

## **EIC provisions for inventors should focus on clarity and providing appropriate support**

**The Guild expresses concerns about the provisions in the Horizon Europe grant agreement that give ‘EIC inventors’ indefinite royalty-free access rights with the assumption that this would facilitate the exploitation of research outcomes. It would be more effective and relevant to ensure that universities have the adequate resources (in terms of skills, infrastructures, and finance) to perform their mission of knowledge valorization. The Guild also notes that the EIC inventor provisions lack clarity and sometimes conflict with institutional, national, and regional rules. The resulting uncertainties negatively affect the exploitation of research results by universities.**

### **Introduction**

The Guild praises the European Innovation Council (EIC) and its ambition to bring about a step-change for innovation in Europe.<sup>1</sup> It particularly welcomes the support provided to research teams for building on promising research results. However, it is concerned that the standard Intellectual Property (IP) provisions in EIC Pathfinder and EIC Transition create serious obstacles to qualitative knowledge valorization in most universities.

The EIC work programme and the Horizon Europe Model Grant Agreement (MGA) state that *“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., the university employing the EIC inventor] 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) [...]”* in the MGA Annex 5. The EIC Work Programme 2022 adds that *“If the EIC awardee provides support to the EIC Inventor for any such exploitation, royalties may be shared with the EIC awardee in mutually beneficial terms, provided the conclusion of any such agreement does not prevent the EIC Inventor(s) to exercise its(their) rights.”*

### **Questionable relevance of the EIC inventor provisions**

The Guild questions the rationale for the EIC inventor provisions and therefore their relevance. They seemingly rely on the assumption that researchers with royalty-free and indefinite access rights are best placed to exploit the results of their research and that the barriers to knowledge valorization result from limitations in their universities’ activities. The Guild highlights nevertheless that researchers do not systematically have the sufficient resources, skills, and even sometimes willingness to engage in the exploitation of their research results, hence their need to be supported in this complex endeavour by knowledge transfer services in their universities. According to a survey on the Guiding Principles for Knowledge Valorisation conducted in 2021, the main obstacle to knowledge valorization in Europe is

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<sup>1</sup> The Guild (2018) *Bolstering Europe’s innovation ecosystems: Research, creativity and co-creation*. [Position Paper on innovation in the ninth Framework Programme](#).

the “limited knowledge valorization skills among researchers (including entrepreneurial skills)<sup>2</sup>. Also, while training programmes may aim at improving these skills, the European Commission recognized that researchers should not be expected “to excel in all types of tasks nor contribute to all types of (potential) impacts”<sup>3</sup>. Even research systems that rely on the assumption, for instance through their “professors’ privilege”, that researchers are best placed to engage in the exploitation of research results, recognise the need to provide these researchers with support services to assist them, where appropriate, with the maximisation of the social, economic and cultural impacts of their research results.

The Guild re-asserts the crucial role of knowledge and technology transfer offices (KTOs/TTOs) in the exploitation of research results. In a recent report, the European Commission similarly identified them as one of the Knowledge Valorisation tools and even noted that their “proximity to researchers is crucial during various stages of the commercialization process”<sup>4</sup>. Therefore, The Guild encourages better alignment between EU Knowledge Valorisation policies and the EIC Inventors’ provisions.

It is the understanding of The Guild that the EIC inventor provisions aim to ensure that researchers employed in universities without any functional and supportive KTO/TTO in place could still have the means to exploit their research results. The Guild does not endorse this approach and especially not as ‘by default’. The provisions as they currently stand will negatively affect the functioning of already well-performing TTOs/KTOs without strengthening the capacities of weaker TTOs/KTOs. Therefore, The Guild urges the European Commission to revise its approach and ensure that the appropriate framework and structural conditions are in place to enable TTOs/KTOs to support researchers.

The Guild acknowledges that some researchers have the right skills and the mindset already to exploit successfully their research outcomes, for example where the legal framework and support systems for exploiting outcomes are aligned with the premise that researchers are well placed to engage in the exploitation of their research outcomes. However, we assert that investing in individual researchers generates a lower spillover effect in comparison with investments in TTOs/KTOs. Ensuring instead that research performing organizations across Europe have well-functioning TTO/KTOs in place would be a more effective and efficient approach to maximize exploitation of research results. It would also encourage universities to engage in, and support, the development and well-functioning of innovation ecosystems.

The Guild also highlights that innovation is a collective endeavour often benefitting from multiple funding sources. Because the EIC is, to the best of our knowledge, the only funding instrument offering royalty-free access rights to inventors, it may create situations in which members of the same research team have different rights over the research results. Therefore, The Guild voices the concern that the EIC inventor provisions may affect team spirit while making collaboration even more complex.

## Legal uncertainties

The legal provisions on EIC inventors as they are currently phrased in the aforementioned documents cause uncertainties affecting the research exploitation activities of universities. Despite the definition

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<sup>2</sup> European Commission (2021) *Stakeholder consultation on the Guiding Principles for Knowledge Valorisation*. Report of the results. Luxembourg: Publications Office of the European Union. DOI: [10.2777/87803](https://doi.org/10.2777/87803).

<sup>3</sup> European Commission (2021) *Towards a reform of the research assessment system*. Scoping Report. Luxembourg: Publications Office of the European Union. DOI: [10.2777/707440](https://doi.org/10.2777/707440)

<sup>4</sup> European Commission (2020) *Research & Innovation Valorisation Channels and Tools: Boosting the transformation of knowledge into new sustainable solutions*. Luxembourg: Publications Office of the European Union. DOI: [10.2777/04662](https://doi.org/10.2777/04662).

of 'EIC inventor' given in the Work Programme (but still absent in the MGA), it is still uncertain as to whether 'EIC inventors' consist of only the researchers conducting certain research activities in EIC-funded projects or, more broadly, of all support staff involved. The provisions refer also to "support to the EIC inventor" that universities could provide, without giving any guidance on what type of support this entails. Moreover, considering that the EIC grant agreements are signed by the entities employing the researchers (and not by the individual researchers), it is unclear on which legal basis the EIC inventors – therefore not parties in the grant agreements - could lawfully claim their royalty-free access rights. This lack of clarity affects the knowledge valorization activities of EIC-awarded universities.

These provisions are also problematic for many universities as they may conflict with their institutional rules or national and regional regulations on handling IP or exploiting research results. This holds true even in EU member states where the so-called professor's privilege applies and provides thereby researchers with a large responsibility in the exploitation of their research results. These researchers may indeed need to share royalties with their universities. Therefore, The Guild invites the European Commission to acknowledge the diversity in knowledge valorization strategies and practices across Europe, to assess the coherence of the EIC inventor provision with national and regional regulatory frameworks across Europe and, based on this assessment, to propose amendments to the Horizon Europe grant agreement.

The Guild notes that universities and other research-performing organizations may ask for exemptions to these rules on a case-by-case basis. To avoid any unnecessary administrative burdens that such requests may create, The Guild advocates instead for a systematic exemption to the EIC inventor rule for the research-performing organizations with KTOs/TTOs, accompanied by measures to support the knowledge valorization activities of these organizations.