CoE RAISE
AHM@CERN

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T5.3 – Establishment of Legal Grounds for the RAISE Business

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Task 5.3: Establishment of Legal Grounds for the RAISE Business

➢ ParTec AG leads Task 5.3

➢ Task 5.3 was planned to start M3 (March 2021) and run until the end of the project (M36, December 2023)
  ➢ In reality, it started early, and will most likely continue until the new end of the project (M42)

➢ T5.3 did contribute to the work of T5.1 and T5.2, in particular to the business plan (Deliverable D5.2)
  ➢ D5.2 contains an update on the proposed legal structure for a RAISE spinoff ("RAISE NewCo")
  ➢ D5.2 contains a broad-strokes discussion of the IP strategy of RAISE NewCo

➢ <u>Decision on RAISE NewCo legal form to be taken quickly (before EoY)</u>
  ➢ Organization has to be up & running at the new end of project (M42)
  ➢ <u>Part 1 of this presentation covers the options and decision/voting process on the legal form</u>

➢ Next & final T5.3 Deliverable D5.6 (M42) will report the full OSS license study, the IP protection/licensing measures which can be taken by RAISE (NewCo) and the description of the RAISE NewCo legal form
  ➢ <u>Part 2 of this presentation discusses data needed to complete the OSS study (and inform the RAISE NewCo IP strategy)</u>

Part 1: RAISE NewCo Legal Form

➤ Realistic options with pros and cons
  ➤ informed by January AHM discussions and further WP5 analysis
➤ Access rights to project results for the RAISE NewCo
➤ Proposal for a decision/voting process
➤ Schedule and next steps

RAISE NewCo Legal Form – Realistic Options (Slide 1)

- Common properties of considered options
  - Can pursue commercial activities
  - Are legal persons able to close commercial customer contracts and employ people
  - Limit the liability of members/shareholders/employees (with exceptions, like criminal activities)
  - Registered/notarized
  - Public audit requirements kick in at relatively high revenue/employee numbers

- Proposal to found the RAISE NewCo in one of the larger EuroHPC countries with active RAISE partners
  - Like BE, DE, ES, FR
  - Market entry & hiring, theoretical availability of EuroHPC funding
  - Also look at operating costs (travel, salaries)

RAISE NewCo Legal Form – Realistic Options (Slide 2)

- Commercial legal forms – Share-based companies
  - Examples: German (small) AG or European SE
  - Precedents: scapos AG (Fraunhofer spinoff), SAP SE
  - Pros: easy to add new shareholders, could use this to raise capital (VC-style), limitation of liability to company capital
  - Cons: significant up-front effort needed (time, $$$) and legal pitfalls
  - Cons: problems for RAISE CoE partners to join as shareholders and/or lead the company

- Commercial legal forms – Limited companies
  - Examples: German GmbH or French SARL
  - Precedents: many small-medium HPC companies
  - Pros: straightforward foundation process, low initial capital requirement, limited liability (capital)
  - Cons: problems for RAISE CoE partners to join as shareholders and/or lead the company, GmbH needs € 25,000 capital

RAISE NewCo Legal Form – Realistic Options (Slide 3)

- Non-commercial legal forms – Associations
  - Require definition of "idealistic" goal , allow commercial activities to reach that goal
  - Do not require a minimum capital, usually financed through membership fees & economic activties
  - Examples: German Verein (e.V.) and Belgian AISBL
  - Cons: liability of association officials in case of gross negligence or wilful intend to cause damage while acting for the association

- German Verein
  - Precedents: Unicore Forum e.V., Gauss Centre for Supercomputing e.V.
  - Pros: easy & quick foundation, only local court registration required
  - Cons: needs at least seven members (personal or institutional)
  - Cons: personal liability of Verein-members in case of gross negligence or wilful intend to cause damage while acting for the Verein

- AISBL
  - Precedents: PRACE AISBL, ETP4HPC AISBL (in NL)
  - Pros: one member would be sufficient, established model for international "lobby" organisations
  - Cons: needs to be notarized and approved by Belgium ministry of law (time, $$)

RAISE NewCo Legal Form – Where Do We Go from Here?

> Agree <u>here</u> on <u>two</u> legal form options to choose from
>> From our previous discussions, a commercial form is seen as problematic by many partners
>> Initial proposal for the legal forms are
>>> <u>German association (e.V., „Idealverein")</u> with the idealistic objective of bringing the CoE RAISE results into use and sustain/improve them
>>> <u>Belgian Association Internationale sans but Lucrative (AISBL)</u> with the same idealistic objective
>> Discussion topics:
>>> Do the partners prefer to have a commercial option (Limited style company, like German GmbH or French SARL)?
>>> Do the partners want to see different non-commercial options?
>>> Do the partners want to see different countries of registration?

> Discuss the decision/voting process proposed in the next slides

RAISE NewCo – Involvement of the Project Steering Board

➤ Per the CoE RAISE consortium agreement, the PSB must "*deliberate, negotiate and decide*" on project „content" & evolution, IP & financial matters, as well as appointments
  ➤ It seems logical that spinning out a RAISE NewCo falls into the PSB domain
  ➤ All project partners have to be present and cast votes if a decision is called

➤ Yet, only a subset of partners will (realistically) join the RAISE NewCo and actively participate there
  ➤ Decision affecting only the RAISE NewCo should be discussed & ratified amongst these „NewCo-partners"

➤ And, the RAISE NewCo will need rights to use the project results
  ➤ This is governed by the Consortium Agreement section 9.4 „Access Rights for Exploitation" for project partners

CA Section 9.4 „Access Rights for Exploitation"

9.4.1 Access Rights to <u>Results</u> of one Party Needed for Exploitation of <u>another Party's own Results</u> shall be granted on <u>Fair and Reasonable conditions</u>, shall be <u>non-discriminatory</u> and shall be subject to a separate <u>written agreement between the Parties concerned</u>.

...

A <u>third Party</u> shall not be granted direct Access to Results generated by other Parties unless those <u>Parties explicitly agree</u> to it.

9.4.2 Access Rights to <u>Background</u> of one Party if Needed for Exploitation of <u>another Party's own Results</u> shall be granted on <u>Fair and Reasonable Conditions</u> and upon <u>written agreement</u>.

9.4.3 A <u>request for Access Rights</u> may be made up to <u>twelve (12) months after the end of the Project</u> or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

9.4.4 The Parties agree that certain Parties, such as public bodies and non-profit organizations, may not carry Exploitation activities out directly due to their legal status and accordingly <u>may need to sublicense the Access Right</u> in order <u>to carry out an Exploitation activity</u>. Such a Party requesting Access Rights <u>shall confirm the requirement for a right to sublicense</u>, which the Party granting Access Rights <u>shall not unreasonably refuse</u>.

CA Section 9.4 – Extend Rights to the RAISE NewCo

➢ Preferred option: give RAISE NewCo the rights of a project partner

  ➢ PSB <u>should</u> be able to do this – if certain partners object, we can except them

  ➢ Please note that the RAISE NewCo could access results only under fair & reasonable conditions

➢ Fallback option: use mechanism described in 9.4.4

  ➢ Drawback: RAISE NewCo exloitation activities need to ad-hoc be "channelled" through a partner which can not perform exploitation itself – additional effort & delay

➢ The period of 12 months seems quite short – can we extend it (24 months are further)?

  ➢ RAISE NewCo must stay viable mid/long term, and follow-on projects are not really "in sight"

RAISE NewCo – Decision & Voting Process (Slide 1)

➢ WP5 proposes a two-step process to call email votes in the BSP (each step with 10 days prior notice)

➢ Step 1 – Determine circle of „NewCo-partners" and the NewCo legal form with two votes

1. Does your organization want to participate in the RAISE NewCo if it takes one of the two legal forms presented?
   ➢ These will be the two legal forms "vetted" in our meeting today
   ➢ "Participate" means being an *active* member or stakeholder

2. What legal form should the organization be?
   ➢ According to the choice presented earlier
   ➢ We would ask partners who did vote "N" to Vote 1 to abstain

RAISE NewCo – Decision & Voting Process (Slide 2)

➢ Step 2 – Reconfirm the circle of NewCo-partners and clarify/extend access rights according to CA section 9.4 to the RAISE NewCo

1. Does your organization want to participate in the RAISE NewCo if it takes one of the two legal forms presented?

   ➢ This will re-confirm the circle of NewCo-partners

2. Does your organization agree to endow the RAISE NewCo with the same status as a CoE RAISE partner regarding CA section 9.4, extending the period for making access requests to twenty-four (24) months?

   ➢ This would significantly simplify exploitation by the RAISE NewCo, and safeguard mid-term access to project results

RAISE NewCo – Decision & Voting Process Schedule

Task	Responsible	Due Date
Email to PSB Inform PSB that we will present NewCo at AHM and ask to consult with people attending the AHM + provide opportunity to dial in/attend in person	Roel	July 20 ✓
WP5/T5.3 Presentation at the Iceland AHM Meeting	Hans-Christian	August 29 (today)
Formal Vote Preparation Email: communication with PSB beginning of September - usual way is that we inform them that we plan formal vote and give period to ask questions (send presentation of the AHM as attachment)	Roel to prepare Andi to send out	September 8
Schedule Formal Vote Outcome Meeting with all project partners end of October	Roel	September 8
Send formal voting documents round 1: for questions 1 and 2 via mail to partners (due date to return answers 29/9)	Andi	September 18
Send reminder to provide votes	Andi	September 25
Send formal voting documents round 2: for questions 3 and 4 via mail to partners (due date to return answers 13/10)	Andi	October 6
Prepare and lead Formal Vote Outcome Meeting	Roel	End of October

Part 2: RAISE SW Components and their Licenses

- Finalize list of IP (mainly SW) components for exploitable results
  - Unified AI framework (UAIF) – to be licensed to RAISE NewCo customers
  - UAIF certification – any additional IP/SW to be used in the certification process on behalf of the RAISE NewCo customers
  - Computation-driven use cases in WP3 planned to be exploited
  - Data-driven use cases in WP4 planned to be exploited
- Collect all relevant licenses for the above
  - Most AI components come under non-viral, lenient OSS licenses (such as BSD, MIT, Apache)
  - Must watch out for viral licenses like GPL or LGPL – they can materially impact the RAISE NewCo business model & opportunities
- Determine which licenses the RAISE NewCo can propose to their customers

UAIF SW Component List as of D5.2

Secure Shell/SSL – which implementation/license?	Jupyter Notebooks (https://github.com/jupyter/notebook)
Apache Airflow (https://github.com/apache/airflow)	LAMEC API ONNX – which license & dependencies?
LAMEC API Community Platform Integration*	Community Platform OpenML Interoperability – which implementation/license?
ClearML MLOps Platform Interoperability (https://github.com/allegroai/clearml)	LAMEC API Façade Pattern Implementation*
LAMEC API Batch Script Repository*	LAMEC API Batch Script Generator*
Open HPC/AI Script Generator Web Page*	

*: assumed to be project result – which license, and which dependencies?
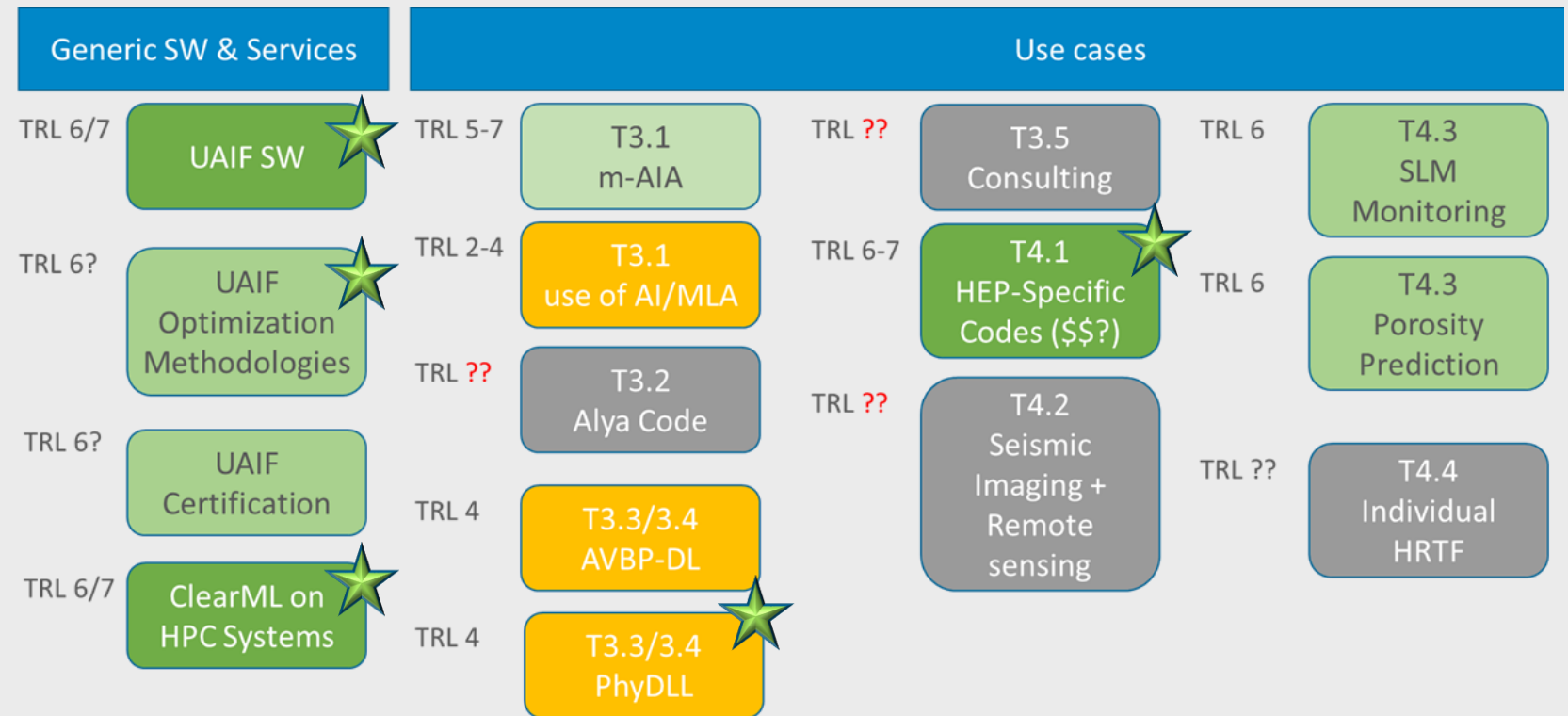
WP3 / WP4 SW Components D5.2 Lists as Parts of UAIF

Machine-Learned Particle-Flow (MLPF)*	T4.1
AI4HPC (https://gitlab.jsc.fz-juelich.de/CoE-RAISE/FZJ/ai4hpc/ai4hpc) – GPL!	T3.?
AI4Sim Model Collection*	T3.?
PhyDLL (https://gitlab.com/cerfacs/phydll) – CeCILL-B license	T3.3

*: assumed to be project result – which license, and which dependencies?

Exploitation of Other WP3/WP4 Use Cases

- Slide of last AHM →

- Must update with M42 target

- Need to identify SW components critical to exploitable use cases

- D5.5 (M42) will contain IP and license analysis → need the SW components information by end of January 2024 at the latest

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