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WORKING PAPER

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NOTE

From:	Presidency
To:	Working Party on Research
Subject:	GERMAN PRESIDENCY SUMMARY: EXPLANATIONS ON ARTICLE 18(5) - REGULATION ON HORIZON EUROPE as provided (orally) by the Chair of the Research Working Party, 14 September 2020

Delegations will find attached the GermanPresidency Summary: "EXPLANATIONS ON ARTICLE 18(5) - REGULATION ON HORIZON EUROPE" as provided (orally) by the Chair of the Research Working Party on14 September 2020.

GERMAN PRESIDENCY SUMMARY:
EXPLANATIONS ON ARTICLE 18(5) - REGULATION ON HORIZON EUROPE
as provided (orally) by the Chair of the Research Working Party, 14 September 2020

The **additional provision the Presidency introduced in Article 18(5)** is aimed at **better safeguarding the Union's interests**.

General context of this provision:

At global level, **Research and Innovation (R&I) thrive in a rules-based, free-market environment**, with a **level-playing field**, supported by pro-innovation policies. The EU advocates, vis-à-vis its international partners, these **fair and non-distortive policies**, in line with international obligations.

However, **when a level-playing field is not reached with international partners, the interests of the EU could be put at risks**. For these reasons, the **EU is equipping itself with the necessary tools to face unfair practices** that could undermine its security and economic interests: the EU has set up the FDI screening (REGULATION (EU) 2019/452) and the Commission has adopted a White Paper on foreign subsidies in the single market.

A **similar tool is needed for the R&I cooperation in Horizon Europe**. For instance, because of EU openness, some third country-owned EU companies enjoy rights that EU-owned companies established in some third countries don't, such as access to R&I programmes to the same extent as local companies, or the possibility to export technologies and data outside third country territories. These unfair practices favour our competitors and damage the EU interests.

In order to **better protect its interests**, but also to **allow the EU to have the necessary leverage when negotiating a level playing field and reciprocity** with certain international partners, **a provision such as the new provision suggested in Article 18(5) is needed**. It would provide the basis for a well targeted and reciprocal restriction of participation in duly justified and exceptional cases. Any exclusion should be proportionate to the risks the inclusion of concerned individual entities would represent on the one hand, and the benefits that their participation would incur on the other hand. This would also be consistent with a similar provision in the Digital Europe Programme.

The **situation in Horizon Europe is particular**. **Amongst all EU programmes, Horizon Europe is by design the most open for international participation.** This is a **strength of the programme, but at the same time**, it

can make the programme – especially in a changed international environment as we face it today – **much more vulnerable**. Therefore, it is of particular importance for this open programme not to be naïve, but to equip it with the appropriate protection tools to defend EU interests. As a matter of fact, this is a **delicate balance between openness to the world and the protection of the interests of the Union and its Member States**. At the end of the day, **it's about being "as open as possible and at the same time as closed as necessary"**.

On the **specific concerns** that were raised in the last meetings:

- The question of preferential treatment of EEA Members

The question came up if the reference to the EEA agreements in the same paragraph could lead to a preferential treatment of EEA Members. Under **Article 81 (d) of the EEA Agreement**, it is stated that the *"institutions, undertakings, organizations and nationals of **EFTA States shall have the same rights and obligations in the Community programme or other action in question** as those applicable to partner institutions, undertakings, organizations and national of EC Member States".*

The Presidency's conclusion out of this is that the **work programme can limit the participation to the entities established in the Member States and in the EEA States**.

Moreover, reference can also be made to **Article 123 of the EEA Agreement**.

Therefore, **the Presidency does not see legal grounds for a preferential treatment of the EEA countries based on the current wording of Article 18(5).**

However, in order to make the wording of the paragraph clearer, the Presidency **changed the order** and added the new provision on the legal entities controlled by third countries at the very end of the paragraph.

- Limitation to non-associated third countries

Another change made in the 2nd Presidency text refers to concerns raised by Member States on the **scope of this possible exclusion from participation**.

In the 2nd Presidency text, the **scope** of the possible exclusion of legal entities is **limited** to such entities controlled by **non-associated third countries**.

- Limitations only in duly justified and exceptional cases

Following concerns about the use of this provision, the Presidency also **added the term "exceptional"** in order to underline the intention to use this provision **"for duly justified and exceptional reasons".**

Furthermore, the Presidency added the formulation that such entities would be excluded **"from individual calls, or make their participation subject to conditions set out in the work programme"**.

It is in this framework that the **use of these tools will be considered in the design of the work programmes with full involvement of Member States**.

- Why are the initial provisions not enough?

The **previous wording is not sufficient**: The first sentence of Article 18(5) looks at the mere fact of the place of establishment of an entity and disregards the economic reality that the question of the place of establishment is of diminishing importance in a globalised economy.

Therefore, it is **necessary to also cover the case of entities which, although formally set up under the law of the Member States, are, in fact, an extended arm of international competitors in key strategic technologies**. In these cases, it should be possible (and transparent), to **exclude in a restricted way and after full consultation with the Member States** such entities where this danger is evident.