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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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

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

EU/NZ/en 1

The European Union, hereinafter referred to as the "Union",

of the one part,

and

New Zealand,

of the other part,

hereinafter referred to individually as the "Party" and jointly as the "Parties",

WISHING to establish a lasting framework for cooperation between the Parties with clear conditions for the participation of New Zealand in Union programmes and activities as well as a mechanism facilitating the establishment of such participation in individual Union programmes or activities;

CONSIDERING the common goals, values and strong links of the Parties established inter alia through the 2016 Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part¹; and the 2008 Agreement on Scientific and Technological Cooperation between the European Community and the Government of New Zealand²; which provide a general framework for collaboration in research and other relevant areas between the Parties, and recognising the common desire of the Parties to further develop, strengthen, stimulate and extend their relations and cooperation;

CONSIDERING the Parties' efforts to lead the response by joining forces with their international partners to address global challenges in line with the plan of action for people, planet and prosperity in the United Nations "Transforming our World: the 2030 Agenda for Sustainable Development", and acknowledging that research and innovation are key drivers and essential tools for innovation-led sustainable growth, economic competitiveness and attractiveness;

ACKNOWLEDGING that Te Tiriti o Waitangi / the Treaty of Waitangi is a foundational document of constitutional importance to New Zealand;

¹ OJ EU L 321, 29.11.2016, p. 3.

² OJ EU L 171, 1.7.2009, p. 28.

RECOGNISING the key importance of the shared fundamental values and principles underpinning international cooperation between the Parties in research and innovation, such as ethics and integrity in research, gender equality and equal opportunities, and the shared objectives of the Parties to foster and facilitate the cooperation between the organisations in the field of research and innovation, including universities, and the exchange of best practices and attractive research careers, to facilitate cross-border and inter-sectoral mobility of researchers, to foster the free movement of scientific knowledge and innovation, to promote the respect of academic freedom and freedom of scientific research, to support science education and communication activities, and, in the case of New Zealand, to ensure the promotion and protection of Mātauranga Māori;

WHEREAS the Union programme Horizon Europe – the Framework Programme for Research and Innovation (the "Horizon Europe Programme") was established by Regulation (EU) 2021/695 of the European Parliament and of the Council¹;

RECOGNISING the general principles as set out in Regulation (EU) 2021/695;

¹ 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 EU L 170, 12.5.2021, p. 1).

ACKNOWLEDGING the intention of the Parties to mutually cooperate and contribute to research and innovation activities and the EU missions aiming at supporting and strengthening research capacities in order to face global challenges as well as to deepen their respective industrial competitiveness, and in turn, to achieve a transformative and systemic impact for the societies of both Parties in support of the United Nations Sustainable Development Goals which are beneficial for both Parties;

EMPHASISING the role of the European Partnerships addressing some of Europe's most pressing challenges through concerted research and innovation initiatives contributing significantly to those Union priorities in the area of research and innovation that require critical mass and long-term vision and the importance of associated countries' involvement in those Partnerships;

RECOGNISING that reciprocal participation in each other's research and innovation programmes should provide mutual benefits; while acknowledging that the Parties reserve their right to limit or condition participation in their research and innovation programmes, including in particular for actions related to their strategic assets, interests, autonomy or security; and, in the case of New Zealand, the duties and responsibilities of the Government of New Zealand related to Te Tiriti o Waitangi/the Treaty of Waitangi,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Subject matter

This Agreement establishes the rules applicable to the participation of New Zealand in any Union programme or activity (the "Agreement").

ARTICLE 2

Definitions

For the purposes of this Agreement, the following definitions apply:

- (a) "basic act" means:
 - (i) a legal act of one or more Union institutions, other than a recommendation or an opinion, establishing a programme, which provides a legal basis for an action and for the implementation of the corresponding expenditure entered in the Union budget or of the budgetary guarantee or financial assistance backed by the Union budget, including any amendment and any relevant acts of a Union institution which supplement or implement that act, except those adopting work programmes; or

- (ii) a legal act of one or more Union institutions, other than a recommendation or an opinion, establishing an activity financed by the Union budget other than programmes, including any amendment and any relevant acts of a Union institution which supplement or implement that legal act, except those adopting work programmes;
- (b) "funding agreements" means agreements relating to Union programmes and activities under the Protocols to this Agreement, in which New Zealand participates, and which implement Union funds, such as grant agreements, contribution agreements, financial framework partnership agreements, financing agreements and guarantee agreements;
- (c) "other rules pertaining to the implementation of the Union programme and activity" means rules laid down in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council¹ ("Financial Regulation") that apply to the general budget of the Union, and in the work programme or in the calls or other Union award procedures;
- (d) "Union award procedure" means a procedure for award of Union funding launched by the Union or by persons or entities entrusted with the implementation of Union funds;

¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ EU L 193, 30.7.2018, p. 1).

- (e) "New Zealand entity" means any type of entity, whether a natural person, legal person or another type of entity, which may participate in activities of a Union programme or activity in accordance with the basic act and that resides or which is established in New Zealand;
- (f) "EU financial year" means the period running from 1 January to 31 December.

ARTICLE 3

Establishment of the participation

1. New Zealand shall be allowed to participate in and contribute to the Union programmes or activities, or, in exceptional cases, parts thereof that are opened to the participation of New Zealand in accordance with the basic acts and as covered by the Protocols to this Agreement.
2. The specific terms and conditions for the participation of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) are laid down in the Protocol on the association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) to this Agreement. By way of derogation from Article 15(8) of this Agreement, that Protocol may be amended by the Joint Committee established under Article 14 of this Agreement.

3. By way of derogation from Article 15(8) of this Agreement, the specific terms and conditions for the participation of New Zealand in any other particular Union programme or activity shall be laid down in Protocols to this Agreement to be adopted and amended by the Joint Committee established under Article 14 of this Agreement.

4. The Protocols shall:

- (a) identify the Union programmes, activities, or exceptionally parts thereof, in which New Zealand participates;
- (b) lay down the duration of participation, which shall refer to the period of time during which New Zealand and New Zealand entities may apply for Union funding or may be entrusted with the implementation of Union funds;
- (c) lay down specific conditions for the participation of New Zealand and New Zealand entities, including specific modalities for the implementation of the financial conditions as identified under Articles 6 and 7 of this Agreement, specific modalities of the correction mechanism as identified under Article 8 of this Agreement, and conditions for participation in structures created for the purposes of implementing those Union programmes or activities. Those conditions shall comply with this Agreement and the basic acts and acts of one or more Union institutions establishing such structures;

- (d) where applicable, lay down the amount of New Zealand's financial contribution to a Union programme implemented through a financial instrument or a budgetary guarantee.

ARTICLE 4

Compliance with the Union's programme's or activity's rules

1. New Zealand shall participate in the Union programmes or activities, or parts thereof covered by the Protocols to this Agreement under the terms and conditions established in this Agreement, its Protocols, in the basic acts and other rules pertaining to the implementation of Union programmes and activities.
2. The terms and conditions referred to in paragraph 1 shall include:
 - (a) the eligibility of the New Zealand entities and any other eligibility conditions related to New Zealand, in particular to the origin, place of activity or nationality;
 - (b) the terms and conditions applicable to the submission, assessment and selection of applications and to the implementation of the actions by eligible New Zealand entities.

3. The terms and conditions referred to in paragraph 2, point (b), shall be equivalent to those applicable to eligible Union Member State entities, including respect for the Union restrictive measures¹, unless otherwise provided for in the terms and conditions referred to in paragraph 1.

ARTICLE 5

Participation of New Zealand in the governance of Union programmes or activities

1. Representatives or experts of New Zealand or experts designated by New Zealand shall be allowed to take part, as observers, unless it concerns points reserved only for Union Member States or in relation to a Union programme or activity, or parts thereof in which New Zealand is not participating, in the committees, expert group meetings or other similar meetings where representatives or experts of the Union Member States, or experts designated by Union Member States take part, and which assist the European Commission in the implementation and management of the Union programmes or activities or parts thereof in which New Zealand participates in accordance with Article 3 of this Agreement or are established by the European Commission in respect of the implementation of Union law in relation to those programmes or activities, or parts thereof. The representatives or experts of New Zealand, or experts designated by New Zealand, shall not be present at the time of voting. New Zealand shall be informed of the result of the vote.

¹ The Union restrictive measures are restrictive measures adopted pursuant to the Treaty on the European Union or of the Treaty on the Functioning of the European Union.

2. Where experts or evaluators are not appointed on the basis of nationality, nationality shall not be a reason to exclude New Zealand nationals. New Zealand shall have due regard to its responsibilities under Te Tiriti o Waitangi when encouraging its nationals to become candidate experts.

3. Subject to the conditions of paragraph 1, participation of the New Zealand representatives in the meetings referred to in paragraph 1, or in other meetings related to the implementation of Union programmes or activities, shall be governed by the same rules and procedures as those applicable to representatives of the Union Member States, concerning speaking rights, receipt of information and documentation unless it concerns points reserved only for Union Member States or in relation to a Union programme or activity or parts thereof in which New Zealand is not participating. Protocols to this Agreement may define further modalities for the reimbursement of travel and subsistence costs.

4. Protocols to this Agreement may define further modalities for the participation of experts, as well as the participation of New Zealand, in governing boards and structures created for the purposes of implementing Union programmes or activities defined in the respective Protocol.

ARTICLE 6

Financial conditions

1. Participation of New Zealand or New Zealand entities in Union programmes or activities, or, in exceptional cases, parts thereof, shall be subject to New Zealand contributing financially to the corresponding funding under the general budget of the Union (the "Union budget").

2. For each Union programme or activity, or, in exceptional cases, parts thereof, the financial contribution shall take the form of the sum of:

(a) an operational contribution; and

(b) a participation fee.

3. The financial contribution shall take the form of an annual payment made in one or more instalments.

4. Without prejudice to paragraph 9 of this Article and to Article 7, the participation fee shall be 4 % of the annual operational contribution and shall not be subject to retrospective adjustments. As of 2028, the level of the participation fee may be adjusted by the Joint Committee established under Article 14 of this Agreement.

5. The operational contribution shall cover operational and support expenditure and shall be additional both in commitment and payment appropriations to the amounts entered in the Union budget definitively adopted for Union programmes or activities, or, in exceptional cases, parts thereof, increased, where appropriate, by external assigned revenue that does not result from financial contributions to Union programmes and activities from other donors, covered by each respective Protocol to this Agreement.

6. The operational contribution shall be based on a contribution key defined as the ratio of the Gross Domestic Product (GDP) of New Zealand at market prices to the GDP of the Union at market prices. The GDPs at market prices to be applied shall be determined by the dedicated European Commission services based on the most recent statistical data available for budget calculations in the year prior to the year in which the annual payment is due. Adjustments to this contribution key may be laid down in the respective Protocols.

7. The operational contribution shall be based on the application of the contribution key to the initial commitment appropriations increased as described in paragraph 5 entered in the Union budget definitively adopted for the applicable year for financing the Union programmes or activities, or, in exceptional cases, parts thereof, in which New Zealand participates.

8. By way of derogation from paragraphs 6 and 7, the operational contribution of New Zealand to the Horizon Europe Programme for the years 2023 to 2027 shall be as follows:

- 2023 – EUR 2 110 000;
- 2024 – EUR 2 900 000;
- 2025 – EUR 4 200 000;
- 2026 – EUR 4 200 000;
- 2027 – EUR 5 040 000.

9. The participation fee referred to in paragraph 2, point (b), shall have the following value for the years 2023 to 2027:

- 2023: 1.5 %;
- 2024: 2 %;
- 2025: 2.5 %;
- 2026: 3 %;
- 2027: 4 %.

10. Upon request, the Union shall provide New Zealand with information in relation to its financial contribution as included in the budgetary, accounting, performance and evaluation related information provided to the Union budgetary and discharge authorities concerning the Union programmes or activities, or, in exceptional cases, parts thereof, in which New Zealand participates. That information shall be provided having due regard to the Union's and New Zealand's confidentiality and data protection rules and is without prejudice to the information which New Zealand is entitled to receive under Article 10 of this Agreement.

11. All financial contributions of New Zealand or payments from the Union, and the calculation of amounts due or to be received, shall be made in euros.

12. Detailed provisions for the implementation of this Article are set out in the respective Protocols.

ARTICLE 7

Union programmes and activities to which an adjustment mechanism of the operational contribution applies

1. If so provided in the respective Protocol, the operational contribution of a Union programme or activity, or, in exceptional cases, parts thereof, for year N may be adjusted retrospectively in one or more subsequent years on the basis of the budgetary commitments made on the commitment appropriations of that year, their implementation through legal commitments and their decommitment.

2. The first adjustment shall be made in year N+1 when the operational contribution shall be adjusted by the difference between the contribution and an adjusted contribution calculated by applying the contribution key of year N, adjusted via the application of a coefficient if the respective Protocol so provides, to the sum of:

- (a) the amount of budgetary commitments made on commitment appropriations authorised in year N under the voted Union budget and on commitment appropriations corresponding to decommitments made available again; and
- (b) any external assigned revenue appropriations that do not result from financial contributions to Union programmes and activities from other donors covered in each respective Protocol to this Agreement and that were available at the end of year N.

3. Each subsequent year, until all the budgetary commitments financed under commitment appropriations originating from year N have been paid or decommitted, and at the latest three years after the end of the Union programme or after the end of the multiannual financial framework corresponding to year N, whichever is earlier, the Union shall calculate an adjustment of the contribution of year N by reducing the New Zealand contribution by the amount obtained by applying the contribution key, adjusted if the respective Protocol so provides, of year N to the decommitments made each year on commitments of year N financed under the Union budget or from decommitments made available again.

4. If external assigned revenue appropriations that do not result from financial contributions to Union programmes and activities from other donors covered by each respective Protocol to this Agreement are cancelled, the contribution of New Zealand to the respective Union programme or activity, or, in exceptional cases, parts thereof, shall be reduced by the amount obtained by applying the contribution key, adjusted if the respective Protocol so provides, of year N to the amount cancelled.

ARTICLE 8

Union programmes and activities to which an automatic correction mechanism applies

1. An automatic correction mechanism shall apply in relation to those Union programmes or activities, or, in exceptional cases, parts thereof, for which the application of an automatic correction mechanism is provided for in the respective Protocol. The application of that automatic correction mechanism may be limited to parts of the Union programme or activity specified in the respective Protocol, which are implemented through grants for which competitive calls are organised. Detailed rules on the identification of the parts of the Union programme or activity to which the automatic correction mechanism does or does not apply may be established in the respective Protocol.

2. The amount of the automatic correction for a Union programme or activity, or, in exceptional cases, parts thereof, shall be the difference between the initial amounts of the legal commitments actually entered into with New Zealand or New Zealand entities financed from commitment appropriations of the year in question and the corresponding operational contribution paid by New Zealand as adjusted pursuant to Article 7 if the relevant Protocol provides for such adjustment, excluding support expenditure, covering the same period.

3. Detailed rules on the establishment of the relevant amounts of the legal commitments referred to in paragraph 2 of this Article, including in the case of consortia, and on the calculation of the automatic correction may be laid down in the respective Protocol.

ARTICLE 9

Reviews and audits

1. The Union shall have the right to conduct, in accordance with the applicable acts of one or more Union institutions or bodies and as provided in relevant agreements and/or contracts, technical, scientific, financial, or other types of reviews and audits on the premises of any natural person residing in or any legal entity established in New Zealand and receiving Union funding, as well as any third party involved in the implementation of Union funds residing or established in New Zealand. Such review and audits may be carried out by the agents of the institutions and bodies of the Union, in particular of the European Commission and the European Court of Auditors, or by other persons mandated by the European Commission. When exercising their duties in the territory of New Zealand, the 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.
2. When implementing paragraph 1, the agents of the institutions and bodies of the Union, in particular of the European Commission and the European Court of Auditors, and the other persons mandated by the European Commission, shall have appropriate access to sites, works and documents (in electronic and paper versions) and to all the information required in order to carry out such audits, including the right of obtaining a physical/electronic copy of, and extracts from, any document or the contents of any data medium held by the audited natural or legal person, or by the audited third party.

3. New Zealand shall not prevent or raise any particular obstacle to the right of entrance into New Zealand and to the access to the premises of the agents and other persons referred to in paragraph 2 on the grounds of the exercise of their duties referred to in this Article.

4. The reviews and audits may be carried out also after the suspension of application of a Protocol to this Agreement pursuant to Article 15(4) of this Agreement, the cessation of provisional application or the termination of this Agreement, on the terms laid down in the applicable acts of one or more Union institutions or bodies and as provided for in relevant agreements and/or contracts in relation to any legal commitment implementing the Union budget entered into by the Union before the date on which the suspension of application of the relevant Protocol, the cessation of provisional application or the termination of this Agreement takes effect.

ARTICLE 10

Fight against irregularities, fraud and other criminal offences affecting the financial interests of the Union

1. The European Commission and the European Anti-Fraud Office (OLAF) shall be authorised to carry out administrative investigations, including on-the-spot checks and inspections, on the territory of New Zealand. These investigations shall be carried out in accordance with the terms and conditions established by applicable acts of one or more Union institutions and as provided for in relevant agreements and/or contracts. When exercising their duties in the territory of New Zealand, the European Commission and OLAF shall act in a manner consistent with New Zealand law.

2. The competent New Zealand authorities shall inform the European Commission or OLAF within reasonable time of any fact or suspicion which has come to their notice relating to an irregularity, fraud or other illegal activity affecting the financial interests of the Union.
3. When implementing paragraph 1, on-the-spot checks and inspections may be carried out on the premises of any natural person residing in or legal entity established in New Zealand and receiving Union funds, as well as of any third party involved in the implementation of Union funds residing or established in New Zealand.
4. On-the-spot checks and inspections shall be prepared and conducted by the European Commission or OLAF in close collaboration with the competent New Zealand authority designated by the government of New Zealand. The designated authority shall be notified a reasonable time in advance of the object, purpose and legal basis of the checks and inspections, so that it can provide assistance. To that end, the officials of the competent New Zealand authorities may participate in the on-the-spot checks and inspections.
5. Upon request by the authorities of New Zealand, the on-the-spot checks and inspections may be carried out jointly with the European Commission or OLAF.
6. The European Commission agents and OLAF staff shall have access to all the information and documentation, including computer data, on the operations concerned, which are required for the proper conduct of the on-the-spot checks and inspections. They may, in particular, copy relevant documents.

7. Where the person, entity or another third party resists an on-the-spot check or inspection, New Zealand authorities, acting in accordance with national rules and regulations, shall assist the European Commission or OLAF, to allow them to fulfil their duty in carrying out an on-the-spot check or inspection. This assistance shall include taking the appropriate precautionary measures under national law, in particular in order to safeguard evidence.
8. The European Commission or OLAF shall inform New Zealand authorities of the result of such checks and inspections. In particular, the European Commission or OLAF shall report as soon as possible to the competent New Zealand authority any fact or suspicion relating to an irregularity, which has come to their notice in the course of the on-the-spot check or inspection.
9. Without prejudice to the application of New Zealand criminal law, the European Commission may impose administrative measures and penalties on legal or natural persons of New Zealand participating in the implementation of a Union programme or activity in accordance with Union legislation.
10. For the purposes of proper implementation of this Article, the European Commission or OLAF and the competent New Zealand authorities shall regularly exchange information and, at the request of one of the Parties, consult each other.
11. In order to facilitate effective cooperation and exchange of information with OLAF, New Zealand shall designate a contact point.

12. Information exchanged between the European Commission or OLAF and the New Zealand competent authorities shall take place having due regard to the confidentiality requirements. Personal data included in the exchange of information shall be protected in accordance with applicable rules.

13. The New Zealand authorities shall cooperate with the European Public Prosecutor's Office to allow it to fulfil its duty to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union in accordance with the applicable legislation.

ARTICLE 11

Amendments to Articles 9 and 10

The Joint Committee established under Article 14 of this Agreement may amend Articles 9 and 10, in particular to take account of changes made to acts of one or more Union institutions.

ARTICLE 12

Recovery and enforcement

1. The European Commission may adopt a decision imposing a pecuniary obligation on a New Zealand entity other than the State in relation to any claims stemming from Union programmes, activities, actions or projects. If, following the notification of that decision to the New Zealand entity in accordance with Article 13, that entity does not pay within the prescribed period, the European Commission shall notify the decision to the competent authority designated by the Government of New Zealand, and the Government of New Zealand shall pay to the European Commission the amount of any pecuniary obligation and seek a refund of the amount from the New Zealand entity on whom the financial obligation is imposed through its agreements with that entity.

2. In order to ensure enforceability of judgments and orders of the Court of Justice of the European Union (CJEU) delivered in application of an arbitration clause contained in a contract or agreement in relation to Union programmes, activities, actions or projects, where such judgments or orders have been notified to the relevant New Zealand entity in accordance with the rules regarding notification of the CJEU, and that entity does not pay the amounts established within a period of two months and ten days, the European Commission shall, on its behalf or on behalf of the relevant Executive Agency or Union bodies set up under the Treaty on the Functioning of the European Union (TFEU), notify the judgment or order of the CJEU to the competent authority designated by the Government of New Zealand and the Government of New Zealand shall pay to the European Commission the amount of any pecuniary obligation and seek a refund of the amount from the New Zealand entity on whom the financial obligation is imposed through its agreements with that entity.

3. The Government of New Zealand shall make known its designated competent authority to the European Commission.

4. The CJEU shall have jurisdiction to review the legality of the decisions of the European Commission referred to in paragraph 1 and to suspend their enforcement.

ARTICLE 13

Communication, notification and exchange of information

The Union institutions and bodies involved in the implementation of Union programmes or activities, or in control of such programmes or activities, shall be entitled to communicate directly, including through electronic exchange systems, with any natural person residing in New Zealand or legal entity established in New Zealand receiving Union funding, as well as with any third party involved in the implementation of Union funding that resides or is established in New Zealand. The European Commission shall be entitled to notify decisions, judgments and orders referred to in Article 12(1) and (2) of this Agreement directly to persons residing and legal entities established in New Zealand. Such persons, entities and third parties may submit directly to the Union institutions and bodies all relevant information and documentation which they are required to submit on the basis of the Union legislation applicable to the Union programme or activity and on the basis of the contracts or funding agreements concluded to implement that programme or activity.

ARTICLE 14

The Joint Committee

1. The Joint Committee is hereby established. The tasks of the Joint Committee shall include:
 - (a) assessing, evaluating and reviewing the implementation of this Agreement and its Protocols, in particular:
 - (i) the participation and performance of New Zealand legal entities in Union programmes and activities;
 - (ii) where relevant, the level of (mutual) openness to the legal entities established in each Party to participate in programmes or activities, or, in exceptional cases, parts thereof, of the other Party;
 - (iii) the implementation of the financial contribution mechanism and, where relevant, the automatic correction mechanism applicable to Union programmes or activities covered by Protocols to this Agreement;
 - (iv) information exchange and, where relevant, examining any possible questions on the exploitation of results, including intellectual property rights;

- (b) discussing upon request of either Party restrictions applied or planned by the Parties on access to their respective research and innovation programmes, including in particular for actions related to their strategic assets, interests, autonomy or security and, in the case of New Zealand, protecting the rights and interests of Māori under Te Tiriti o Waitangi;
- (c) examining how to improve and develop cooperation;
- (d) discussing jointly the future orientations and priorities of policies related to Union programmes or activities covered by the Protocols to this Agreement;
- (e) exchanging information, inter alia, on new legislation, decisions or national programmes that are relevant for the implementation of this Agreement and its Protocols;
- (f) adopting Protocols to this Agreement on specific terms and conditions of participation of New Zealand in Union programmes or activities, or, in exceptional cases, parts thereof, or amending such Protocols as needed, by way of a decision;
- (g) amending Articles 9 and 10 of this Agreement, in particular to take account of changes made to acts of one or more Union institutions, by way of a decision.

2. Decisions of the Joint Committee shall be taken by consensus. The decision of the Joint Committee shall either specify the date of its entry into force or, where required by a Party's domestic legal system, provide that amendments to this Agreement, new Protocols or amendments thereto enter into force after the notification in writing of the completion of any outstanding legal requirements and procedures of the Parties.
3. The Joint Committee, which shall be composed of representatives of the Union and New Zealand, shall adopt its Rules of Procedure.
4. The Joint Committee may decide to set up any working party/advisory body on an ad hoc basis at expert level that can assist in carrying out the implementation of this Agreement.
5. The Joint Committee shall meet at least once a year, and, whenever special circumstances so require, at the request of any of the Parties. The meetings shall be organised and hosted alternately by the Union and by the Government of New Zealand.
6. The Joint Committee shall work on an on-going basis through an exchange of relevant information by any means of communication, in particular in relation to the participation/performance of New Zealand legal entities. The Joint Committee may in particular conduct its tasks in writing whenever the need arises.

ARTICLE 15

Final provisions

1. This Agreement shall enter into force on the date on which the Parties have notified each other of the completion of their internal procedures necessary for that purpose.
2. The Union and New Zealand may apply this Agreement provisionally in accordance with their respective internal procedures and legislation. The provisional application shall begin on the date on which the Parties have notified each other of the completion of their internal procedures necessary for that purpose.
3. Should New Zealand notify the Union that it will not complete its internal procedures necessary for the entry into force of this Agreement, this Agreement shall cease to apply provisionally on the date of receipt of this notification by the Union, which shall constitute the cessation date for the purposes of this Agreement.

The decisions of the Joint Committee established under Article 14 of this Agreement shall cease to apply on the same date.

4. The application of a relevant Protocol to this Agreement may be suspended by the Union in case of partial or full non-payment of the financial contribution due by New Zealand under the respective Union programme or activity.

In case of non-payment which may significantly jeopardise the implementation and management of the relevant Union programme or activity, the European Commission shall send a formal letter of reminder. Where no payment is made within 20 working days after the formal letter of reminder, suspension of the application of the relevant Protocol shall be notified by the Union to New Zealand by a formal letter of notification which shall take effect 15 days following the receipt of that notification by New Zealand.

In case the application of a Protocol is suspended, New Zealand entities shall not be eligible to participate in Union award procedures that are not yet completed when the suspension takes effect. A Union award procedure shall be considered completed when legal commitments have been entered into as a result of that procedure.

The suspension does not affect the legal commitments entered into with New Zealand entities under the relevant Union programme or activity before the suspension took effect. The relevant Protocol shall continue to apply to such legal commitments.

The Union shall immediately notify New Zealand once the entire amount of the financial contribution due has been received by the Union. The suspension shall be lifted with an immediate effect upon this notification.

As of the date when the suspension is lifted, New Zealand entities shall again be eligible in Union award procedures launched under the relevant Union programme or activity after that date and in Union award procedures launched before that date, for which the deadline for submission of applications has not expired.

5. Either Party may terminate this Agreement at any time by a written notification informing the other Party of its intent to terminate it. This Agreement may only be terminated in its entirety. The termination shall take effect three calendar months after the date on which the written notification reaches its addressee. The date on which the termination takes effect shall constitute the termination date for the purposes of this Agreement.

6. Where this Agreement ceases to apply provisionally in accordance with paragraph 3 or is terminated in accordance with paragraph 5, the Parties agree that:

(a) projects, actions, activities or parts thereof in respect of which legal commitments have been entered into during the provisional application and/or after the entry into force of this Agreement, and before this Agreement ceases to apply or is terminated, shall continue until their completion under the conditions laid down in this Agreement;

- (b) the annual financial contribution to the relevant Union programme or activity of the year N during which this Agreement ceases to apply provisionally or is terminated shall be paid entirely in accordance with Article 6 of this Agreement and any relevant rules in the respective Protocols. Where the adjustment mechanism applies, the operational contribution to the relevant Union programme or activity of the year N shall be adjusted in accordance with Article 7 of this Agreement. For Union programmes or activities where both the adjustment mechanism and the automatic correction mechanism apply, the relevant operational contribution of the year N shall be adjusted in accordance with Article 7 of this Agreement and corrected in accordance with its Article 8. For Union programmes or activities where only the correction mechanism applies, the relevant operational contribution of the year N shall be corrected in accordance with Article 8 of this Agreement. The participation fee paid for the year N as part of the financial contribution to the relevant Union programme or activity shall not be adjusted or corrected;
- (c) where the adjustment mechanism applies, following the year during which this Agreement ceases to apply provisionally or is terminated, the operational contributions to the relevant Union programme or activity paid for the years during which this Agreement applied shall be adjusted in accordance with Article 7. For Union programmes or activities where both the adjustment mechanism and the automatic correction mechanism apply, these operational contributions shall be adjusted in accordance with Article 7 and automatically corrected in accordance with Article 8. For Union programmes or activities where only the automatic correction mechanism applies, the relevant operational contributions shall be automatically corrected in accordance with Article 8.

7. The Parties shall settle by common consent any other consequences of termination or cessation of provisional application of this Agreement.
8. This Agreement may only be amended in writing by common consent of the Parties. The entry into force of the amendments shall follow the same procedure as that applicable for the entry into force of this Agreement as provided for in paragraph 1.
9. The written notifications made in accordance with paragraphs 1, 2, 3 and 5 shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs and Trade of New Zealand.
10. Protocols shall constitute an integral part of this Agreement.
11. This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Done at ..., this ... day of ... in the year ...

For the European Union,

For New Zealand,

PROTOCOL
ON THE ASSOCIATION OF NEW ZEALAND
TO HORIZON EUROPE – THE FRAMEWORK PROGRAMME
FOR RESEARCH AND INNOVATION (2021-2027)

EU/NZ/P/en 1

ARTICLE 1

Scope of the association

New Zealand shall participate as associated country in and contribute to Pillar II "Global Challenges and European Industrial Competitiveness" of Horizon Europe – the Framework Programme for Research and Innovation (the "Horizon Europe Programme") referred to in Article 4 of Regulation (EU) 2021/695 of the European Parliament and of the Council¹, and implemented through the Specific Programme established by Council Decision (EU) 2021/764², in their most up to date versions.

¹ 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 EU L 170, 12.5.2021, p. 1).

² Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU (OJ EU L 167 I, 12.5.2021, p. 1).

ARTICLE 2

Additional conditions of participation in the Horizon Europe Programme

1. Before deciding on whether New Zealand entities are eligible to participate in an action related to EU strategic assets, interests, autonomy or security under Article 22(5) of Regulation (EU) 2021/695, the European Commission may request specific information or assurances, such as:
 - (a) information as to whether reciprocal access has been or will be granted to Union entities to existing and planned programmes or activities, or parts thereof, of New Zealand equivalent to the Horizon Europe action concerned;
 - (b) information as to whether New Zealand has in place a national investment screening mechanism and assurances that New Zealand authorities will report on and consult the European Commission on any possible cases where in application of such a mechanism, they have become aware of planned foreign investment/takeover by an entity established or controlled from outside New Zealand of a New Zealand entity, which has received Horizon Europe funding in actions related to Union strategic assets, interests, autonomy or security, provided that the European Commission supplies New Zealand with the list of the relevant New Zealand entities following the signature of grant agreements with those entities; and

(c) assurances that none of the results, technologies, services and products developed under the concerned actions by the New Zealand entities shall be subject to restrictions on their export to Union Member States during the action and for four years after the end of the action.

New Zealand will share an up-to-date list of national export restrictions on an annual basis, during the action and for four years after the end of the action.

2. New Zealand entities may participate in the activities of the Joint Research Centre (JRC) under terms and conditions equivalent to those applicable to Union entities, unless limitations are necessary to ensure consistency with the scope of participation stemming from the implementation of paragraph 1.

3. New Zealand shall be kept regularly informed of JRC activities relating to New Zealand's participation in the Horizon Europe Programme, in particular of JRC multiannual work programmes. A representative from New Zealand may be invited as observer to meetings of the JRC Board of Governors in relation to a point that concerns New Zealand's participation in the Horizon Europe Programme.

4. Where the Union implements the Horizon Europe Programme through the application of Articles 185 and 187 of the TFEU, New Zealand and New Zealand entities may participate in the legal structures created under those provisions, in conformity with the Union legal acts that have been or will be adopted for the establishment of those legal structures.

5. In view of New Zealand's participation in Pillar II of the Horizon Europe Programme, representatives of New Zealand shall have the right to participate as observers in the committee referred to in Article 14 of Decision (EU) 2021/764 without voting rights and for points which concern New Zealand. Such participation shall be in accordance with Article 5 of this Agreement. Travel cost of the representatives of New Zealand to the meetings of the committee shall be reimbursed in economy class. For all other matters, the reimbursement of travel cost and subsistence expenses shall be governed by the same rules as those applicable to the representatives of Union Member States.

6. The Parties shall make every effort, within the framework of the existing provisions, legislation and/or government regulations, to facilitate the free movement, including visits and conduct of research, of persons participating in the activities covered by this Protocol and to facilitate cross-border movement of goods and services intended for use in such activities.

ARTICLE 3

Reciprocity

Legal entities established in the Union may participate in programmes or activities, or parts thereof, of New Zealand equivalent to those under Pillar II of the Horizon Europe Programme, in accordance with New Zealand domestic regimes governing science funding. Where funding is not provided by New Zealand, legal entities established in the Union may participate with their own means.

The non-exhaustive list of the equivalent programmes or activities, or, in exceptional cases, parts thereof, of New Zealand is provided in Annex II to this Protocol.

ARTICLE 4

Open Science

The Parties shall mutually promote and encourage open science practices in their programmes, projects and activities in accordance with the rules of the Horizon Europe Programme and New Zealand laws, regulations and open research policy, and with due regard to New Zealand's obligations under Te Tiriti o Waitangi.

ARTICLE 5

Detailed rules on financial contribution, adjustment mechanism and automatic correction mechanism

1. An automatic correction mechanism shall apply in relation to the operational contribution of New Zealand to the Horizon Europe Programme. The adjustment mechanism provided for under Article 7 of this Agreement shall not apply in relation to the operational contribution of New Zealand to the Horizon Europe Programme.

2. The automatic correction mechanism shall be based on the performance of New Zealand and the New Zealand entities in the parts of Pillar II of the Horizon Europe Programme which are implemented through competitive grants.
3. Detailed rules for application of the automatic correction mechanism are laid down in Annex I to this Protocol.

ARTICLE 6

Final provisions

1. This Protocol shall remain in force for as long as is necessary for all the projects, actions, activities or parts thereof financed from Pillar II of the Horizon Europe Programme, all the actions necessary to protect the financial interests of the Union and all the financial obligations stemming from the implementation of this Protocol between the Parties to be completed.
2. The Annexes to this Protocol shall form an integral part of the Protocol.

Annex I: Rules governing the financial contribution of New Zealand to the Horizon Europe Programme (2021-2027)

Annex II: List of the equivalent programmes or activities, or parts thereof, of New Zealand

Rules governing the financial contribution of New Zealand to the Horizon Europe Programme
(2021-2027)

- I. Calculation of New Zealand's financial contribution
 1. The financial contribution of New Zealand to Pillar II of the Horizon Europe Programme shall be established on a yearly basis in accordance with Article 6 of this Agreement.
 2. The participation fee of New Zealand shall be established and phased in according to Article 6(4) and (9) of this Agreement.
 3. The operational contribution to be paid by New Zealand for the EU financial years 2023-2027 shall be calculated in accordance with Article 6(8) of this Agreement.

II. Automatic correction of New Zealand's operational contribution

1. For the calculation of the automatic correction as referred to in Article 8 of this Agreement and in Article 5 of this Protocol, the following modalities shall apply:
 - (a) "competitive grants" means grants awarded through calls for proposals launched under Pillar II of the Horizon Europe Programme where the final beneficiaries can be identified at the time of the calculation of the automatic correction; financial support to third parties as defined in Article 204 of the Financial Regulation is excluded;
 - (b) where a legal commitment is signed with a consortium, the amounts used to establish the initial amounts of the legal commitment shall be the cumulative amounts allocated to beneficiaries that are New Zealand entities in accordance with the indicative budget breakdown of the grant agreement;
 - (c) all amounts of legal commitments corresponding to competitive grants shall be established using the European Commission electronic system eCorda and be extracted on the second Wednesday of February of year N+2;

- (d) "non-intervention costs" means costs of the Horizon Europe Programme other than competitive grants, including support expenditure, programme-specific administration, other actions¹;
- (e) amounts allocated to international organisations as legal entities being the final beneficiary² shall be considered as non-intervention costs.

2. The mechanism shall be applied as follows:

- (a) automatic corrections for year N in relation to the execution of commitment appropriations for year N, increased in accordance with Article 6(5) of this Agreement, shall be applied based on data on year N and year N+1 from e-Corda referred to in point (c) of paragraph 1 of section II of this Annex in year N+2; the amount considered will be the amount of competitive grants under Pillar II of the Horizon Europe Programme for which data is available, at the time of the calculation of the correction;

¹ Other actions include in particular procurement, prizes, financial instruments, direct actions of the JRC, subscriptions (the Organisation for Economic Co-operation and Development (OECD), the European Research Coordination Agency (Eureka), the International Partnership for Energy Efficiency Cooperation (IPEEC), the International Energy Agency (IEA), ...), experts (evaluators, monitoring of projects), etc.

² International organisations would only be considered as non-intervention costs if they are final beneficiaries. This will not apply where an international organisation is a coordinator of a project (distributing funds to other coordinators).

- (b) starting in N+2 and up until 2029, the amount of the automatic correction shall be calculated for year N by taking the difference between:
- (i) the total amount of the competitive grants apportioned to New Zealand or New Zealand legal entities under Pillar II of the Horizon Europe Programme as commitments made on budget appropriations of year N; and
 - (ii) the amount of New Zealand's operational contribution for year N multiplied by the ratio between:
 - A the amount of competitive grants made on commitment appropriations of year N under Pillar II of the Horizon Europe Programme, increased in accordance with Article 6(5) of this Agreement; and
 - B the total of all the authorised budgetary commitment appropriations of year N under Pillar II of the Horizon Europe Programme, including non-intervention costs.

- III. Payment of New Zealand's financial contribution and payment of the automatic correction applicable to the New Zealand's operational contribution
1. The European Commission shall communicate to New Zealand, as soon as possible and at the latest when issuing the first call for funds of the EU financial year, the following information:
 - (a) the amount of the operational contribution referred to in Article 6(8) of this Agreement;
 - (b) the amount of the participation fee referred to in Article 6(9) of this Agreement;
 - (c) from year N+2 for the part of the Horizon Europe Programme where such information is necessary to calculate the automatic correction, the level of commitments entered into in favour of New Zealand legal entities under Pillar II of the Horizon Europe Programme broken down according to the corresponding year of budgetary appropriations and the related total level of commitments.
 2. The European Commission shall issue, at the earliest in June of each EU financial year, a call for funds to New Zealand corresponding to its contribution under this Protocol.

The calls for funds shall provide for the payment of New Zealand's contribution not later than 30 days after the call for funds is issued.

For the first year of implementation of this Protocol, the European Commission shall issue a single call for funds, within 60 days of the signature of this Agreement.

3. Each year starting in 2025, the calls for funds shall also reflect the amount of the automatic correction applicable to the operational contribution paid for year N-2.

For each of the EU financial years 2028 and 2029, the amount resulting from the automatic correction applied to the operational contributions paid in 2025, 2026 and 2027 by New Zealand will be due to or from New Zealand.

4. New Zealand shall pay its financial contribution under this Protocol in accordance with section III of this Annex. In the absence of payment by New Zealand by the due date, the European Commission shall send a formal letter of reminder.

Any delay in the payment of the financial contribution shall give rise to the payment of default interest by New Zealand on the outstanding amount from the due date.

The interest rate for amounts receivable not paid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

List of the equivalent programmes or activities,
or parts thereof, of New Zealand

The following non-exhaustive list shall be regarded as New Zealand's programmes or activities, or parts thereof, equivalent to Pillar II of the Horizon Europe Programme:

- Catalyst Strategic Fund;
 - Endeavour Fund;
 - Health Research Fund;
 - National Science Challenges.
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