

LERU's concerns on EIC inventors remain valid

LERU statement

Introduction

On 14 June LERU has submitted feedback to Christian Ehler for this EP report on the implementation of the European Innovation Council. In general, LERU is positive about the EIC pathfinder and transition activities in which LERU member universities are actively engaging. However, LERU is still very concerned with the issue of EIC inventors which members find very problematic.

Already in December 2021, LERU voiced its concerns regarding the concept of EIC inventors (<https://www.leru.org/news/leru-raises-concerns-on-eic-inventors>). Since then, a LERU delegation had a meeting with the European Commission to discuss these concerns and other stakeholder organisations have expressed similar criticism on the concept.

In this statement, LERU briefly presents the main issues identified with the EIC inventors and recommendations for the European Commission to address these.

Main issues with EIC inventors

LERU fully supports the goal to increase the exploitation of research results in the EU. However, LERU urges the Commission to consult relevant stakeholders on constructive solutions and ways forward to reach this common goal. The concept of the EIC inventors is conceived on neither on the basis of evidence nor consultation. In fact, it works against common and recognised practices at universities throughout Europe where there is effective commercialisation and, as such, will have a detrimental effect on universities' efforts to create value from research results produced by university staff members.

A specific issue with the EIC inventors is the part of the definition of an EIC inventor in the EIC work programme 2021-2022 that states "a person entitled to appear as inventor in any corresponding publication or patent filing". "Inventorship" is a well-recognised concept, widely used in international patent law and national legislation. The EIC definition does not reflect this, but unhelpfully and erroneously conflates the specific concepts "inventorship" and "authorship". In addition, notions such as 'entitled to appear' or 'any corresponding publication' create uncertainty, room for misunderstandings, potential misuse, and unnecessary disputes.

In general, LERU is concerned that EIC inventors could lead to less research being exploited. EIC pathfinder and transition activities fund early-stage research. Identifying commercial partners who are willing to exploit these results is not straightforward. Potential commercial partners can require exclusivity as a condition for further development of a given technology, especially in domains with very high development costs, such as drug discovery. This exclusivity cannot be guaranteed for EIC projects unless an exemption from the EIC inventors is granted.

As mentioned in LERU's December 2021 statement, asking for an exemption on a case-by-case basis leads to additional red tape for applicants. It also creates a period of uncertainty, especially if it takes long before the exemption is granted. Last but not least, it could hurt one of the most crucial elements in an efficient technology transfer system, namely the relationship of trust between the research institution and the researcher. When asking for an exemption, in order to ensure commercialization, research institutions will de facto request to take away certain rights from researchers. This will not be conducive to a good relationship, even if all parties endorse the intention and end goals of the actions taken.

Against this background of trust and good relations essential for successful technology and knowledge transfer, LERU fears that the EIC inventor concept will make it more difficult for newer TTOs to interact with researchers in a constructive way, while Europe's most established and successful TTOs have to work with a system that does not fit the structure and legal frameworks that have been established over decades. In both cases, it will lead to less technology transfer, not more.

Conclusion and recommendations

There is no evidence that granting access rights to research results to a wider group of people will lead to more exploitation, on the contrary. LERU recognises the good intentions behind this concept but recommends the European Commission to take immediate action to mitigate its potential negative impact:

- 1) the European Commission should guarantee that a research institution applying for an exemption will receive an official response within 30 days. Failure to comply with this deadline means that the exemption will be granted.
- 2) As of the next Work Programme 2023-2024, the definition of the EIC inventors should be changed in order to reflect the recognised concept of "inventorship".
- 3) LERU urges the European Commission to amend the Horizon Europe Model Grant Agreement and repeal the concept of EIC inventors all together.

As always, LERU is open and committed to discuss possible other wording and alternative ways forward in a constructive dialogue with the Commission, the European Parliament and other stakeholders.