basis of a scale of unit cost.

#### *Article 27*

#### **Scales of unit costs**

1. In accordance with Article X of Regulation (EU) No XX/XX [financial regulation], the Commission may establish methods to determine scales of unit costs based on:
  - (a) statistical data or similar objective means;
  - (b) auditable historical data of the participant.
2. Direct eligible personnel costs may be financed on the basis of scale of unit costs determined according to the participant's usual cost accounting practices, provided that they comply with the following cumulative criteria:
  - (a) they are calculated on the basis of the total actual personnel costs recorded in the participant's general accounts which may be adjusted on the basis of

budgeted or estimated elements according to the conditions defined by the Commission;

- (b) they comply with the provisions in Article 23;
- (c) they ensure compliance with the non-profit requirement and avoidance of double funding of costs;
- (d) they are calculated with due regard to the provisions on productive hours in Article 25.

#### *Article 28*

##### **Certificate on the financial statements**

The certificate on financial statements shall cover the total amount of the grant claimed by a participant under the form of reimbursement of actual costs and under the form of scale of unit costs referred to Article 27(2). The certificate shall only be submitted when that amount is equal to or greater than EUR 325 000 at the time of claiming the payment of the balance of the grant.

#### *Article 29*

##### **Certificates on the methodology**

1. Participants that calculate and claim direct personnel costs on the basis of scale of unit costs may submit to the Commission a certificate on the methodology. That methodology shall comply with the conditions set out in 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.

#### *Article 30*

##### **Certifying auditors**

1. The certificates on the financial statements and on the methodology referred to in Articles 28 and 29 shall be established by an independent auditor qualified to carry out statutory audits of accounting documents in accordance with Directive 2006/43/EC of the European Parliament and of the Council<sup>21</sup> or similar national regulations or by a competent and independent public officer for whom the relevant national authorities have established the legal capacity to audit the participant and who has not been involved in the preparation of the financial statements.

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<sup>21</sup> OJ L 157, 09.06.2006, p.87.

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 31*

### **Cumulative funding**

An action for which a grant from the Union budget has been awarded may also give rise to the award of a grant on the basis of Regulation (EU) No XX/XX [Horizon 2020] provided that the grants do not cover the same cost items.

## **SECTION IV GUARANTEES**

#### *Article 32*

### **Participant Guarantee Fund**

1. A participant guarantee fund ("the Fund") is hereby established and shall cover the risk associated with non-recovery of sums due to the Union under actions financed through grants by the Commission under Decision No 1982/2006/EC and by the Commission or Union bodies under "Horizon 2020" according to the Rules set out in this Regulation. The Fund shall replace and succeed the Participant Guarantee Fund set up under Regulation (EC) No 1906/2006.
2. The Fund shall be operated in accordance with Article 33. Financial interest generated by the Fund shall be added to the Fund and shall serve exclusively for the purposes set out in Article 33(3).
3. Where interest is insufficient to cover the operations described in Article 33(3) the Fund shall not intervene and the Commission or the relevant Union funding body shall recover directly from beneficiaries any amount owed.
4. The Fund shall be considered as a sufficient guarantee under Regulation (EU) No XX/XX [the Financial Regulation]. No additional guarantee or security may be accepted from participants or imposed on them except in the case described in paragraph 3.
5. The participants in actions under Horizon 2020 whose risk is covered by the Fund shall make a contribution of 5 % of the Union funding for the action. At the end of the action the amount contributed to the Fund shall be returned to the participants, via the coordinator.

### *Article 33*

#### **Operation of the Fund**

1. The Fund shall be managed by the Union represented by the Commission acting as executive agent on behalf of the participants, according to the conditions established by the grant agreement.

The Commission may manage the Fund directly or entrust the financial management of the Fund either to the European Investment Bank or to an appropriate financial institution (the depository bank). The depository bank shall manage the Fund pursuant to the instructions of the Commission.

2. The participants' contribution to the Fund may be offset from the initial pre-financing and be paid to the Fund on behalf of the participants.
3. Where amounts are due to the Union by a participant the Commission may, without prejudice to penalties which may be imposed on the defaulting participant, take either of the following actions:

- (a) transfer or order the depository bank to transfer directly the amount due from the Fund to the coordinator of the action. That transfer shall be made after the termination or withdrawal of the participation of the defaulting participant if the action is still ongoing and if the remaining participants agree to implement it according to the same objectives. Amounts transferred from the Fund shall be regarded as Union funding;

- (b) recover effectively that amount from the Fund.

The Commission shall issue a recovery order against that participant to the benefit of the Fund. The Commission may adopt to that end a recovery decision in accordance with Regulation (EU) No XX/XX [the Financial Regulation].

4. The amounts recovered shall constitute revenue assigned to the Fund within the meaning of Article X of Regulation (EU) No XX/2012 [the Financial Regulation]. Once the implementation of all grants whose risk is covered by the Fund is complete, any sums outstanding shall be recovered by the Commission and entered into the budget of the Union, subject to decisions of the legislative authority.

## **Chapter IV PRIZES, PROCUREMENT AND FINANCIAL INSTRUMENTS**

### *Article 34*

#### **Prizes**

Union funding may take the form of prizes as defined in Title VII of Regulation (EU) No XX/XX [Financial Regulation].

## Article 35

### **Procurement, pre-commercial procurement and public procurement of innovative solutions**

1. Any procurement carried out by the Commission on its own behalf or jointly with Member States shall be subject to the rules on public procurement as set out in Regulation (EU) No xx/2012 [Financial Regulation] and Regulation (EU) No XX/XX [the Delegated Regulation].
2. Union funding may take the form of pre-commercial procurement or procurement of innovative solutions carried out by the Commission or the relevant funding body on its own behalf or jointly with contracting authorities from Member States and associated countries.

The procurement procedures:

- (a) shall comply with the principles of transparency, non-discrimination, equal treatment, sound financial management, proportionality, and with competition rules and, where applicable, with Directives 2004/17/EC, 2004/18/EC and 2009/81/EC, or, where the Commission acts on its own behalf, with Regulation (EU) No XX/2012 [the Financial Regulation];
- (b) may provide for specific conditions such as the place of performance of the procured activities **being limited** for pre-commercial procurement to the territory of the Member States and of countries associated to Horizon 2020 where duly justified by the objectives of the actions;
- (c) may authorise the award of multiple contracts within the same procedure (multiple sourcing);
- (d) shall provide for the award of the contracts to the tender(s) offering best value for money.

## Article 36

### **Financial instruments**

1. Financial instruments may take any of the forms referred to in and shall be implemented in accordance with [Title VIII] of Regulation (EU) No XX/XX [the Financial Regulation] and may be combined with grants funded under the Union budget, including under Horizon 2020.
2. In accordance with Article [18(2)] of Regulation (EU) No XX/XX [the Financial Regulation], revenues and repayments generated by a financial instrument set up under Regulation (EU) No XX/XX [Horizon 2020] shall be assigned to that financial instrument.
3. Revenues and repayments generated by the Risk-Sharing Finance facility set up under Decision No 1982/2006/EC and the early stage part of the High-Growth and Innovative SME Facility (GIF1) set up under the Decision No 1639/2006/EC of the

European Parliament and of the Council<sup>22</sup>, shall be assigned to the succeeding financial instruments under Regulation (EU) No XX/XX [Horizon 2020].

## **Chapter VII**

### **EXPERTS**

#### *Article 37*

#### **Appointment of independent experts**

1. The Commission and, where appropriate, funding bodies may appoint independent experts to evaluate proposals or to advise on or assist with:
  - (a) the evaluation of proposals;
  - (b) the monitoring of the implementation of actions carried out under Regulation (EU) No XX/XX [Horizon 2020] as well as of previous Research and/or Innovation Programmes;
  - (c) the implementation of Union research and innovation policy or programmes including Horizon 2020, as well as with the achievement and functioning of the European Research Area;
  - (d) the evaluation of Research and Innovation Programmes;
  - (e) the design of the Union research and innovation policy including the preparation of future programmes.
2. Independent experts shall be chosen on the basis of skills, experience and knowledge appropriate to carry out the tasks assigned to them. In cases where independent experts have to deal with classified information, the appropriate security clearance shall be required before appointment.

Independent experts shall be identified and selected on the basis of calls for applications from individuals and calls addressed to relevant organisations such as national research agencies, research institutions, standardisation organisations or enterprises with a view to establishing a database of candidates.

The Commission or the relevant funding body may, if deemed appropriate and in duly justified cases, select any individual with the appropriate skills from outside the database.

Appropriate measures shall be taken to seek gender balance and geographical diversity when appointing independent experts.

The Commission or the relevant funding body may call upon the advice of advisory bodies for the appointment of independent experts. In the case of ERC frontier

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<sup>22</sup> OJ L 310, 9.11.2006, p. 15.

research actions, the Commission shall appoint experts on the basis of a proposal from the Scientific Council of the ERC.

3. The Commission or the relevant funding body shall take all necessary steps to ensure that the expert is not faced with a conflict of interests in relation to the matter on which the expert is required to provide an opinion.
4. The appointment of the experts may take the form of a framework appointment valid for the entire duration of Horizon 2020 with specific assignments of tasks.
5. The names of experts appointed in a personal capacity, who have assisted the Commission or the funding bodies in implementation of Regulation (EU) No XX/XX Horizon 2020 and Decision No XX/XX/EU [the specific programme], shall be published at least once a year on the Internet site of the Commission or the funding body. The names of experts shall be collected, processed and published in accordance with Regulation (EC) No 45/2001.

# **Title III**

## **RULES GOVERNING DISSEMINATION OF RESULTS**

### **Chapter I**

#### **GRANTS**

#### **SECTION I**

##### **RESULTS**

##### *Article 38*

##### **Ownership of results**

1. Results shall be owned by the participant generating these results.
2. Where participants in an action have jointly generated results and where their respective share of the work 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.

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:

- (a) prior notice shall be given to the other joint owners;
  - (b) fair and reasonable compensation shall be provided to the other joint owners.
3. If employees or any party working for a participant are entitled to claim rights to the results generated, the participant concerned shall ensure that it is possible to exercise these rights in a manner compatible with its obligations under the grant agreement.

##### *Article 39*

##### **Protection of results**

1. Where results are capable of commercial or industrial application, the participant owning these results shall examine the possibility for protection and, if possible and justified given the circumstances, shall adequately protect them for an appropriate period of time and with an appropriate territorial coverage, having due regard to its legitimate interests and the legitimate interests, particularly the commercial interests, of the other participants in the action.

2. Where a participant that has received Union funding intends not to protect results generated by it for reasons other than impossibility under Union or national law or the lack of potential for commercial exploitation, and unless the participant intends to transfer them to another legal entity established in a Member State or associated country in view of their protection, it shall inform the Commission or funding body before any dissemination relating to these results takes place. The Commission on behalf of the Union or the funding body may assume ownership of these results and take the necessary steps for their adequate protection.

The participant may refuse consent only if it demonstrates that its legitimate interests would suffer significant harm. No dissemination relating to these results may take place until the Commission or the funding body has taken a decision or has decided that it will assume ownership and has taken the necessary steps to ensure protection. The grant agreement shall lay down time-limits in this respect.

3. Where a participant that has received Union funding intends to abandon the protection of results or not to seek extension of such protection for reasons other than the lack of potential for commercial exploitation, it shall inform the Commission or the funding body which may continue or extend protection by assuming ownership thereof. The participant may refuse consent only if it demonstrates that its legitimate interests would suffer significant harm. The grant agreement shall lay down time-limits in this respect.

#### *Article 40*

### **Exploitation and dissemination of results**

1. Each participant that has received Union funding shall use its best efforts to exploit the results it owns in further research or commercially, or to have them exploited by another legal entity for these purposes, in particular through transfer and licensing of results in accordance with Article 41.

Additional exploitation obligations may be laid down in the grant agreement. Any such additional obligations shall be indicated in the work programme or work plan.

2. Subject to any restrictions due to the protection of intellectual property, security rules or legitimate commercial interests, each participant shall through appropriate means disseminate the results it owns as soon as possible. The grant agreement may lay down time-limits in this respect.

Additional dissemination obligations may be laid down in the grant agreement.

With regard to dissemination through research publications, open access shall apply under the terms and conditions laid down in the grant agreement. 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.

Prior notice of any dissemination activity shall be given to the other participants. Following notification, a participant may object if it demonstrates that its legitimate interests in relation to its results or background would suffer significant harm by the

intended dissemination. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests. The grant agreement may lay down time-limits in this respect.

3. Each participant shall report to the Commission or funding body on its exploitation and dissemination related activities. For the purposes of monitoring and dissemination by the Commission or funding body, participants shall provide any information and documents useful in accordance with the conditions laid down in the grant agreement.
4. All patent applications, standards, publications or any other dissemination, also in electronic form, relating to results shall include a statement, which may include visual means, that the action received financial support from the Union. The terms of that statement shall be established in the grant agreement.

#### *Article 41*

#### **Transfer and licensing of results**

1. Where a participant transfers ownership of results, it shall pass on its obligations under the grant agreement regarding those results to the transferee, including the obligation to pass them on in any subsequent transfer.

Without prejudice to confidentiality obligations arising from laws or regulations in the case of mergers and acquisitions, where other participants still enjoy access rights to the results to be transferred, the participant who intends to transfer the results shall give prior notice to those other participants, together with sufficient information concerning the intended new owner of the results to permit the other participants to analyse the effect of the intended transfer on the possible exercise of their access rights.

Following notification, a participant may object to the transfer of ownership if it demonstrates that the intended transfer would adversely affect the exercise of its access rights. In such case, the transfer may not take place until agreement has been reached between the participants concerned. The grant agreement may lay down time-limits.

The other participants may by prior written agreement, waive their right to prior notice and to object in the case of transfers of ownership from one participant to a specifically identified third party.

2. Provided that any access rights to the results can be exercised and that any additional exploitation obligations are complied with, the participant who owns results may grant licences or otherwise give the right to exploit them to any legal entity, including on an exclusive basis.
3. With regard to results which are generated by participants that have received Union funding, the Commission or 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 to 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 funding body is satisfied that appropriate safeguards will be put in place.

Where appropriate, the grant agreement shall provide that the Commission or 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.

## **SECTION 2**

### **ACCESS RIGHTS TO BACKGROUND AND RESULTS**

#### *Article 42*

##### **Background**

Participants shall identify the background for their action in any manner in a written agreement.

#### *Article 43*

##### **Access rights principles**

1. Any request to exercise access rights or any waiving of access rights shall be made in writing.
2. Unless otherwise agreed by the owner of the results or background to which access is requested, access rights shall not include the right to sub-licence.
3. Participants in the same action shall inform each other before their accession to the grant agreement of any legal restriction or limit to granting access to their background. Any agreement concluded thereafter by a participant regarding background shall ensure that any access rights may be exercised.
4. For the purposes of access rights, fair and reasonable conditions may be royalty-free conditions.
5. The termination of the participation in an action shall not affect the obligation of such a participant to grant access under the terms and conditions established in the grant agreement.
6. Where a participant defaults on its obligations and such default is not remedied, the consortium agreement may stipulate that such a participant shall no longer enjoy access rights.

#### *Article 44*

##### **Access rights for implementation**

1. A participant shall enjoy access rights to the results of another participant in the same action, if such access is needed by the former to carry out its work under the action.

Such access shall be granted on a royalty-free basis.

2. A participant shall enjoy access rights to background of another participant in the same action, if such access is needed by the former to carry out its work under the action and subject to any restrictions pursuant to Article 43(3).

Such access shall be granted on a royalty-free basis, unless otherwise agreed by the participants before their accession to the grant agreement.

#### *Article 45*

##### **Access rights for exploitation**

1. A participant shall enjoy access rights to the results of another participant in the same action, if such access is needed by the former to exploit its results.

Subject to agreement, such access shall be granted under fair and reasonable conditions.

2. A participant shall enjoy access rights to background of another participant in the same action, if such access is needed by the former to exploit its results and subject to any restrictions or limits pursuant to Article 43(3).

Subject to agreement, such access shall be granted under fair and reasonable conditions.

3. An affiliated entity established in a Member State or associated country shall, unless otherwise provided for in the consortium agreement, also have access rights to results or background under the same conditions if such access is needed to exploit the results generated by the participant to which it is affiliated.

4. A request for access under paragraphs 1, 2 and 3 may be made up to one year after the end of the action. However, the participants may agree on a different time-limit.

#### *Article 46*

##### **Access rights for the Union and the Member States**

1. The Union institutions and bodies shall, for the purpose of developing, implementing and monitoring Union policies or programmes, enjoy access rights to the results of a participant that has received Union funding. Such access rights are limited to non-commercial and non-competitive use.

Such access shall be granted on a royalty-free basis.

2. Regarding actions in the activity 'Secure societies' within the specific objective 'Inclusive, innovative and secure societies', the Union institutions and bodies as well as Member States' national authorities shall, for the purpose of developing, implementing and monitoring their policies or programmes in this area, enjoy access rights to the results of a participant that has received Union funding. Notwithstanding Article 43(2), such access rights shall include the right to authorise third parties to use the results in public procurement in the case of the development of capabilities in domains with very limited market size and a risk of market failure, and where a predominant public interest exists.

Such access shall be granted on a royalty-free basis, except for use in public procurement where it shall be granted on fair and reasonable conditions to be agreed upon. The Union funding received in generating the results shall be fully taken into account in the determination of the fair and reasonable conditions. The Commission rules on security shall apply regarding classified information.

### **SECTION 3 SPECIFIC CASES**

#### *Article 47*

##### **Specific provisions**

1. In the case of actions involving security-related activities, the grant agreement may lay down specific provisions, in particular on changes to the consortium's composition, classified information, exploitation, dissemination, transfers and licences of results.
2. In the case of actions to support existing or new research infrastructures, the grant agreement may lay down specific provisions relating to users of the infrastructure.
3. In the case of ERC frontier research actions, the grant agreement may lay down specific provisions, in particular on access rights, portability and dissemination, relating to participants, researchers and any party concerned by the action.
4. In the case of training and mobility actions, the grant agreement may lay down specific provisions on commitments relating to the researchers benefiting from the action, ownership, access rights and portability.
5. In the case of coordination and support actions, the grant agreement may lay down specific provisions, in particular on ownership, access rights, exploitation and dissemination.
6. In the case of the SME instrument and grants by funding bodies targeting SMEs, the grant agreement may lay down specific provisions, in particular on ownership, access rights, exploitation and dissemination.
7. In the case of the Knowledge and Innovation Communities of the EIT, the grant agreement may lay down specific provisions, in particular on ownership, access rights, exploitation and dissemination.

## **CHAPTER II PRIZES AND PROCUREMENT**

### *Article 48*

#### **Prizes**

Any prize awarded shall be conditional on the acceptance of the appropriate publicity obligations. The work programme or work plan may contain specific obligations regarding exploitation and dissemination.

### *Article 49*

#### **Procurement, pre-commercial procurement and public procurement of innovative solutions**

1. Unless otherwise stipulated in the call for tenders, results generated by procurement carried out by the Commission shall be owned by the Union.
2. Specific provisions regarding ownership, access rights and licensing shall be laid down in the contracts regarding pre-commercial procurement to ensure maximum uptake of the results and to avoid any unfair advantage. 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 as well as the right to grant, or require the participating contractors to grant, non-exclusive licences to third parties to exploit the results under fair and reasonable conditions without any right to sub-licence. If a contractor fails to commercially exploit the results within a given period after the pre-commercial procurement as identified in the contract, it shall transfer any ownership of the results to the contracting authorities.
3. Specific provisions regarding ownership, access rights and licensing may be laid down in the contracts regarding public procurement of innovative solutions to ensure maximum uptake of the results and to avoid any unfair advantage.

## **TITLE IV FINAL PROVISIONS**

### *Article 50*

#### **Repeal and transitional provisions**

1. Regulation (EC) No 1906/2006 is repealed with effect from 1 January 2014.
2. Without prejudice to paragraph 1, this Regulation shall not affect the continuation or modification, including the total or partial termination of the actions concerned, until

their closure, or the award of financial assistance by the Commission or funding bodies under Decision No 1982/2006/EC, or any other legislation applying to that assistance on 31 December 2013, which shall continue to apply to the actions concerned until their closure.

3. Any sums from the participant Guarantee Fund set up by Regulation (EC) No 1906/2006 as well as all its rights and obligations shall be transferred to the Fund as of 31 December 2013. The participants in actions under the Seventh Framework Programme signing grant agreements after 31 December 2013 shall make their contribution to the Fund.

#### *Article 51*

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*