



Brussels, 7.3.2023
COM(2023) 113 final

2023/0059 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion of the Agreement between the European Union, of the one part, and
New Zealand, of the other part, on the participation of New Zealand in Union
programmes**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 6 December 2021, by a Letter of Intent, New Zealand expressed its formal interest to associate to Horizon Europe.

New Zealand and the European Union have a history of fruitful cooperation in research and innovation. A Scientific and Technological Cooperation Agreement has been in force between New Zealand and the EU since 2009 providing a general legal framework for strengthening the cooperation between both Parties in this field and the forum for regular discussions of their research priorities and areas of common interest.

New Zealand has had a strong record of participations in the previous two Framework Programmes for Research and Innovation- the FP7 and Horizon 2020. Dozens of researchers have come to Europe with Marie Skłodowska-Curie Actions (MSCA) funding and New Zealand shows excellent figures in terms of overall New Zealand participation under Horizon 2020, with 77 participations.

The exploratory phase has clarified New Zealand's interest in associating to Horizon Europe's Pillar II (*'Global Challenges and European Industrial Competitiveness'*). This pillar is characterised by existing inter-linkages between its clusters, as well as by the multi- or interdisciplinary nature of many projects. Its collaborative research orientation, and the priorities outlined in its clusters are rich in potential synergies with the New Zealand R&I system, and corresponds to both Parties' strong political will to address together global issues such as climate change, health, energy and mobility, food, bioeconomy and natural resources, environment.

Article 16(1), point (d) of the Horizon Europe Regulation concerning the association of third countries to the programme provides for the possibility of association of third countries and territories that jointly fulfil all of the criteria spelled out therein. Such third countries or territories are to participate in the Horizon Europe programme on the basis of an agreement covering the participation of the third country or territory to any Union programme.

New Zealand fulfils those cumulative criteria, notably, it has a good capacity in science, technology and innovation; it is committed to a rules-based open market economy, including fair and equitable dealing with intellectual property rights, respect of human rights, backed by democratic institutions; and it actively promote policies to improve the economic and social well-being of its citizens.

On 9 September 2022, the Council authorised the Commission to open negotiations, on behalf of the Union, with New Zealand on an Agreement between the European Union and New Zealand on the general principles for the participation of New Zealand in Union programmes and New Zealand's association to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027)¹. The Research Working Party and the COASI Working Party were appointed by the Council to act in the capacity of the special committees to assist the Commission during negotiations.

Negotiations began on 28 October 2022 and concluded on 20 December 2022. The text of the draft Agreement was initialled by representatives from each of the future Parties on 22 December 2022. The Research Working Party and COASI Working Party were regularly consulted during negotiations and the European Parliament was kept regularly informed.

¹ Council Decision (EU) 2022/1527 of 9 September 2022 authorising the opening of negotiations with New Zealand for an Agreement on the general principles for the participation of New Zealand in Union programmes and on the association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) (OJ L 237, 14.9.2022, p.18).

In line with the negotiating directives, which the Commission obtained from the Council, the Agreement annexed to this proposal is composed of two parts, notably the general principles for the participation of New Zealand in Union Programmes and the Protocol on the terms and conditions for the association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027). The latter part is embedded into the Protocol, forming an integral part of the Agreement.

The Agreement comprehensively regulates the conditions of association of New Zealand applicable across all Union programmes. It governs the terms and conditions for participation in EU programmes, modalities for establishing participation in (association to) any given Union programme and the involvement of New Zealand in the governance of the Union Programmes or activities (reflecting the principle of no decision making powers). It contains detailed rules for the establishment of the financial contribution of New Zealand to the Union Programmes, including, where applicable, an automatic correction mechanism. The Agreement contains comprehensive rules for the protection of EU financial interests across all EU programmes, including powers which the Commission, European Court of Auditors, OLAF and EPPO exercise to that end, as well as rules allowing for swift recovery of financial amounts due by New Zealand beneficiaries, pursuant to adoption of Commission decisions on recovery or judgments of the Court of Justice of the European Union addressed to New Zealand beneficiaries in any Union Programmes to which New Zealand may become associated. The Agreement also establishes institutional structures, i.e. a Joint Committee tasked with inter alia monitoring of the implementation of the Agreement and examining how to improve and develop the cooperation under the Agreement.

The Agreement is meant to create a lasting legal framework for cooperation between the Union and New Zealand in relation to Union programmes. It is expected to remain in force for several Multi-annual Financial Frameworks of the EU, similarly to the Agreement on the European Economic Area, the EU-UK Trade and Cooperation Agreement or the framework agreements with Enlargement and European Neighbourhood Partnership countries on the general principles for participation of these countries in EU programmes. Protocols on association of New Zealand to each specific Union programme could be added to this Agreement in the future, if such Programmes are open to New Zealand participation under EU basic acts establishing each relevant Programme, and if this is the political wish of both Parties, and following the completion of required internal procedures. The duration of the Protocols is expected to be limited in time to the implementation of any particular Union programme.

It is proposed that the Protocols will be adopted via consensual decisions of the Joint Committee, which this Agreement will establish.

All essential elements pertaining to cooperation between the EU and New Zealand in Union programmes are comprehensively regulated in the Agreement. Article 3(4) of the Agreement specifically pre-defines and restricts the content of the future Protocols to: identifying the relevant Programme, activity or part thereof; setting the duration of the association; regulating matters which are programme-specific and not otherwise regulated in the Agreement and – in specific cases where the Union programme is implemented through a financial instrument or a budgetary guarantee - laying down the amount of New Zealand's contribution to such a Union programme.

The first such Protocol on Horizon Europe association was negotiated in parallel to the provisions of the Agreement on general principles of New Zealand's participation in Union programmes and forms an integral part of the Agreement, which is now being proposed for conclusion by the EU. This way of proceeding was authorised by the Council in the negotiating directives of 9 September 2022. In order to be able to grant privileged access to

the Calls of Horizon Europe Pillar II under the Work Programme 2023-24 the Agreement also provides for provisional application.

Regarding the programme-specific terms and conditions providing for the association of New Zealand to the Horizon Europe Framework Programme, they provide – in line with the recommendation of the Council – for association to the Pillar II of the Programme.

Following an internal analysis of the benefits for the Union, an assessment was made to limit the scope of the associations of Horizon Europe category (d) countries to Pillar II of Horizon Europe programme. Pillar I of the programme primarily aims to strengthen the EU's own science and technology bases, build-up European research and innovation capabilities and attract knowledge and talents to Europe. Pillar III focuses on the competitiveness and the innovative capabilities of the EU. Thus Pillar II was considered the most appropriate for opening to association of highly-industrialised countries located not in the Union's geographic vicinity (without prejudice to any decisions concerning a different scope of possible future association should it be regarded in EU interest).

The policies of the New Zealand government in areas such as climate change and carbon-neutrality point to the long-term potential for developing synergies in Pillar II between researchers from the Union and New Zealand, particularly given Horizon Europe's key objective of tackling climate change.

An association of New Zealand to Pillar II is expected not only to strengthen an already strong cooperation in areas of mutual interest, but also to contribute to unlocking pre-identified potential for cooperation in other areas of significance, such as administrative big data and precision agriculture, sustainable energy, earthquake research or industrial innovation. The identified 'niches of excellence' in the New Zealand research system include bioengineering in medicine, optimisation in industry and services, and Antarctic Research. In the Pacific region, the EU cooperates with New Zealand on a number of issues including climate change, regional integration, ocean governance, fisheries (including Illegal Unreported and Unregulated Fishing) and security (including maritime security). New Zealand is additionally leading in terms of inclusive research by encouraging the incorporation of indigenous knowledge (Mātauranga Māori) across all disciplines.

Cooperation through association between the EU and New Zealand would enhance the EU's innovativeness and competitiveness. Given the high success rate and high quality of applications and proposals by entities from New Zealand, association would also contribute to improving the overall quality of projects funded under Horizon Europe, as well as help create synergies and competitive advantages at a global level. It is foreseen that association could lead to a significant increase in terms of cooperation as the EU is New Zealand's most significant regional science and innovation partner, with more than half of New Zealand's researchers regularly engaged in active collaborations with EU partners. Around 4,000 businesses in New Zealand report performing R&D, with many more engaging in innovation. New Zealand has 8 Universities, 7 Crown Research Institutes, and a number of independent research organisations dedicated to research activity. It is important to underline that New Zealand is de facto dependent on international research collaboration with other countries in order to conduct frontier research in a number of areas, which explains New Zealand's high level of interest in cooperation with the EU and other major Science, Technology and Innovation players across the globe such as the USA, China, Japan or South Korea.

The already close cooperation between the Union and New Zealand research entities is expected to be further strengthened through the provisions of the Protocol requiring opening of programmes and activities equivalent to Pillar II of Horizon Europe to the participation of

EU-based research entities (with an indicative list of relevant New Zealand programmes contained in the Annex to the Protocol).

The proposed new agreement sets out fair and balanced conditions concerning the financial contribution of New Zealand to the Horizon Europe Programme, particularly through the application of the automatic correction system, implementation details thereof being laid down in the Protocol.

The draft Agreement annexed to this proposal for a Council decision is in line with the negotiating directives issued by the Council.

2. LEGAL ELEMENTS OF THE PROPOSAL

The proposal for a Council decision is based on Articles 186 and 212 in conjunction with Article 218(6), point (a) of the Treaty on the Functioning of the European Union.

The consent of the European Parliament will be required under Article 218(6), point (a) TFEU for the conclusion of the Agreement annexed to this proposal.

In the light of the above, the Commission proposes that the Council conclude the Agreement on behalf of the European Union.

3. BUDGETARY IMPLICATIONS

The Legislative Financial Statement presented with this Decision sets out the indicative budgetary implications.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 186 and 212 in conjunction with Article 218(6), point (a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament²,

Whereas:

- (1) In accordance with Council Decision (EU) .../...³, the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New in Union programmes ('the Agreement') was signed on behalf of the Union on ... [*date of signature*] subject to its conclusion at a later date.
- (2) The objectives of the Agreement are to establish a lasting framework for cooperation between the Union and New Zealand and to set out the terms and conditions for the participation of New Zealand in the Union programmes which are opened for its participation in accordance with the basic acts establishing Union programmes as referred to in the Agreement. Under the Agreement, the Union will carry out cooperation measures with New Zealand pursuant to Article 212 of the Treaty on the Functioning of the European Union. Pursuant to Article 3 of the Agreement, the specific terms and conditions for the participation of New Zealand in any Union programme or activity are subject to the adoption of Protocols.
- (3) The Union Programme Horizon Europe, the Framework Programme for Research and Innovation for the period 2021–2027, was established by Regulation (EU) 2021/695 of the European Parliament and of the Council⁴. In line with the Council authorisation the Protocol on the association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021–2027) was negotiated in parallel to the Agreement and, pursuant to Article 15(9) of the Agreement, forms an integral part thereof.
- (4) The European Parliament has given its consent to the Agreement on [.../.../...].

² [...].

³ [...].

⁴ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p.1).

(5) The Agreement should be approved on behalf of the Union,
HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and New Zealand on the participation of New Zealand in Union programmes ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is annexed to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the exchange of notifications provided for in Article 15(1) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on [the date of its adoption].

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal for a Council Decision on the conclusion of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes

2. BUDGET LINES:

Revenue line (Chapter/Article/Item): 6 0 1 0 — Horizon Europe — Assigned revenue

Amount budgeted for the year concerned:

(only in case of assigned revenues):

The revenues will be assigned to the following expenditure line (Chapter/Article/Item):

Whole article 01.0101 (01.010101, 01.010102, 01.010103, 01.010111, 01.010112, 01.010113, 01.010171, 01.010172, 01.010173, 01.010174, 01.010176)

Whole article 01.0202 (01.020210, 01.020211, 01.020212, 01.020220, 01.020230, 01.020231, 01.020240, 01.020241, 01.020242, 01.020243, 01.020250, 01.020251, 01.020252, 01.020253, 01.020254, 01.020260, 01.020261, 01.020270)

Article 01.0205

Budget line 20.XX Administrative expenditure of the European Commission

3. FINANCIAL IMPACT

- Proposal has no financial implications
- Proposal has no financial impact on expenditure but has a financial impact on revenue
- Proposal has a financial impact on assigned revenue

The effect is as follows:

(EUR million to one decimal place)

Revenue line	Impact on revenue ⁵⁶	XX months period starting dd/mm/yyyy (if applicable)	Year N
6 0 1 0	18.972	60 months starting 01/01/2023	2.142

Situation following action					
Revenue line	2023	2024	2025	2026	2027
6 0 1 0	2.142	2.958	4.305	4.326	5.242

(Only in case of assigned revenues, under the condition that the budget line is already known):

Situation following action					
Expenditure line ⁷	2023	2024	2025	2026	2027
Articles 01.0101, 01.0202 and 01.0205	2.110	2.900	4.200	4.200	5.040
20.XX	0.032	0.058	0.105	0.126	0.202

4. ANTI-FRAUD MEASURES

Article 325 of the Treaty on the functioning of the European Union (TFEU) requires the Commission to counter fraud and any illegal activities affecting the financial interests of the Union. Preventing and detecting fraud is therefore a general obligation for all Commission Services in the framework of their daily activities involving the use of resources. Fraud involving EU funds has a particularly negative impact on the reputation of the Commission and the implementation of EU policies

⁵ The amounts per year need to be an estimation based on the formula or method defined under section 5. For the starting year, the yearly amount is normally paid without a reduction or pro rata.

⁶ In the case of traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

⁷ To be used only if necessary.

The current Commission Anti-Fraud Strategy (COM(2019)196) was adopted on 29 April 2019, to replace the 2011 Strategy. It is a policy document setting out the Commission's priorities in the fight against fraud in view of the 2021-2027 multiannual financial framework. The 2019 CAFS' main objectives are to 1) "further improve the understanding of fraud patterns, fraudsters' profiles and systemic vulnerabilities relating to fraud affecting the EU budget" (data collection and analysis), and 2) "optimise coordination, cooperation and workflows for the fight against fraud, in particular among Commission services and executive agencies" (coordination, cooperation and processes). The strategy is accompanied by a 63-point action plan, the full implementation of which is, in principle, due for end 2021.

The guiding principles and target standards of the 2019 CAFS are:

- zero tolerance for fraud;
- fight against fraud as an integral part of internal control;
- cost-effectiveness of controls;
- professional integrity and competence of EU staff;
- transparency on how EU funds are used;
- fraud prevention, notably fraud-proofing of spending programmes;
- effective investigation capacity and timely exchange of information;
- swift correction (including recovery of defrauded funds and judicial/administrative sanctions);
- good cooperation between internal and external players, in particular between the EU and national authorities responsible, and among the departments of all EU institutions and bodies concerned;
- effective internal and external communication on the fight against fraud.

The Articles 9 – 12 of the Agreement contain detailed provisions concerning anti-fraud measures. These measures are to be applicable horizontally to ensure protection of EU financial interests across EU Programmes or activities covered in the future Protocols potentially to be adopted by the Joint Committee under the Agreement to associate New Zealand to a number of EU programmes or activities. They are applicable also to the association of New Zealand to the Horizon Europe Programme covered by the Protocol on the association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) which was negotiated in parallel to the Agreement and forms an integral part thereof.

Notably the above-mentioned provisions (Articles 9 – 12 of the Agreement) provide for the necessary details, processes and allows for unhampered execution of tasks by the bodies safeguarding the financial interests of the EU (the Commission, including OLAF, the European Court of Auditors and the EPPO). Throughout the implementation of the Programmes or activities covered by the Protocols to the Agreement, the principle remains the same: the financial interests of the EU are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, to the imposition of the administrative penalties.

In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and ensure that any third parties involved in the implementation of Union funds grant equivalent rights. As expressly provided in Article 9(4) of the Agreement, reviews and audits may be carried out also after the suspension of application of a Protocol, cessation of application or termination of the Agreement.

The Agreement ensures the possibility for the European Anti-Fraud Office (OLAF) to carry out administrative investigations, including on-the-spot checks and inspections on the territory of New Zealand, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union.

As regards the reviews and audits, as well as fight against irregularities, fraud and other criminal offences affecting the financial interests of the Union (Cooperation with OLAF), agents of the institutions and bodies of the Union and the other persons mandated by the European Commission shall act in a manner consistent with New Zealand law.

The Agreement obliges the authorities of New Zealand to cooperate with the European Public Prosecutor's Office to allow it to fulfil its duty to investigate, prosecute and bring to justice the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the European Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

Furthermore the Agreement provides for effective mechanism to ensure swift recovery of financial amounts due from the New Zealand beneficiaries of the relevant Union programmes (i.e. those to which New Zealand is associated) pursuant to adoption of Commission decisions or judgments and orders of Court of Justice in relation to claims stemming from the Programme.

5. OTHER REMARKS

The method for calculation of New Zealand financial contribution across EU programmes is defined in Article 6, 7 and 8 of the Agreement. In relation to the financial contribution of New Zealand to the Horizon Europe Programme, further technical details for application of the automatic correction mechanism are laid down in Article 5 of the Protocol on the association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), and Annex I thereto. The financial contribution model applicable under the Horizon Europe Programme is specific amongst all other EU Programmes, providing for application of an automatic correction mechanism (in line with Article 16 of the Horizon Europe Regulation).