

Joint Statement Paper on the Model Grant Agreement's Intellectual Property Provisions of the European Innovation Council under Horizon Europe

5 December 2022

We, the undersigned associations of research-performing organisations and knowledge transfer professionals, voice our concerns regarding the Intellectual Property (IP) provisions for Transition and Pathfinder projects of the European Innovation Council (EIC). We urge the European Commission to apply the standard IP rules of Horizon Europe and to strengthen the capacities of knowledge valorisation services, as promoted in the European Commission's Proposal for a Council Recommendation on the guiding principles for knowledge valorisation,¹ the Council conclusions on the New European Innovation Agenda,² and the European Parliament's report on the implementation of the EIC.³

The Horizon Europe Model Grant Agreement states that, for EIC Pathfinder or EIC Transition actions, "EIC Inventors are granted indefinite access rights for exploitation purposes under the following conditions: the access rights are granted on a royalty-free basis, unless the beneficiary [i.e., their employing organisations] provides support to the EIC inventor to exploit the results (in which case the royalties may be shared on mutually beneficial terms, provided this does not make the exploitation by the EIC inventor impossible) [...]"

These EIC IP provisions conflict with institutional, national and regional rules, hence hindering the participation of our members in EIC. They may also have some serious negative side effects on the efforts done by our research-performing organisations to maximise the exploitation of their research outcomes. More specifically, we highlight the following issues:

1. The assumption that the so-called EIC inventors are always the best placed to commercially exploit their research outcomes is plainly wrong.

The rationales for the EIC IP provisions are the assumptions that the lower innovation performance in Europe compared with China and the United States is due to the poor quality of technology transfer services in the European academic world, and that it could be therefore more efficient to support individual inventors to exploit their research outcomes than to rely on these services. However, researchers do not always have the required resources, skills, mindset and even sometimes the willingness to engage in such an endeavour. Knowledge transfer services – underpinned by dedicated resources and specialised professionals – have therefore for several years been offering the support researchers need to exploit their research outcomes.⁴ Moreover, individual researchers and even start-ups may not have the means to cover the costs of filing and maintaining patents.

2. The EIC inventors' royalty-free access right overlooks and undermines the crucial role of research performing organisations' knowledge valorisation services, including Knowledge (or Technology) Transfer Offices.

These provisions will hinder the support provided by knowledge valorisation services to researchers by unnecessarily making the framework conditions for intellectual asset management more complex. They may indeed create difficult situations when multiple inventors have different rights (if they are not all 'EIC

¹ European Commission (2022) *Council Recommendation on the guiding principles for knowledge valorisation*.

² Council of the European Union (2022) *Conclusions on the New European Innovation Agenda*.

³ European Parliament (2022) *Report on the implementation of the European Innovation Council*, Report 2022/2063(INI).

⁴ European Commission (2021) *Stakeholder consultation on the guiding principles for knowledge valorisation : report of the results*. Publications Office of the European Union. DOI: 10.2777/87803

inventors'). This complexity would be even greater in the event of joint ownership between several project partners.

EIC beneficiaries can request the suspension of the EIC IP provisions in certain circumstances. However, if this exemption is to be requested for each possible EIC inventor, it will create high administrative burdens on the research-performing organisations diverting their resources away from the conduct of actual knowledge valorisation activities. Project-level negotiations to opt out from the default EIC inventors' access rights will similarly slow down the setting up of consortium agreements and increase red tape. Therefore, we urge the European Commission to remove the provisions on the EIC inventors' royalty-free access rights from the Horizon Europe Model Grant Agreement and the EIC work programmes as recommended in the European Parliament's report on the implementation of EIC.

3. Fragmenting the rights of exploitation of IP between several actors and the fact that therefore only non-exclusive licenses can be granted to start-ups will drive away investors who generally only invests if start-ups are equipped with exclusive IP rights.

We stress that, instead of granting researchers royalty-free access rights, a more appropriate approach would be to license spinouts, which were created by researchers and other companies, exclusive exploitation rights in specific fields of application. This would enable research-performing organisations to maximise the exploitation of the intellectual assets produced by their researchers and, for instance, to create several start-ups based on the same patent in other fields of application and to terminate the exclusive license when relevant. Furthermore, an exclusive licence on a patent is more attractive to investors than royalty-free access rights. It also gives licensees the crucially strategic possibility to enforce or assert their IP rights.

4. The definition of the EIC inventors⁵ erroneously conflates "inventorship", usually used in international patent law and national legislation, for the inventor of a patent, and "authorship", usually used for the author of a scientific publication.

5. The new EIC IPR provisions create additional uncertainties that may affect knowledge valorisation.

They relate to the definition of EIC inventors, the requirement to suspend royalty-free access rights, the applicability of the EIC inventors' access rights to non-patentable intellectual assets, the background and sideground knowledge necessary for the exploitation of EIC project outcomes, the implication of the indefinite nature of EIC inventors' access right, etc.

6. The EIC IP provisions are problematic for many research-performing organisations as they may conflict with their institutional, regional or national rules on handling IP and sharing royalties.

These rules were often adopted in line with the 2008 Commission Recommendation on the management of intellectual property in knowledge transfer activities and Code of Practice by universities and other public research organisations. They also follow the model of the Bayh Dole Act and the Stevenson Act that have demonstrated their effectiveness in spurring innovation in the United States.

In conclusion, the EIC IP provisions are not only counterproductive and hinder knowledge valorisation, but they are also unworkable. We strongly recommend that the European Commission implements in the EIC the same IP provisions as in the rest of Horizon Europe (traditional IPR provisions). The undersigned associations and their experts remain ready to provide additional input on this topic and are available for further discussion with EU institutions to ensure a successful implementation of the EIC.

⁵ "EIC Inventors: with reference to information and results owned by any EIC beneficiary that is a not-for-profit legal entity, any of their employees and subcontractors, established in a Member States or Associated Country, and appearing or entitled to appear as inventor in any corresponding publication or patent filing."



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