

20 June 2012

Response to the EP draft reports on Horizon 2020 of rapporteurs Mrs. Riera Madurell, Mr. Ehler and Mrs. Carvalho

Introduction

BUSINESSEUROPE is broadly supportive of the proposal for Horizon 2020. It includes many improvements compared with the current Framework Programme that should make EU R&I spending more effective in improving the competitiveness of European companies and speeding up market uptake of innovation.

If properly implemented, Horizon 2020 will allow European business to strengthen its role as a leading global actor, in particular delivering new solutions for the societal challenges identified by the Commission.

BUSINESSEUROPE welcomes the work by the EP rapporteurs to improve the Commission's proposals. However, we are concerned by some provisions that may change the balance between research and innovation and therefore unfavorably affect the participation of industry.

It is essential to improve the attractiveness of the programme for industry supporting innovation, providing adequate reimbursement and reducing the bureaucracy and the administrative obligations as much as possible. BUSINESSEUROPE also suggests considering at least 35% of total funding in Horizon 2020 as a yardstick for adequate involvement of the business sector.

We therefore would like to highlight below the issues that in the view of European business still need to be addressed, specified or re-drafted in the amendment's phase.

Draft report for a regulation establishing Horizon 2020 – Rapporteur Mrs. Riera Madurell

- The key role played by business in R&I and in reaching EU's goals of growth and competitiveness is not sufficiently highlighted in the text. Whereas large companies and SMEs together perform well over 60% of all R&D in Europe, private sector participation in the research framework programmes has been declining steadily and it is around 31% so far in FP7.

Boosting business' participation in Horizon 2020 must be an explicit priority of EU policy makers.

AM: 21

- The importance of financing and supporting innovation and close to market activities is diminished compared to the original Commission's proposal.

A stronger focus on collaborative innovation is essential to encourage business' participation and to fill the gap between research and market deployment of innovative products.

AM: 2, 74, 88, 102

- Provisions strengthening the interfaces between Horizon 2020 and Cohesion funds are a very good way of empowering the research and innovation capacity of regions currently underperforming in Europe.

However, it is essential to draw a clear distinction between the way funding is allocated: **all financing under Horizon 2020 should be allocated on the basis of the criteria of excellence in research, impact and quality & efficiency of the implementation, with the ERC as the only exception. R&I in cohesion policy should focus on capacity building.**

AM: 118

- We support the basic principles of the Charter for Researchers and the Code of Conduct for their Recruitment. Nevertheless, there are some serious concerns regarding the full implementation of every element as this may not be possible for all the stakeholders, e.g. in industry, including SMEs.

The voluntary character of the Charter must be explicitly mentioned in Horizon 2020.

AM: 9

- Amendments suggesting that funding provided by Horizon 2020 should be designed in accordance with State aid rules could lead to legal uncertainty as State aid rules have been specifically drafted for Member States.

Instead of referring to the State aid rules, it would be better if the Horizon 2020 provisions themselves were to clearly indicate which boundary conditions will apply. AM 11 of Mr. Ehler's draft Report on the Rules for Participation is adequate in this respect; a similar amendment would be needed for the proposed regulation establishing Horizon 2020.

AM: 20

- The report suggests that "Horizon 2020 should experiment with online open access to scientific data produced or collected by publicly funded research aiming at open access to such data becoming the general rule by 2020".

Any obligation on open access would be acceptable only if:

I) the scope is limited to published versions or final manuscripts accepted for publication; II) there is no obligation to publish; III) there is no interference



with commercial exploitation of research results or the possibility to protect results by intellectual property rights such as patents.

Policies for promoting open access to results from publicly funded research other than scientific publications or their final manuscripts accepted for publication should only apply on a voluntary basis and provided that the legitimate interests of all partners in the consortia are not adversely affected.

AM: 10, 46, 119

- The aim of supporting gender balance in the programmes, evaluation committees, expert and advisory groups and decision making bodies of Horizon 2020 is shared by the business community. However, it is unclear how this would work in practice; the impact on any gender-related requirement under Horizon 2020 should be carefully evaluated.

The most effective way of promoting gender balance in EU R&I funding activities implies addressing the issue since the education and training phase.

AM: 43, 44, 64, 110, 111, 119

- According to the Commission's proposal PPPs shall be identified and implemented following some criteria, including their impact on industrial competitiveness, sustainable growth and socio-economic issues. It is proposed to measure such impact through societal and competitiveness objectives, including job creation and educational/training targets.

It will be important to better define which PPPs will be subject to the "impact assessment" on competitiveness, sustainable growth and socio-economic issues (JTI already have such requirements), who will be in charge to perform the assessment and how its costs will be managed.

AM: 53

- The proposed **SME instrument** to provide simplified and staged support throughout the innovation cycle is a step forward but its functioning and its implications for SME participation in regular collaborative projects need to be clarified.

In spite of specific **SME actions**, **SMEs should not operate in a separate environment**. Research intensive and non-research intensive SMEs should have the possibility to cooperate with successful innovative large companies. Past experience during the FP7 indicates that the **involvement of large companies in support actions for SMEs can be beneficial**.

It should be clarified whether large companies cooperating with SMEs through the dedicated instrument will be entitled to some reimbursement of costs incurred; this would encourage their participation and ultimately also benefit participating SMEs.

BUSINESSEUROPE also welcomes the proposal of the Council (partial general approach 30 May 2012) to increase the budget for SMEs to a minimum of 20%



of the total combined budget for the specific objective on "Leadership in enabling and industrial technologies" and the priority "Societal challenges".

AM: 49, 146, 147, 148, 149, 150

- **Requirements for monitoring and evaluation of activities financed by the European Institute of Innovation and Technology (EIT) should strike the right balance between trust and control avoiding the creation of excessive and burdensome bureaucracy.**

AM: 207-215

Draft report on the Rules for the participation and dissemination in Horizon 2020 – Rapporteur Mr. Ehler

- **Flexibility will be needed to adapt Horizon 2020 priorities and actions to changing needs and to take account of the evolving nature of science, technology, innovation, markets and society.** This principle still needs to be included and translated into concrete provisions in the Rules for Participation which fail to provide also ongoing projects with the flexibility needed to adapt to market developments and retain their industrial relevance.

- **Clarity is needed regarding the proposed flexibility in the application of the Rules for participation for funding bodies.**

The report introduces some flexibility in the application of the Rules for Participation in relation to the EIT (AM 14) and public private partnerships (AM 105). It is necessary to better specify the scope of these provisions and ensure coherence among the articles of the Report.

AM: 14, AM 105

- **“Demonstration activities” should not be included in the definition of Close to Market Activities (CtM).** In FP7, demonstration activities carried out by industry are reimbursed up equivalent to research (i.e. currently to a maximum of 50% of eligible costs); this equivalent treatment of demonstration and research should be continued in Horizon 2020.

The collaborative aspect of innovation / CtM activities should not be underestimated when setting the rules for the reimbursement of eligible costs. Funding of innovation activities under Horizon 2020 will make possible for different industrial, academic and research stakeholders to cooperate on common projects with potential to deliver concrete innovative results to the market.

AM: 17

- **Reimbursement of eligible costs. European business welcomes the re-introduction of full costs as an option for reimbursement.** This option must be defended during the negotiations with the other EU institutions and kept in the final text of the Rules for Participation. The level of reimbursement of full costs for industry under Horizon 2020 must not be lower than what currently granted in FP7.

BUSINESSEUROPE suggests improving the Commission’s proposal on reimbursement rates for direct and indirect eligible costs:

- total eligible costs should be reimbursed up to 100% for research actions and up to 70% for innovation / Close to Market actions;
- indirect eligible costs should be calculated applying a flat rate of 30% to the total direct eligible costs.

AM: 53, 54, 55, 56



- **The provision limiting the financial responsibility of each participant to its own debt is unclear and needs to be better specified to avoid a too far reaching interpretation.**

Since participants in a project have a joint and several liability for the technical implementation of the project, "own debt" could also be extended to the debt that is incurred for reason of not performing the obligations from another participant under the joint and several technical liability. It should be clarified in the Rules that a participant can never be financially liable for funding that it has not directly received itself.

AM: 47

- According to the draft report, the reimbursement of management activities is only possible as a flat rate of direct eligible costs. **It must be clarified how management activities will be reimbursed in case full costs are chosen as the method of cost calculation.** FP6 and FP7 are appropriate references for this purpose.

AM: 57

- **The certification of the methodology for calculating eligible costs must not be compulsory as this would result in major extra administrative burden for companies.** Such certification should remain optional in line with requirements under the Framework Programme 7.

AM: 67

- **Evaluation of projects.** For the activities under Industrial Leadership and Societal challenges, **a greater involvement of evaluators from the industrial sector would be desirable** as the evaluation process is currently very "academia-oriented".

In Industrial Leadership at least 50% of the evaluators should be indicated by the industrial sector (they may also come from universities, as long as they have specific skills in the field of industrial processes or relevant experience in industry).

AM: 72

- **The default regime for joint ownership of intellectual property (IP) should be a regime that supports exploitation and does not drive parties away from genuine collaboration. That regime should support unrestricted use by a joint owner and its affiliates of its joint IP, without giving notice or paying compensation to another joint owner.** Parties however should have the freedom to deviate from that if they explicitly so agree.

AM: 77



- **Except for scientific publications, there should be no obligation to grant open access to data, knowledge or information generated as a direct result of Horizon 2020 funding**

Unrestricted dissemination may deteriorate the value of the results of publicly funded projects and discourage parties to invest themselves in these types of projects or in the commercialisation of the results. Policies for promoting open access to results from publicly funded research other than scientific publications or their final manuscripts accepted for publication should only apply on a voluntary basis and provided that the legitimate interests of all partners in the consortia are not adversely affected.

AM: 85

- **Contractors engaged in pre-commercial public procurement should not risk losing their IP ownership rights for reason of lack of commercialization**, which can be due to specific market circumstances, or based on other legitimate decisions from the contractor. Moreover, it is unclear by when the obligation to commercialize results should apply, leading to legal uncertainty. The regulation should not substitute freedom of contract here, i.e. a mutually agreeable solution suitable for the project in question between the parties.

AM: 103

- **Transfer and exclusive licensing – right to object by the EU Commission.** With regard to results which are generated by participants having received EU funding, **in principle the Commission should not interfere with transfers of ownership or to grants of an exclusive licence to third parties established in a third country not participating in the programme.** This would significantly limit companies' rights to sell patents and therefore the value of patents generated from EU funded projects would decrease.

However **in limited circumstances this right to object to a transfer might be in the interest of Europe.** We therefore propose that obtaining the consent from the EU Commission is not set as the rule, but as the exception for specific circumstances when the European interests are at stake. The Rules therefore should only provide a basis that grants the Commission the right to object, by means of a special clause in the specific grant agreement of those projects in which it is likely that EU interest might be at stake in case of a transfer outside Europe.

- **Regarding public - public partnerships, a financial commitment of participating entities either in cash or in kind should be admitted as a precondition for top-up funding through an ERA-NET instrument** (as in the partial general approach reached by the Council on 30 May 2012).

AM: 106

- **SME Instrument:** see point in the section dedicated to the Report by Mrs. Riera Madurell. AM: 107

Draft Report on the Specific Programme Implementing Horizon 2020 – Rapporteur Mrs. Carvalho

- **On open access**, see relevant point in the section on the report by Mrs. Riera Madurell (p.1).

AM: 28

- **A stronger focus on collaborative innovation is essential to encourage business' participation and to fill the gap between research and market deployment of innovative products. Therefore we oppose any weakening of the provisions regarding the financing of innovation included in the Commission's proposal.**

To ensure adequate potential for delivering concrete results in innovation, all financing under Horizon 2020 should be allocated on the basis of the criteria of excellence in research, impact and quality & efficiency of the implementation, with the ERC as the only exception.

AM: 48, 49, 50

- **SME Instrument:** see point in the part dedicated to the Report by Mrs. Riera Madurell.

AM: 30