



COVERSHEET

Minister	Hon Dr Ayesha Verrall	Portfolio	Research, Science and Innovation
Title of Cabinet papers	Horizon Europe Association Agreement between the European Union and New Zealand: Approval for Signature New Zealand Association to Horizon Europe: Negotiating Mandate	Date to be published	10 July 2023

List of documents that have been proactively released

Date	Title	Author
23 November 2022	<i>New Zealand Association to Horizon Europe - Negotiating Mandate</i>	<i>Office of the Minister of Research, Science and Innovation</i>
10 May 2023	<i>Horizon Europe Association Agreement between the European Union and New Zealand - Approval for Signature</i>	
	<i>Annex One - EU-NZ Horizon Europe Association Agreement and Protocol</i>	
25 January 2023	<i>Annex Two - National Interest Analysis, Horizon Europe Association</i>	<i>Cabinet Office</i>
	<i>New Zealand Association to Horizon Europe: Negotiating Mandate</i>	
10 May 2023	<i>DEV-22-MIN-0281 Minute</i>	
10 May 2023	<i>Horizon Europe Association Agreement between the European Union and New Zealand: Approval for Signature</i>	
	<i>DEV-23-MIN-0076 Minute</i>	

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of National Economy, Confidential Advice to Government, Free and Frank Opinions, and International Relations.

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Office of the Minister of Research, Science and Innovation

Cabinet Economic Development Committee

Approval for Signature of the Horizon Europe Association Agreement between the European Union and New Zealand

Proposal

1. This paper seeks approval to enter into a treaty between New Zealand and the European Union (the EU) for New Zealand to become an Associate Member to Pillar Two of Horizon Europe, the EU's framework programme for research and innovation.

Relation to Government Priorities

2. Association to Horizon Europe will contribute to the achievement of the Government's Economic Plan, outlined by the Minister of Finance in his June 2022 Economic Strategy letter to Ministerial colleagues. The plan focuses on building a high-wage, low-emissions economy that gives economic security in good times and bad, that addresses the major long-term challenges our economy faces. The Economic Plan also seeks strengthened international connections. These objectives align with those of Horizon Europe.
3. Association to Horizon Europe is an action in Te Ara Paerangi – Future Pathways, the reform of New Zealand's science system.

Executive summary

4. Association to Horizon Europe requires a treaty-level agreement between New Zealand and the European Union (the Treaty). The final negotiated text is attached in **Annex One**. The text does not significantly differ from the parameters agreed to by Cabinet in the negotiating mandate agreed to in November 2022 [DEV-22-MIN-0281].
5. New Zealand has been invited to Associate to Pillar Two of Horizon Europe: Global Challenges and European Industrial Competitiveness. Association will allow New Zealand research organisations to participate in Pillar Two programmes and receive funding on the same terms as their European counterparts, allowing them to lead their own projects and retain the intellectual property they bring to, and create within, their Horizon Europe projects. New Zealand researchers will gain easier access to world-leading research infrastructure that is unavailable domestically, as well as integrate deeper into the global research system.
6. Association will strengthen our strategic relationship with the European Union.

Free and frank opinions

Free and frank opinions

7. The primary costs of Association include New Zealand reimbursing the European Commission for any monies awarded as grants to successful New Zealand research organisations, as well as a small pre-agreed participation (administration) fee. I also intend to establish a domestic scheme to top-up research overheads for successful New Zealand participants to ensure their meaningful and equitable participation in the programme. In total, our Association to Pillar Two of Horizon Europe is estimated to cost NZ \$50.18 million over 2023-2028. National economy

Background

8. Horizon Europe is the EU's main research and innovation framework and funding platform. It is the world's largest multilateral research programme, both in terms of the number of participants and the research funding dedicated to the programme (€95.5 billion ≈ NZ\$160 billion).
9. In November 2022, the Cabinet Economic Development Committee (DEV) approved a mandate for officials to commence formal negotiations for New Zealand to Associate to Horizon Europe [DEV-21-MIN-0281]. Formal negotiations with the European Commission started shortly thereafter and concluded with the initialling of the final treaty text in late December 2022. This treaty text is attached in **Annex One**.

Analysis

10. Association to Horizon Europe requires a treaty-level agreement between New Zealand and the European Union. This paper seeks approval for binding treaty action.
11. The Treaty text is attached in **Annex One**. The Treaty is split into two parts; the first part is an overarching Agreement (the Agreement) that sets the foundation for New Zealand to participate in EU programmes outlined in Protocols attached to the treaty; the second is a Protocol for New Zealand to Associate to Pillar Two of Horizon Europe (the Protocol), which will last until the completion of New Zealand's Horizon Europe projects. The intent of the Agreement is that New Zealand will be able to associate to future iterations of Horizon Europe using new Protocols attached to this overarching Agreement, if we wished to. While likely to require re-negotiation of the text, it is also possible to use the parent Agreement to associate to EU Programmes beyond research and innovation.
12. Broadly speaking, the Agreement covers:
 - 12.1. The mutual goals and principles of New Zealand and the European Union that underpin New Zealand's Association, including: a common desire to further develop and strengthen our scientific relationships for mutual and global benefit, recognition of shared fundamental values in research and innovation (including ethics and integrity in research, gender equality, equal

opportunities, open science), and recognition of the importance of Te Tiriti o Waitangi.

- 12.2. Matters of New Zealand's participation in the governance of the Horizon Europe programme.
- 12.3. Financial considerations, including the estimated costs for New Zealand's Association to Horizon Europe, and the establishment of an automatic correction mechanism.
- 12.4. The process by which the European Commission may conduct audits and reviews of New Zealand entities participating in a Horizon Europe programme, including mechanisms of recovery and enforcement of judgements of the European Commission and/or the Court of Justice of the European Union.
- 12.5. The process of communication, notification and exchange of information between New Zealand and the European Union for matters arising from New Zealand's Association.
- 12.6. The establishment of a Joint Committee to discuss and review the implementation of the Agreement and Protocol and allowing formal New Zealand participation in the work programmes, governance and future strategy sessions of the programme as a whole.
- 12.7. Final provisions relating to internal procedures for treaty entry into force and termination.

13. In addition, the Protocol outlines that New Zealand will become an Associate Member of Pillar Two of Horizon Europe, with specific provisions regarding our mutual commitment to open science and reciprocity of participation, as well as detailed calculations of New Zealand's financial contribution under Association.

Benefits of Association

14. In November 2022, Cabinet noted [DEV-22-MIN-0281] the main benefits of New Zealand's Association to Horizon Europe, include:
- 14.1. Strengthening New Zealand's international connections in science and innovation through high-quality collaborations with the European Union and its member states, and their international partners across both research and industry.
 - 14.2. Access to funding on the same terms as European researchers, and access to world-leading research infrastructure in Europe.
 - 14.3. Overall benefit to a wide range and number of New Zealand researchers, with positive impacts across the domestic economy, environment and society.
15. The attached National Interest Analysis (**Annex Two**) explores these benefits in more detail.

Domestic Implementation Processes

16. A National Interest Analysis (NIA) is attached to this paper as **Annex Two** for Cabinet approval. I recommend that Cabinet approve the content of this NIA as a requirement of the Parliamentary Treaty Examination process.
17. No domestic legislation will be required for New Zealand to implement the Treaty.

Transitional access

18. Negotiations were concluded on both sides in December 2022. To enable practical access for New Zealand research organisations in the 2023 grant year, in January 2023 the European Commission granted New Zealand transitional access to the Horizon Europe programme. This is a temporary administrative step that allows New Zealand research organisations to submit their applications to the current round of Horizon Europe, but no contracts can be entered into or grant monies disbursed without formal Association.

Signature and Provisional Application

19. The Treaty will follow these stages: signature, provisional application, Parliamentary Treaty Examination, ratification and entry into force. In the first place, the Treaty must be formally signed by both New Zealand and the European Commission. MBIE and MFAT officials are investigating opportunities for a signature event. I recommend that Cabinet agree that New Zealand sign the Treaty at the earliest suitable opportunity (at this stage, likely to be a visit by the Prime Minister to Europe in July 2023).
20. Subject to Cabinet approval, provisional application can follow automatically from signature via an exchange of diplomatic notes. Provisional application is a legally binding way of receiving the benefits (and obligations) of a treaty ahead of formal ratification and entry into force. While the parliamentary examination process in New Zealand can be relatively fast, processes in Europe take longer. The European Commission is unlikely to be able to bring the Treaty into force until mid-2024, and so they propose provisional application as a standard mechanism to enable continued access to the benefits of the Treaty during this period. In particular, this will allow New Zealand research organisations to receive funding in the August 2023 Horizon Europe funding round, i.e. those research organisations who have been applying into the scheme under transitional access since January 2023.
21. During provisional application, the legal and financial obligations in the Treaty are legally binding. However, the provisional application can be unilaterally terminated by either party at any point, including if either party no longer intends to become party to the Treaty. I consider that the benefits are significant enough that provisional application should take place before Parliamentary Treaty Examination. I recommend that Cabinet authorises New Zealand to provisionally apply the Treaty.

Parliamentary Treaty Examination

22. Following the signature and while it is under provisional application, the Treaty and NIA must be presented to the House of Representatives for Parliamentary Treaty Examination, as this treaty constitutes a major bilateral treaty of particular significance. Unless more time is requested and agreed by the Government, the Foreign Affairs, Defence and Trade Committee will have up to 15 sitting days to report any recommendations to the Government, and the Government will have up to 90 days to respond to these recommendations. I recommend that Cabinet agrees to present the Treaty and NIA to the House of Representatives for the purposes of the Parliamentary Treaty Examination process, under Standing Order 405.

Entry into force

23. Following examination by both the New Zealand and European Parliaments, the Treaty enters into force upon a formal exchange of diplomatic letters. This stage requires New Zealand Cabinet approval which can be given now, subject to the satisfactory completion of the Parliamentary Treaty Examination process. Approval from the European Parliament and the Parliaments of all EU Member States is expected to take between 6 to 18 months, with completion around mid-2024. I recommend that Cabinet authorises the conclusion of notification to bring the Treaty into force at that point, subject to confirmation at that time by the Minister of Research, Science and Innovation and the Minister of Foreign Affairs.

Financial implications

24. National economy

[Redacted]

[Redacted]

[Redacted]

[Redacted]

National economy [redacted]

[redacted]

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Overheads Scheme

28. I have established a domestic scheme to cover research overheads. New Zealand research grants differ from European grants in that they are based on a full cost funding model which includes a range of administrative and institutional running costs, or 'overheads'. By contrast, in the European system these overheads are bulk funded through other, mostly national, research budgetary mechanisms across research and higher education.

29. The overheads top-up scheme will be available for all New Zealand entities contracted by the European Commission under Horizon Europe Pillar Two programmes, with funding provided through contracts via the MBIE Catalyst Fund.

30. National economy [redacted]

National economy

31. I consider that, in the New Zealand context, some form of research overheads top-up is a necessary complement to the primary research grants allocated through Horizon Europe to enable the meaningful and equitable participation of New Zealand research organisations in the scheme.

National economy

[Redacted content]

[Redacted content]

National economy

National economy

Payment Recovery Obligation

35. In addition to these upfront and overhead costs, Article 12 of the treaty requires the New Zealand Government to commit to paying the amounts of any pecuniary obligation imposed on a New Zealand research participant by either the European Commission or the Court of Justice of the European Union (the EU Court of Justice) if the New Zealand research participant does not pay the amount themselves within a specified period. This obligation has the characteristics of an indemnity. Article 12 also stipulates that the New Zealand Government will then seek a refund from that entity using domestic legal procedures.

36. The existing Horizon Europe agreements (both for EU Member States and neighbouring Associated Countries) provide for a simplified enforcement procedure for decisions of the European Commission or EU Court of Justice. However, New Zealand law does not provide for enforcement of administrative decisions of the European Commission, and

while judgements of the EU Court of Justice may be enforceable in New Zealand, there are some legal complexities.

37. Article 12 reflects a negotiated text that ensures that the European Commission and EU Court of Justice have a method of payment recovery. This obligation is necessary to achieve Association to Horizon Europe, as it is certain the European Commission will reject any Treaty without such a provision.
38. While there is no specified cap on this obligation, the possible fiscal exposure is expected to be very low. At most, any pecuniary obligation would likely be the amount needed to refund a research grant, which is estimated by the European Commission to be on average NZD \$700,000. These grants are paid in instalments over the period of Association, and therefore if an entity had to repay all money they had been granted to a point, it is unlikely to be the total value of the grant. In addition, the payment recovery obligation would only apply if the New Zealand research participant did not pay it back themselves within the period specified by the European Commission or EU Court of Justice, which is unlikely to happen.
39. Due to the overheads payment, MBIE will hold a separate contract with any successful Horizon Europe participant from New Zealand which will explicitly state that they must pay the amount of any pecuniary obligation imposed on them by the European Commission or EU Court of Justice. This contract provides the New Zealand Government a legal pathway to recover these costs domestically, therefore the indemnity will have net-zero cost for the Government.
40. The Minister of Finance has approved in principle the granting of an indemnity under the Public Finance Act in order to meet the obligation under Article 12 of the Horizon Europe Treaty. This indemnity will be granted by way of a Deed of Indemnity, which will be signed in line with the signature with of the Horizon Europe Treaty, expected to be in mid-2023.

Impact analysis

41. A National Interest Analysis (NIA) is attached separately in **Annex Two**, outlining the details of the Treaty, and the benefits and costs of New Zealand Associating to Horizon Europe.

Publicity

42. Prime Minister Ardern and European Commission President von der Leyen jointly announced New Zealand's intention to pursue Association to Horizon Europe in Brussels on 30 June 2022. On 17 February 2023, I announced in tandem with the European Commission the implementation of a transitional arrangement to allow New Zealand research organisations to apply while the treaty goes through domestic processes on both ends. I intend to publish a press release once provisional application and entry into force are in place.
43. In late February 2023, officials from the Ministry of Business, Innovation and Employment (MBIE) held a week-long roadshow with EURAXESS – a European Commission's support programme that provides information to researchers and research organisations – to give stakeholders an in-depth walkthrough of Pillar Two

programmes and the application process. The MBIE overheads scheme went live for registrations in March 2023.

44. MBIE will continue to engage the domestic research community on New Zealand's Association to Horizon Europe. Engagement activities will include dedicated general and specific stakeholder meetings with the research community, with particular focus on Māori researchers, and with other Government agencies.

Proactive Release

45. I intend to withhold proactively releasing this paper until New Zealand receives confirmation from the European Commission that their domestic processes for provisional application have been completed, which is expected to be mid-2023.

Consultation

46. This paper was prepared by the Ministry of Business, Innovation and Employment. The Department of Prime Minister and Cabinet, the Ministry of Foreign Affairs and Trade, and the Treasury were consulted in the preparation of this paper. These agencies are comfortable with the content of the Cabinet paper and concur with its recommendations.
47. I have consulted with the Minister of Foreign Affairs on this paper, and she concurs with its recommendations.
48. The following interest groups have been consulted and are supportive of Association to Horizon Europe: Science NZ (representing the Crown Research Institutes), Universities New Zealand, the Royal Society of New Zealand Te Apārangi, and the Independent Research Association of New Zealand. The Prime Minister's Chief Science Advisor, Dame Juliet Gerrard, has also strongly endorse the prospect of Association.

Recommendations

The Minister of Research, Science and Innovation recommends that the Committee:

Horizon Europe

1. **Note** that Horizon Europe is the European Union's main research and innovation framework and funding platform (worth €95.5 billion, NZ \$160 billion), and runs from 2021-2028. It is organised under three pillars: 1) Excellent Science, 2) Global Challenges and European Industrial Competitiveness, and 3) Innovative Europe.
2. **Note** that formal Association by New Zealand to Horizon Europe would confer eligibility onto New Zealand research organisations to bid into Pillar Two of this programme and receive funding from this programme on the same terms as European research organisations and would also grant them access to world-leading research infrastructure in Europe.
3. **Note** that Association to Horizon Europe will contribute to strengthening New Zealand's international connections in science and innovation through high-quality collaborations with the European Union and its member states, and their international partners across both research and industry.

Negotiations

4. **Note** that in November 2022, the Cabinet Economic Development Committee agreed that officials should commence formal negotiations with the European Commission for New Zealand to Associate to Horizon Europe [DEV-22-MIN-0281].
5. **Note** that negotiations have now been completed, in line with the mandate and costs outlined in DEV-22-MIN-0281.

Costs of Association

6. National economy [REDACTED]
7. **Note** that, following consultation with peak organisations in the New Zealand research community, the Ministry of Business, Innovation and Employment considers a research overheads top-up to be a necessary complement to the research grants outlined in recommendation 6 above, to enable meaningful and equitable participation in Horizon Europe programmes. National economy [REDACTED]
8. **Note** that the expenses for Association to Horizon Europe are uncapped, and that MBIE will establish a pre-registration system to mitigate any unexpected expenses. If costs appear to be heading towards exceeding the budgeted appropriation, the payment of overheads to New Zealand research organisations could be reduced or discontinued.

National economy

Treaty Process

13. **Note** that to secure timely access for research organisations into the 2023 grant year, following conclusion of negotiations the European Commission has unilaterally granted, since January 2023, New Zealand research organisations transitional access to Pillar Two of the Horizon Europe programme.
14. **Approve** the text of the Treaty which constitutes the Agreement between the European Union and New Zealand on the participation of New Zealand in Union Programmes (the Agreement), and the Protocol on the Association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) (the Protocol), both of which are attached to this paper.
15. **Note** that Article 12 of the Agreement has the characteristics of an indemnity from New Zealand to the European Commission.
16. **Note** that the Minister of Finance has approved in principle to provide an indemnity by way of a Deed of Indemnity to the European Commission and the Court of Justice of the European Union under Section 65ZD of the Public Finance Act 1989, to be signed at the appropriate time (mid-2023).
17. **Agree** that New Zealand sign the Treaty.
18. **Authorise** the Minister of Research, Science and Innovation to approve any necessary minor or technical amendments to the Treaty ahead of signature.
19. **Note** that provisional application of the Treaty will begin when the Parties notify each other of the completion of internal procedures necessary for that purpose, which is expected to be in mid-2023.
20. **Note** that provisional application will occur before Parliamentary Treaty Examination so that New Zealand can access the benefits of the Treaty before entry into force.
21. **Agree** that the Treaty can be provisionally applied before entry into force.
22. **Note** that the Treaty will enter into force on the date of the completion of domestic processes in both New Zealand and the European Union. This will require the

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approval of the European Parliament and the Parliaments of all European Union member states, which is expected to be completed in mid-2024.

23. **Authorise** conclusion of the notification required to bring the Treaty into force, subject to the satisfactory completion of the Parliamentary Treaty Examination process.
24. **Approve** the content of the National Interest Analysis (NIA), which is attached to the paper.
25. **Agree** to present the Treaty and NIA to the House of Representatives for the purposes of the Parliamentary Treaty Examination process, under Standing Order 405.

Authorised for lodgement

Hon Dr Ayesha Verrall
Minister of Research, Science and Innovation

Annex One: EU – NZ Horizon Europe Association Agreement and Protocol

Attached separately.

Annex Two: National Interest Analysis: Horizon Europe Association

Attached separately.



Council of the
European Union

Brussels, xxx
(OR. en)

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Interinstitutional File:
2023/0058 (NLE)

RECH 107
COASI 66

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

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 (the "Joint Committee").

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.

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 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 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.

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 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 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 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 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 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 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 their 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 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 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 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 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 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)

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.

5. 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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**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



National Interest Analysis

Agreement Between the European Union and New Zealand on the participation of New Zealand in Union programmes, and the Protocol on the association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027)

For submission to Parliamentary Treaty Examination process July 2023

1. Executive summary

The Agreement Between the European Union and New Zealand on the participation of New Zealand in Union programmes, and the Protocol on the association of New Zealand to Horizon Europe (2021-2027) constitute a treaty for New Zealand to associate to Pillar Two of Horizon Europe (the Treaty). This National Interest Analysis outlines the details of the Treaty, and the benefits and costs of New Zealand associating to Horizon Europe.

Horizon Europe is the European Union's (EU) main research and innovation framework and funding platform. It is the world's largest multilateral research programme, both in terms of the number of participants and the research funding dedicated to the programme (€95.5 billion ≈ NZD \$160 billion, over 2021-2027). New Zealand has been invited by the European Union to associate to Pillar Two of the programme: Global Challenges and European Industrial Competitiveness (€35.5 billion ≈ NZD \$60.2 billion), which focusses on science that addresses global challenges, such as climate change, energy and global health.

Under the terms of association, New Zealand research organisations will gain access to Pillar Two programmes, infrastructure and funding on the same terms as their European counterparts. In addition, they will be able to lead research projects and consortia, and retain possession of the intellectual property they bring to, and create within, their collaborative projects.

New Zealand will be required to cover the cost of any research grant awarded to a New Zealand entity, as well as a participation fee paid to the European Commission, which combined are estimated to cost NZD \$31.70 million over the 2023-2024 to 2027-2028 Financial Years. In addition, the Ministry of Business, Innovation and Employment (MBIE) will establish a domestic overheads scheme to ensure the meaningful and equitable participation of New Zealand entities in the programme, which is estimated to cost NZD \$18.48 million over the 2023-2028 Financial Years. In total, our association to Pillar Two is estimated to cost NZD \$50.18 million over the 2023-2024 to 2027-2028 Financial Years.

If we Associate to Horizon Europe, New Zealand will be the first nation beyond Europe's immediate 'neighbourhood' to do so. The European Union is looking to more closely align with New Zealand and other 'likeminded' liberal democracies in the broader geopolitical context of increasing challenges to the international rules-based order. In addition, New Zealand's national research priorities are likely to closely align with the European research agenda. New Zealand's association to Horizon Europe is a natural next step to strengthen our relationship with the European Union, and support and showcase New Zealand research on a global scale.

2. Nature and timing of the proposed treaty action

Association to Pillar Two of Horizon Europe (Global Challenges and European Industrial Competitiveness) requires a treaty-level agreement between New Zealand and the European Union. The Treaty is split into two parts: the Agreement Between the European Union and New Zealand on the participation of New Zealand in Union programmes (the Agreement), and the Protocol on the association of New Zealand to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027) (the Protocol).

The overarching Agreement sets the foundation for New Zealand to participate in EU programmes outlined in Protocols attached to the Treaty. The Protocol will allow New Zealand to associate to Pillar Two of Horizon Europe, and will last until the completion of New Zealand's Horizon Europe projects, expected to be in 2029. The intent of the Agreement is that New Zealand will be able to associate to future iterations of Horizon Europe via a new Protocol, if we wished to.

The implementing agency on the EU side is the European Commission. In New Zealand it is the Ministry of Business, Innovation and Employment (MBIE).

As of January 2023, the European Commission has implemented a transitional arrangement for New Zealand. This means that New Zealand research organisations have been able to submit applications to Pillar Two programmes, with any contracting pending provisional application of the Treaty.

Formal signature of the Treaty by both parties is currently planned for July 2023. Under Article 15, the Treaty shall provisionally apply on the date on which both parties confirm that they have completed their internal procedures necessary for provisional application. This will occur via an exchange of diplomatic letters between New Zealand and the European Commission, which can occur at officials-level. Provisional application is a legally binding way of receiving the benefits (and obligations) of a treaty ahead of formal entry into force. However, the provisional application can be unilaterally terminated by either party at any point, including if either party no longer intends to become party to the Treaty.

Following examination by both the New Zealand and European Parliaments, the Treaty enters into force upon another formal exchange of diplomatic letters. Once satisfactory completion of the Parliamentary Treaty Examination (PTE) process has occurred, New Zealand will be able to inform the EU that all domestic procedures have been completed for entry into force. Approval from the European Parliament and Parliaments of each EU Member State is expected to take 6 to 18 months, with completion around mid-2024. At this point, the Treaty will enter into force, pending confirmation at that time by the Minister of Research, Science and Innovation and the Minister of Foreign Affairs.

The Treaty will not apply to Tokelau.

3. Reasons for New Zealand becoming a party to the Treaty

While New Zealand's research, science and innovation system is already reasonably connected and respected globally, we need to build on this through more favourable funding and institutional settings that better support how knowledge is transferred and mobilised to innovate at an international scale. Association to Pillar Two of Horizon Europe: Global Challenges and European Industrial Competitiveness, will enable New Zealand research organisations, innovators and institutions to engage with the world's best and take advantage of international opportunities. Association will grow our global connectivity, resulting in more global recognition of, and engagement with, our research institutions and researchers, enhanced access to international research infrastructure, routes to market and increased international funding.

The European Union has one of the world's highest per capita research and development (R&D) budgets. In 2020, EU member states collectively spent €311 billion on R&D, or 2.35 per cent of EU-wide GDP. High levels of investment have resulted in the EU accounting for 18.04 per cent of global research publications.

Europe is also home to much world-leading research infrastructure of a scale not possible in New Zealand, which we will be able to include in project plans under the association. Major facilities include the European Organisation for Nuclear Research (CERN, the particle accelerator leading research into fundamental physics), the European Open Science Cloud for hosting and processing research data, and professional networks and communities such as the Environment Research Infrastructures (ENVI), which facilitates access to 26 European research infrastructures related to environmental research.

The European Union is already one of New Zealand's strongest research partners, with 19.5 per cent of all New Zealand publications produced in collaboration with an EU member state in 2022. The citation performance of these publications exceeds the average citation performance of New Zealand publications, indicating that connectivity with European researchers plays a key role in increasing the quality and impact of New Zealand publications.

Horizon Europe is the world's largest multilateral research programme, both in terms of the number of participants and the research funding dedicated to the programme (€95.5 billion ≈ NZD \$160 billion). Research organisations from any country can apply to be part of the projects under Horizon Europe without association however only in a limited capacity, i.e., they cannot lead their own projects, can only receive funding in very limited circumstances and are not eligible to participate in any of the strategic priority-setting. This is currently the case for New Zealand. 24 grants were awarded to New Zealand participants in the eight years of the previous Pillar Two iteration of Europe's Framework Programme for Research and Innovation, Horizon 2020.

Under the terms of association, New Zealand research organisations (including businesses conducting research) will be able to bid for and receive Horizon Europe funding on the same terms as their European counterparts. They will be able to lead research projects and consortia, retain possession of the intellectual property they bring to, and create within, their collaborative projects, and participate in long-term strategic platforms. These benefits are expected to increase New Zealand research organisations' applications to Horizon Europe, and MBIE estimates that 44 grants will be awarded over 2023–2028.

In addition to the immediate benefits for New Zealand's research organisations, association will contribute to the Government's goal of raising New Zealand's R&D expenditure to 2 per cent of GDP by 2030. It will also contribute to the Government's Economic Plan by strengthening international connections with the European Union and associated countries.

As of January 2023, 16 other countries have associated to Horizon Europe - Albania, Armenia, Bosnia and Herzegovina, the Faroe Islands (provisionally), Georgia, Iceland, Israel, Kosovo, Moldova, Montenegro, North Macedonia, Norway, Serbia, Tunisia, Turkey and Ukraine. A transitional arrangement is in effect for Morocco, the United Kingdom, and New Zealand, pending the completion of domestic procedures for formal association. Canada and South

Korea are currently in formal association negotiations. Japan, Singapore and Australia are also considering membership. The United Kingdom and Switzerland currently have their association suspended, for political reasons relating to disagreement with wider EU policies (Brexit and internal migration respectively).

4. Advantages and disadvantages to New Zealand of the Treaty entering into force and not entering into force for New Zealand

This Treaty is a bilateral agreement between the European Union and New Zealand.

4.1 Advantages of the Treaty entering into force

Association to Pillar Two of Horizon Europe (Global Challenges and European Industrial Competitiveness) will enable New Zealand research organisations to access Pillar Two programmes on the same terms as their European counterparts.

Horizon Europe funds are distributed across six themes known as 'clusters'. These focus on tackling climate change and other global issues aligned with achieving the United Nations Sustainable Development Goals. The six clusters are:

- Cluster 1: Health.
- Cluster 2: Culture, Creativity and Inclusive Society.
- Cluster 3: Civil Security for Society.
- Cluster 4: Digital, Industry and Space.
- Cluster 5: Climate, Energy and Mobility.
- Cluster 6: Food, Bioeconomy, Natural Resources, Agriculture and Environment.

Within these clusters, Horizon Europe incorporates EU 'missions' to increase the effectiveness of funding by pursuing clearly defined targets with a concrete impact. The aim is to achieve bold, inspirational and measurable goals by 2030. There are five missions, including:

- Adaptation to Climate Change: Supporting at least 150 European regions and communities to become climate resilient by 2030.
- Cancer: improving the lives of more than 3 million people through prevention, cure and solutions to live longer and better.
- Restore our Oceans and Waters by 2030.
- 100 Climate-Neutral and Smart Cities by 2030.
- A Soil Deal for Europe: Establishing 100 living labs and lighthouses to lead the transition to healthy soils by 2030.

Association will facilitate research collaboration on these topics of mutual interest to New Zealand and the EU. The Horizon Europe research agenda is likely to align closely with the

National Research Priorities arising from the Te Ara Paerangi – Future Pathways reforms of the New Zealand science system, with the international connections gained through participation in Horizon Europe fulfilling a core objective of Te Ara Paerangi.

Association will also deepen New Zealand's integration into the European, and global, science systems. It confers participation and influence in research agenda setting, research for policymaking, and the shape of future research missions and clusters. It will also grant research organisations early access to insights and knowledge about emerging innovations, providing New Zealand a competitive advantage compared to non-Associated countries, and informing strategic investment decisions both domestically and in other countries. New Zealand is not a member of any other platform of this scale (as they do not exist), and association therefore presents a global science investment governance opportunity that New Zealand does not currently enjoy.

Association would signal, and reinforce, the strength of the partnership between New Zealand and the European Union, building on the foundation established by the 2009 New Zealand – EU Science and Technology Cooperation Agreement. This Treaty is being considered in the wider context of Europe seeking to strengthen its connections with 'likeminded' liberal democracies, in the broader geopolitical situation of increasing challenges to the international rules-based order. New Zealand shares these concerns, and is working to further strengthen its relationship with the EU and its member states, including through the recent negotiation of the 2022 New Zealand – EU Free Trade Agreement.

4.2 Disadvantages of the Treaty entering into force

Aside from the fact that there are financial costs incurred in the Treaty, there are no specific disadvantages, however we note some issues below.

While the Protocol section expires following the conclusion of all of New Zealand's Horizon Europe projects in 2029, the Agreement section of the Treaty technically lasts in perpetuity. The intention of this is to more easily allow New Zealand to Associate to a future iteration of Horizon Europe through a new Protocol, and it imposes no additional immediate requirements. Association via a new Protocol would require New Zealand to complete another round of necessary domestic procedures. New Zealand has the option to withdraw from the Treaty at any time.

Article 12 of the Treaty creates an obligation for payment recovery, wherein the New Zealand Government will be required to pay the European Commission or Court of Justice of the European Union the amount of any pecuniary obligation imposed on a New Zealand entity in relation to their participation in Horizon Europe if that entity does not pay that amount themselves within a specified period. This obligation has the characteristics of an indemnity.

The Minister of Finance has approved in principle the granting of an indemnity under the Public Finance Act in order to meet the obligation under Article 12 of the Treaty. This will occur via a Deed of Indemnity and will be finalised when the date for provisional application of the Treaty is determined between the European Commission and New Zealand.

Given that this indemnity will only be called upon if a pecuniary obligation is imposed, and if the entity does not pay themselves first, the financial exposure is expected to be low. In addition, Article 12 requires the New Zealand Government to hold a contract with the successful entity that allows the Government to seek reimbursement for these costs domestically through the legal system, which in effect will make the indemnity cost-neutral. More detail is provided in section 5.3.

4.3 Disadvantages of the Treaty not entering into force

If the Treaty does not enter into force, New Zealand will not be able to Associate to Horizon Europe. New Zealand research organisations will still be able to participate in other entities' Horizon Europe projects, but will not be able to lead their own projects. They will be eligible for funding on very limited terms, essentially on an ad hoc or junior basis at the discretion of the EU lead. New Zealand will have no influence over the Horizon Europe research agenda, and limited access to European research networks and consortia.

All research that could have been conducted in partnership with Horizon Europe entities, including sharing research expertise, would need to be delivered entirely domestically. This would be very difficult as certain skills sets do not exist in New Zealand. In addition without association, New Zealand research organisations would have severely limited access to European world-leading research infrastructure. It is not feasible for New Zealand to build these infrastructures domestically, as our R&D sector does not have the scale necessary to operate them or cover the very large capital expense.

New Zealand is the first country beyond the European Union's immediate 'neighbourhood' to be invited to Associate to Horizon Europe, which is a positive sign of the good faith relationship that exists between us. However, if we do not decide to Associate, we risk being left behind in this geopolitical and global science space as the EU moves to align with other nations.

5. Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the Treaty, and an outline of any dispute settlement mechanisms

The Treaty creates the following obligations:

5.1 Financial Conditions (Articles 6, 7, 8)

New Zealand will be obliged to contribute funding to the operation of Horizon Europe once the Treaty is being provisionally applied. There are two primary categories of fees which will be paid to the European Commission: an operational contribution, and a participation fee.

The operational contribution covers the research grants awarded to successful New Zealand research organisations. MBIE estimates that the this fee will cost NZD \$30.80 million over Financial Years 2023-2024 to 2027-2028, based on an expected 44 grants being awarded, and a 20 per cent success rate from 220 applications and a grant average of NZD \$700,000. Under the terms of the Treaty this cost is uncapped, and an autocorrection mechanism will be established which will either result in New Zealand receiving a refund if our research

organisations are less successful than expected, or will require us to top-up if our research organisations are more successful.

The participation fee covers a range of administrative activities related to Horizon Europe's day-to-day operations. This fee is a percentage of the pre-agreed operational contribution, starting off at 1.5 per cent in 2023 and rising to 4 per cent in 2027. This participation fee will not change even if the operational contribution differs from estimates, and is expected to cost NZD \$900,000 over Financial Years 2023-2028. There is an additional administrative fee levied when the final grant disbursements are tallied up.

Partial or full non-payment of the financial contribution due by New Zealand may result in the suspension of the Treaty.

5.2 Conduct of Fraud Investigations (Article 10)

New Zealand will be obliged to assist the European Commission and European Anti-Fraud Office (OLAF) with investigations of irregularities, fraud, or other criminal offences that relate to the use of Horizon Europe funds within the territory of New Zealand, and within the confines of existing New Zealand law.

5.3 Payment Recovery Obligation (Article 12)

As mentioned in para 4.2, Article 12 creates an obligation for the New Zealand Government to pay the European Commission or Court of Justice of the European Union the amount of any pecuniary obligation imposed on a New Zealand entity stemming from their participation in Horizon Europe, and if that entity does not pay that amount themselves within a specified period. This obligation has the characteristics of an indemnity.

This clause was included as a negotiated alternative to a standard clause in Horizon Europe association treaties which allows the European Commission or Court of Justice of the EU to enforce these pecuniary obligations directly within the territory of an Associated Country. This standard clause would not be legally possible in New Zealand.

The Minister of Finance has approved in principle the granting of an indemnity under the Public Finance Act in order to meet the obligation under Article 12 of the Treaty. This will occur via a Deed of Indemnity and will be finalised when the date for provisional application of the Treaty is determined between the European Commission and New Zealand.

The financial exposure from this indemnity is expected to be low. Firstly, the likelihood of the indemnity being called upon in the first place is very low as it not only requires a New Zealand entity to have a pecuniary obligation imposed on them due to misconduct, but also to not pay the amount to the European Union within a specified period. In addition, MBIE will contract with all successful New Zealand research organisations to explicitly require them to pay up if such a pecuniary obligation is imposed on them. This gives MBIE a legal mechanism to recover the cost domestically if needed.

5.4 Dispute Resolution (Article 15)

The dispute resolution provisions in the Treaty are high-level and require negotiated outcomes. Implementing agencies (MBIE and the European Commission) would work together to find common consent for amendments to the Treaty. The Treaty does not have any provisions for binding mediation, arbitration, or a similar process.

5.5 Reservation Statement

The Treaty is on a negotiated bilateral basis and does not include any specific reservation statements.

6. Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

No new legislation is required for New Zealand to implement its obligations under the Treaty. There is no regulatory impact from the Treaty's entry into force.

The New Zealand Government will need to hold a contract with successful domestic entities to allow New Zealand's obligations to be met, including the enforcement rules. Upon notification from the European Commission that a New Zealand entity has been awarded a Horizon Europe grant, MBIE will arrange a contract with that entity in addition to paying out a domestic overhead top-up. This can be done through existing government mechanisms.

7. Economic, social, cultural, and environmental costs and effects of the treaty action

Aside from the financial costs, there are no immediate economic, social, cultural, and environmental costs from taking this treaty action.

Deepening research collaboration with the European Union and Associate Members will help deepen our integration into the global science system. Economic, social, cultural and environmental benefits from the research coming out of these Horizon Europe projects will be realised in the medium- to long-term as government, business and society translates it into new policy, innovations and technology. A core driver of Horizon Europe is to address global challenges, most notably tackling climate change.

8. The costs to New Zealand of compliance with the Treaty

Direct financial obligations under the Treaty are described in para 5.1.

In addition, MBIE will cover a range of domestic administrative and institutional running costs, or 'overheads', related to New Zealand research organisations' Horizon Europe projects. New Zealand research grants typically include full overhead costs, whereas European grants do not as these costs are usually covered through other, mostly national, research budgetary mechanisms across the research industry and higher education. Establishing an overheads scheme will be necessary to ensure New Zealand research organisations' meaningful and equitable participation in Horizon Europe. It is expected to cost NZD \$18.48 million over

Financial Years 2023-2024 to 2027-2028, calculated as 60 per cent of the operational contribution.

Additional resourcing will also be required to support the successful implementation of the Treaty. The participation fees will support the establishment of a network of 'National Contact Points' (NCPs) to provide detailed information to research organisations and institutions in building successful bids and, in the first few years, assist them in the preparing of bids and negotiating contracts. MBIE would need to support this role in New Zealand. At this stage, there are several pathways through baseline for funding this type of activity, and any costs of this nature are expected to be relatively minor. One NCP will be appointed per 'cluster' (six in total). They will be supported by an NCP Coordinator based domestically and employed by MBIE, and a Brussels-based NCP which will be integrated into the existing MBIE Brussels Science and Innovation Counsellor role.

The total direct cost of New Zealand's association to Horizon Europe is expected to cost NZ\$50.18 million over the 2023-2024 to 2027-2028 Financial Years. The Minister of Research, Science and Innovation has secured NZ\$44.53 million from Budget 2023 for this purpose. The remaining NZ\$5.65 million will be covered from reprioritised funding within the research, science and innovation portfolio.

Table 1: Total estimated cost for New Zealand's association to Pillar Two of Horizon Europe

Year	2023-24	2024-25	2025-26	2026-27	2027-28	Total
	NZD \$ million					
"Operational contribution" <i>Research grants and specific administrative costs</i>	3.50	6.30	8.40	8.40	4.20	30.80
"Participation Fee" <i>Share of EU administrative costs</i>	0.05	0.13	0.25	0.30	0.17	0.90
Subtotal <i>Reimbursable to the Commission</i>	3.55	6.43	8.65	8.70	4.37	31.70
<i>Overheads top-up</i>	2.10	3.78	5.04	5.04	2.52	18.48
Total	5.65	10.21	13.69	13.74	6.89	50.18

9. Completed or proposed consultation with the community and parties interested in the treaty action

The following departments have been consulted in the preparation of this National Interest Analysis and relevant Cabinet paper, and support the treaty action: the Department of Prime Minister and Cabinet, the Treasury, and the Ministry of Foreign Affairs and Trade.

The Minister of Foreign Affairs was consulted, and concurs with the recommendations of the paper.

The following interest groups have been consulted and are supportive of association to Pillar Two of Horizon Europe: Science NZ (representing the Crown Research Institutes), Universities New Zealand, the Royal Society of New Zealand Te Apārangi, and the Independent Research Association of New Zealand. The Prime Minister's Chief Science Advisor, Professor Dame Juliet Gerrard, has also strongly endorsed the prospect of association.

Consultation with selected Māori researchers demonstrated support for association, and support for the specific Te Tiriti o Waitangi and mātauranga Māori provisions included in the Preamble and Articles 5 and 14 of the Agreement section, and Article 4 of the Protocol section. Care will need to be taken over the appropriate use of data.

10. Subsequent protocols and/or amendments to the Treaty and their likely effect

Article 14 establishes a Joint Committee that will be responsible for evaluating the programme and proposing amendments to the Treaty. These amendments will still be required to go through the relevant Cabinet and parliamentary processes in New Zealand before they enter into force, except for amendments proposed under Article 11.

Article 11 states that the Joint Committee may amend Articles 9 (Reviews and Audits) and 10 (Fight against irregularities, fraud and other criminal offences affecting the financial interests of the Union), as these Articles refer to European Union institutions governed by European acts which may change over the course of the Treaty. This provision is limited in scope and is a standard provision in the EU's Horizon Europe treaties.

Article 14(1)(f) states that new Protocols may be added to this Treaty by the Joint Committee. For New Zealand, any additional Protocol, or amendment to these Protocols, proposed by the Joint Committee would be subject to the normal treaty-making processes, including the relevant Cabinet and potentially parliamentary processes, depending on the materiality of the amendments. New Zealand is likely to be invited to the next iteration of Horizon Europe which starts in 2028, which would require a new Protocol to this Treaty, as well as the relevant domestic processes.

11. Withdrawal or denunciation provision in the treaty

Under Article 15(5), either Party may terminate the Treaty at any time by a written notification of the intent to terminate. The Treaty 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.

Article 15(6) outlines the obligations of the Parties in the case of termination of the Treaty. Specifically it states that any projects that were agreed to prior to termination of the Treaty will still continue under the terms of the Treaty, and New Zealand will still be required to cover the financial contribution related to these projects.

Under Article 16(1) of the Protocol, the Protocol shall remain in force as long as is necessary for all the projects, actions, activities or parts thereof financed from Pillar Two of Horizon Europe, all actions necessary to protect the financial interests of the European Union, and all the financial obligations stemming from the implementation of the Protocol between New Zealand and the EU to be completed.