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**NOTE**

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From:	Presidency
To:	Delegations
No. Cion doc.:	10928/20 ADD 1
Subject:	Annex to the Proposal for a COUNCIL REGULATION on establishing the European High Performance Computing Joint Undertaking

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Delegations will find attached a Presidency text on the Annex to the Proposal for a Council regulation on establishing the European High Performance Computing Joint Undertaking.

Changes in comparison to doc. 10928/20 ADD 1 are marked in **bold underline** for additions and in ~~strikethrough~~ for deletions.

General scrutiny reservation: All delegations.

**STATUTES OF THE EUROPEAN HIGH PERFORMANCE COMPUTING JOINT  
UNDERTAKING**

*Article 1*

**Tasks**

The Joint Undertaking shall carry out the following tasks:

- (a) mobilise public and private sector funds for the financing of the activities of the Joint Undertaking;
- (b) support the implementation of the mission, the objectives and the pillars of activities of the Joint Undertaking listed in Articles 3 and 4 of this Regulation. These activities will be funded by the Union's budget stemming from Regulation (EU) xxx establishing Horizon Europe, Regulation (EU) xxx establishing Digital Europe Programme and Regulation (EU) xxx establishing the Connecting Europe Facility in accordance with the scope of their respective Regulations and by contributions from the relevant Participating States to the Joint Undertaking; to this purpose the Joint Undertaking shall launch calls for proposals, calls for tenders, and any other instrument or procedure provided for in Horizon Europe, the Digital Europe Programme, and the Connecting Europe Facility;
- (c) initiate and manage the calls for expression of interest for hosting EuroHPC supercomputers and evaluate the offers received, with the support of independent external experts;
- (d) select the hosting entity of the EuroHPC supercomputers in a fair, open and transparent manner, in accordance with Article 8 of this Regulation;

- (e) conclude a hosting agreement in accordance with Article 9 of this Regulation with the hosting entity for the operation and maintenance of the EuroHPC supercomputers and monitor the contractual compliance with the hosting agreement, including the acceptance test of the acquired supercomputers;
- (f) define general and specific conditions for allocating the Union's share of access time to the EuroHPC supercomputers and monitor access to these supercomputers in accordance with Article 15 of this Regulation;
- (g) ensure the contribution of its operations to the achievement of the objectives of Horizon Europe, the strategic multiannual planning, reporting, monitoring and evaluation and other requirements of that programme such as the implementation of the common policy feedback framework;
- (h) initiate open calls for proposals and award funding in accordance with Regulation (EU) xxx establishing Horizon Europe, and within the limits of available funds, to indirect actions, mainly in the form of grants;
- (i) initiate open calls for proposals and calls for tenders and award funding in accordance with Regulation xxx (EU) establishing Digital Europe Programme and Regulation (EU) xxx establishing the Connecting Europe Facility within the limits of available funds;
- (j) monitor the implementation of the actions and manage grant agreements and procurement contracts;
- (k) ensure the efficiency of the European High Performance Computing initiative, based on a set of appropriate measures;
- (l) monitor overall progress towards achieving the objectives of the Joint Undertaking;
- (m) develop close cooperation and ensure coordination with Union and national activities, bodies and stakeholders, creating synergies and improving exploitation of research and innovation results in the area of High Performance Computing;

- (n) develop close cooperation and ensure coordination with other European Partnerships, as well as operational synergies with other Joint Undertakings, including through centralisation of administrative functions;
- (o) define the multiannual strategic programme, draw up and implement the corresponding annual work programmes for their execution and make any necessary adjustments to the multiannual strategic programme;
- (p) engage in information, communication, exploitation and dissemination activities by applying *mutatis mutandis* Article 46 of Regulation (EU) No xxx establishing Horizon Europe, including making the detailed information on results from calls for proposals available and accessible in a common Horizon Europe e-database;
- (q) any other task needed to achieve the objectives set out in Article 3 of this Regulation.

## *Article 2*

### **Members**

- (1) The members of the Joint Undertaking shall be:
  - (a) the Union, represented by the Commission;
  - (b) Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, [Germany], Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, **[Malta]**, [Montenegro], the Netherlands, [North Macedonia], Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, [Switzerland], [Turkey];
  - (c) upon acceptance of these Statutes by means of a letter of commitment, the European Technology Platform for High Performance Computing (ETP4HPC) Association registered under Dutch law with its registered office in Amsterdam (the Netherlands), the Big Data Value Association (BDVA) registered under Belgian law with its registered office in Brussels (Belgium).

- (d) Each Participating State shall appoint its representative in the Governing Board of the Joint Undertaking and shall designate the national entity or entities responsible for fulfilling its obligations under this Regulation.

### *Article 3*

#### **Changes to membership**

- (1) Provided that they contribute in accordance with Article 7 of this Regulation or to the financing referred to in Article 15 of these Statutes to achieve the mission and objectives of the Joint Undertaking set out in Article 3 of this Regulation, Member States or countries associated to Horizon Europe or the Digital Europe Programme that are not listed in point (b) of Article 2(1) of these Statutes may apply to become members of the Joint Undertaking.
- (2) Any application of a Member State or country associated to Horizon Europe or the Digital Europe Programme for membership of the Joint Undertaking shall be addressed to the Governing Board. The candidate countries shall provide a written acceptance of these Statutes, and of any other provisions governing the functioning of the Joint Undertaking, as well as their contribution to the administrative costs of the Joint Undertaking. The candidates shall also provide their motivation for requesting membership to the Joint Undertaking and indicate how their national supercomputing strategy is aligned with the Joint Undertaking's objectives. The Governing Board shall assess the application, taking into account the relevance and the potential added value of the candidate as regards the achievement of the mission and objectives of the Joint Undertaking and may decide to ask for clarifications of the candidature before endorsing the application.
- (3) Provided that it contributes to the financing referred to in Article 15 of these Statutes to achieve the mission and objectives of the Joint Undertaking set out in Article 3 of this Regulation, and accept these Statutes, any legal entity that is not listed in point (c) of Article 2(1) of the Statutes and is established in a Member State that directly or indirectly supports research and innovation in a Member State may apply to become a Private Member of the Joint Undertaking in accordance with paragraph 4 of this Article.

- (4) Any application for membership to become a Private Member of the Joint Undertaking made in accordance with paragraph 3 of this Article shall be addressed to the Governing Board. The Governing Board shall assess the application, taking into account the relevance and the potential added value of the applicant as regards the achievement of the mission and objectives of the Joint Undertaking and shall decide on the application.
- (5) Any member may terminate its membership in the Joint Undertaking. Such termination shall become effective and irrevocable six months after notification to the Executive Director, who shall inform the other members of the Governing Board and the Private Members. As from the date of termination, the former member shall be discharged from any obligations other than those approved or incurred by the Joint Undertaking prior to the notification of termination of the membership.
- (6) Each Private Member shall inform the Joint Undertaking once per year of any significant changes in the composition of the Private Member. Where the Commission considers that the change in composition is likely to affect the Union's or the Joint Undertaking's interest on grounds of security or public order, it may propose to the Governing Board to terminate the membership of the concerned Private Member. The termination shall become effective and irrevocable within six months of the decision of the Governing Board or on the date specified in that decision, whichever is earlier.
- (7) Membership in the Joint Undertaking may not be transferred to a third party without the prior agreement of the Governing Board.
- (8) Upon any change to membership pursuant to this Article, the Joint Undertaking shall immediately publish on its website an updated list of members together with the date of such change.

#### *Article 4*

##### **Bodies of the Joint Undertaking**

- (1) The bodies of the Joint Undertaking shall be:
  - (a) the Governing Board;
  - (b) the Executive Director;
  - (c) the Industrial and Scientific Advisory Board composed of the Research and Innovation Advisory Group and the Infrastructure Advisory Group.
- (2) When carrying out its tasks, each body of the Joint Undertaking shall only pursue the objectives set out in this Regulation and shall only act within the scope of the activities of the Joint Undertaking for the purpose of which it was established.

#### *Article 5*

##### **Composition of the Governing Board**

- (1) The Governing Board shall be composed of representatives of the Commission, on behalf of the Union, and of the Participating States.
- (2) The Commission and each Participating State shall appoint one representative in the Governing Board.

#### *Article 6*

##### **Functioning of the Governing Board**

- (1) The representatives of the members of the Governing Board shall make every effort to achieve consensus. Failing consensus, a vote shall be held.
- (2) The Union shall hold 50% of the voting rights. The voting rights of the Union shall be indivisible.

- (3) For the tasks referred to in Article 7(3) of these Statutes, the remaining 50% of the voting rights shall be distributed equally among all Participating States.

For the purpose of this paragraph, decisions of the Governing Board shall be taken by a majority **consisting of the Union's vote and** at least **750%** of all votes **of the Participating States**, including the votes of the members who are absent.

- (4) For the tasks referred to in Article 7(4) of these Statutes, except points (f), (g) and (h), the remaining 50% of the voting rights shall be held by the Participating States that are Member States.

For the purpose of this paragraph, decisions of the Governing Board shall be taken by a qualified majority. Qualified majority shall be deemed established if it represents the Union and at least 55% of the Participating States that are Member States, comprising at least 65% of the total population of these States. To determine the population, the figures set out in Annex III to Council Decision 2009/937/EU<sup>1</sup> shall be used.

- (5) For those tasks referred to in Article 7(4) points (f), (g) and (h) of these Statutes, and for each EuroHPC supercomputer, the voting rights of the Participating States shall be distributed in proportion to their committed financial contributions and to their in-kind contributions to that supercomputer until either its ownership is transferred to the hosting entity in accordance with Article 8(3) of this Regulation or until it is sold or decommissioned; the in-kind contributions shall only be taken into account if they have been certified *ex-ante* by an independent expert or auditor.

For the purpose of this paragraph, decisions of the Governing Board shall be taken by a majority of at least 75% of all votes, including the votes of the members who are absent.

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<sup>1</sup> Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

- (6) For the tasks referred to in Article 7(5), 7(6) and 7(7) of these Statutes, decisions of the Governing Board shall be taken in two stages.

At the first stage, the remaining 50% of the voting rights shall be distributed equally among all Participating States. Decisions of the Governing Board shall be taken by a majority consisting of the Union's vote and at least 55% of all votes of the Participating States, including the votes of the members who are absent.

At the second stage, the Governing Board shall decide by the qualified majority referred to in paragraph 4 of this Article.

- (7) Without prejudice to the previous paragraphs, countries that were members of the Joint Undertaking under Council Regulation 2018/1488 and contributed to the acquisition or operation of the supercomputers acquired by the Joint Undertaking (under that Regulation), but which no longer are members of the present Joint Undertaking, shall maintain voting rights limited exclusively to decisions relating to those supercomputers in accordance with Articles 6(5) and 7(5) of the Statutes of the European High Performance Computing Joint Undertaking annexed to Council Regulation 2018/1488.
- (8) The Governing Board shall elect a chair for a period of two years. The mandate of the chairperson may be extended only once, following a decision by the Governing Board.
- (9) The vice chair of the Governing Board shall be the representative of the Commission, **substituting the chair where necessary.**
- (10) The Governing Board shall hold its ordinary meetings at least twice a year. It may hold extraordinary meetings at the request of the Commission, of a majority of the representatives of the Participating States, at the request of the chair, or at the request of the Executive Director in accordance with Article 15(5) of these Statutes. The meetings of the Governing Board shall be convened by its chair and shall usually take place at the seat of the Joint Undertaking.

The Executive Director shall have the right to attend the meetings and take part in the deliberations but shall have no voting rights. The Governing Board may invite, on a case-by-case basis, other persons to attend its meetings as observers.

Each observer State may appoint one delegate in the Governing Board, who shall receive all relevant documents and may participate in the deliberations of the Governing Board unless decided otherwise by the Governing Board on a case-by-case basis. Those delegates shall have no voting rights and shall ensure the confidentiality of sensitive information according to Article 27 of this Regulation and **be** subject to the rules of conflict of interest.

- (11) The representatives of the members shall not be personally liable for any actions they have taken in their capacity as representatives on the Governing Board.
- (12) The Governing Board shall adopt and publish its own rules of procedure. Those rules shall include specific procedures for identifying and avoiding conflicts of interest and ensure the confidentiality of sensitive information.
- (13) The chairs of the Research and Innovation Advisory Group and of the Infrastructure Advisory Group of the Joint Undertaking shall be invited, whenever issues falling within their tasks are discussed, to attend meetings of the Governing Board as observers and take part in its deliberations, but shall have no voting rights. **They shall ensure the confidentiality of sensitive information according to Article 27 of this Regulation and be subject to the rules of conflict of interest.**
- (14) The chairs of the Private Members of the Joint Undertaking shall be invited to attend the meetings of the Governing Board as observers and take part in its deliberations, but shall have no voting rights. **They shall ensure the confidentiality of sensitive information according to Article 27 of this Regulation and be subject to the rules of conflict of interest.**

## *Article 7*

### **Tasks of the Governing Board**

- (1) The Governing Board shall have overall responsibility for the strategic orientation and the operations of the Joint Undertaking and shall supervise the implementation of its activities. It shall ensure that the principles of fairness and transparency are properly applied in the allocation of public funding.
- (2) The Commission, in its role in the Governing Board, shall seek to ensure coordination between the activities of the Joint Undertaking and the relevant activities of Union funding programmes with a view to promoting synergies when developing an integrated supercomputing and data infrastructure ecosystem and when identifying priorities covered by collaborative research.
- (3) The Governing Board shall, in particular, carry out the following general administrative tasks of the Joint Undertaking:
  - (a) assess, accept or reject applications for membership in accordance with Article 3(2) of these Statutes;
  - (b) decide on the termination of membership in the Joint Undertaking of any member that does not fulfil its obligations;
  - (c) adopt the financial rules of the Joint Undertaking in accordance with Article 17 of this Regulation;
  - (d) adopt the annual administrative budget of the Joint Undertaking, including the corresponding staff establishment plan indicating the number of temporary posts by function group and by grade, the number of contract staff and seconded national experts expressed in full-time equivalents;
  - (e) appoint, dismiss, extend the term of office of, provide guidance to and monitor the performance of the Executive Director;

- (f) approve the consolidated annual activity report, including the corresponding expenditure referred to in Article 19(1) of these Statutes;
- (g) exercise the powers of appointing authority with respect to staff in accordance with Article 18 of this Regulation;
- (h) where appropriate, establish implementing rules to the Staff Regulations and the Conditions of Employment in accordance with Article 18(3) of this Regulation;
- (i) where appropriate, lay down rules on the secondment of national experts to the Joint Undertaking and on the use of trainees in accordance with Article 19(2) of this Regulation;
- (j) where appropriate, set up advisory groups in addition to the bodies of the Joint Undertaking referred to in Article 4 of these Statutes;
- (ja) lay down rules and specific criteria for the selection, appointment and dismissal of members of the advisory groups set up in accordance with point (j) of this paragraph and approve the rules of procedure laid down autonomously by these advisory groups;**
- (k) approve the organisational structure of the Programme Office upon recommendation of the Executive Director;
- (l) where appropriate, submit to the Commission a request to amend this Regulation proposed by a member of the Joint Undertaking;
- (m) define the general and specific access conditions to use the Union's share of access time of the EuroHPC supercomputers, in accordance with Article 15 of this Regulation;
- (n) establish the level of the fee of the commercial services referred to in Article 16 of this Regulation, and decide on the allocation of the access time for those services;

- (o) approve the Joint Undertaking's communication policy upon recommendation by the Executive Director;
  - (p) be responsible for any task that is not specifically allocated to a particular body of the Joint Undertaking; it may assign such tasks to any body of the Joint Undertaking.
- (4) The Governing Board shall, in particular, carry out the following tasks related to the acquisition and operation of the EuroHPC supercomputers and generated revenues referred to in Article 14 of this Regulation:
- (a) adopt the multiannual strategic programme for the acquisition of EuroHPC supercomputers referred to in Article 19(1) of these Statutes;
  - (b) adopt the part of the annual work programme that is related to the acquisition of EuroHPC supercomputers and the selection of hosting entities and the corresponding expenditure estimates referred to in Article 19(2) of these Statutes;
  - (c) approve the launch of calls for expression of interest, in accordance with the annual work programme;
  - (d) approve the selection of the hosting entities for the EuroHPC supercomputers selected through a fair, open and transparent process in accordance with Article 8 of this Regulation;
  - (e) decide annually on the use of any revenue generated by the fees for commercial services referred to in Article 16 of this Regulation;
  - (f) approve the launch of calls for tenders, in accordance with the annual work programme;
  - (g) approve the tenders selected for funding;
  - (h) decide on the possible transfer of ownership of the EuroHPC supercomputers to a hosting entity, their sale to another entity or their decommissioning, in accordance with Articles 10(4), 11(5) and 13(4) of this Regulation;

- (i) decide on the possible transfer of ownership of the EuroHPC supercomputers to the Private Members or a consortium of private partners, their sale to another entity or their decommissioning, in accordance with Article 12(5) of this Regulation.
- (5) The Governing Board shall, in particular, carry out the following tasks related to the research and innovation activities, as well as the data use and skills activities of the Joint Undertaking:
- (a) **discuss and** adopt the strategic research and innovation agenda referred to in Article 19(1) of these Statutes at the beginning of the initiative and amend it throughout the duration of the Horizon Europe, if necessary; the Strategic Research and Innovation agenda shall identify, inter alia, the other European partnerships with which the Joint Undertaking shall establish a formal and regular collaboration, as well as possibilities for synergies between the Joint Undertaking's actions and national or regional initiatives and policies based on information received by the Participating States;
  - (b) **discuss and** adopt the part of the annual work programme that is related to the research and innovation activities and the corresponding expenditure estimates referred to in Article 19(2) of these Statutes to implement the strategic research and innovation agenda, including the content of the calls for proposals, the applicable funding rate per call topic, as well as the related rules for submission, evaluation, selection, award and review procedures;
  - (c) take due account of the agreements referred to in Article 16(3) of the Statutes when adopting the expenditure estimates of the related research and innovation activities in order to ensure the principle of equilibrium of the budget of the Joint Undertaking;
  - (d) approve the launch of calls for proposals, in accordance with the annual work programme;
  - (e) approve the list of actions selected for funding on the basis of the recommendation of the Executive Director;

- (f) be responsible for the close and timely monitoring of the progress of the Joint Undertaking's research and innovation programme and individual actions in relation to the priorities of the Commission and the strategic research and innovation agenda and take corrective measures where needed to ensure that the Joint Undertaking meets its objectives.
- (6) The Governing Board shall, in particular, carry out the following tasks related to the capability building and widening activities of the Joint Undertaking:
- (a) **discuss and** adopt the multiannual strategic programme referred to in Article 19(1) of these Statutes;
  - (b) **discuss and** adopt the part of the annual work programme that is related to the capability building and widening activities and the corresponding expenditure estimates referred to in Article 19(2) of these Statutes;
  - (c) approve the launch of calls for proposals and calls for tender, in accordance with the annual work programme;
  - (d) approve the list of actions selected for funding on the basis of the recommendation of the Executive Director.
- (7) The Governing Board shall, in particular, carry out the following tasks related to the federation and connectivity of the High Performance Computing and data infrastructure activities, as well as the international cooperation activities of the Joint Undertaking:
- (a) **discuss and** adopt the multiannual strategic programme referred to in Article 19(1) of these Statutes;
  - (b) **discuss and** adopt the part of the annual work programme that is related to the federation and connectivity and to the international cooperation activities and the corresponding expenditure estimates referred to in Article 19(2) of these Statutes;

- (c) approve the launch of calls for proposals and calls for tender, in accordance with the annual work programme;
- (d) approve the list of actions selected for funding on the basis of the recommendation of the Executive Director.

### *Article 8*

#### **Appointment, dismissal or extension of the term of office of the Executive Director**

- (1) The Commission shall propose a list of candidates for Executive Director after consultation of the members other than the Union of the Joint Undertaking. For the purpose of such consultation the members other than the Union of the Joint Undertaking shall appoint by common accord their representatives as well as an observer on behalf of the Governing Board.

The Executive Director shall be appointed by the Governing Board from a list of candidates proposed by the Commission following an open and transparent selection procedure.

- (2) The Executive Director shall be a member of staff and shall be engaged as a temporary agent of the Joint Undertaking under point (a) of Article 2 of the Conditions of Employment.

For the purpose of concluding the contract of the Executive Director, the Joint Undertaking shall be represented by the chair of the Governing Board.

- (3) The term of office of the Executive Director shall be four years. By the end of that period, the Commission, associating the members other than the Union as appropriate, shall undertake an assessment of the performance of the Executive Director and the Joint Undertaking's future tasks and challenges.
- (4) The Governing Board, acting on a proposal from the Commission which takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for a period of no more than four years.

- (5) An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
- (6) The Executive Director may be dismissed only upon a decision of the Governing Board pursuant to point (e) of Article 7(3) of these Statutes acting on a proposal from the Commission associating the members other than the Union as appropriate.
- (7) The Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director for any period that the position of Executive Director is vacant.

### *Article 9*

#### **Tasks of the Executive Director**

- (1) The Executive Director shall be the chief executive responsible for the day-to-day management of the Joint Undertaking in accordance with the decisions of the Governing Board.
- (2) The Executive Director shall be the legal representative of the Joint Undertaking. The Executive Director shall be accountable to the Governing Board and perform his or her duties with complete independence within the powers assigned to him or her.
- (3) The Executive Director shall implement the budget of the Joint Undertaking.
- (4) The Executive Director shall carry out, in particular, the following tasks in an independent manner:
  - (a) consolidate and submit for adoption to the Governing Board the draft multiannual strategic programme referred to in Article 19(1) of these Statutes;
  - (b) prepare and submit to the Governing Board for adoption the draft annual budget, including the corresponding staff establishment programme indicating the number of temporary posts in each grade and function group and the number of contract staff and seconded national experts expressed in full-time equivalents;

- (c) prepare and submit to the Governing Board for adoption the draft annual work programme including the scope of the calls for proposals, calls for expression of interest and calls for tenders needed to implement the research and innovation activities programme, the procurement programme, the capability building and widening activities programme and the federation, connectivity and international cooperation activities programme, as proposed by the Industrial and Scientific Advisory Board, and the corresponding expenditure estimates, as proposed by the Participating States and the Commission;
- (d) submit for opinion to the Governing Board the annual accounts;
- (e) prepare and submit for approval to the Governing Board the consolidated annual activity report, including the information on corresponding expenditure;
- (f) sign individual grant agreements, contracts and decisions in his or her remit on behalf of the Joint Undertaking; ;
- (g) sign procurement contracts;
- (h) monitor the operations of the EuroHPC supercomputers owned or funded by the Joint Undertaking, including the allocation of the Union's share of access time, compliance with the access rights for academic and industrial users and quality of provided services;
- (i) propose to the Governing Board the Joint Undertaking's communication policy;
- (j) organise, direct and supervise the operations and the staff of the Joint Undertaking within the limits of the delegation by the Governing Board as provided for in Article 18(2) of this Regulation;
- (k) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Governing Board;
- (l) ensure that risk assessment and risk management are performed;

- (m) arrange, as appropriate, for the establishment of an internal audit capability of the Joint Undertaking;
  - (n) allocate access time for emergencies and crisis management, in agreement with the access policy defined by the Governing Board.
  - (o) take any other measures needed to assess the progress of the Joint Undertaking towards its objectives as set out in Article 3 of this Regulation;
  - (p) perform any other tasks entrusted or delegated to the Executive Director by the Governing Board.
- (5) The Executive Director shall set up a Programme Office for the execution, under his or her responsibility, of all support tasks arising from this Regulation. The Programme Office shall be composed of the staff of the Joint Undertaking and shall in particular carry out the following tasks:
- (a) provide support in establishing and managing an appropriate accounting system in accordance with the financial rules referred to in Article 17 of this Regulation;
  - (b) manage the calls for proposals as provided for in the annual work programme and administer the grant agreements and decisions;
  - (c) manage the calls for tenders as provided for in the annual work programme and administer the contracts;
  - (d) manage the process for the selection of the hosting entities and administer the hosting agreements;
  - (e) provide the members and the other bodies of the Joint Undertaking with all relevant information and support necessary for them to perform their duties, as well as respond to their specific requests;
  - (f) act as the secretariat of the bodies of the Joint Undertaking and provide support to advisory groups set up by the Governing Board.

## Article 10

### Composition of the Industrial and Scientific Advisory Board

- (1) The Industrial and Scientific Advisory Board shall be composed of a Research and Innovation Advisory Group and an Infrastructure Advisory Group.
- (2) The Research and Innovation Advisory Group shall consist of no more than ~~ten~~ **twelve** members, **of** which **up to six** shall be appointed by the Private Members taking into account their commitments to the Joint Undertaking **and up to six shall be appointed by the Governing Board.**
- (3) The Infrastructure Advisory Group shall consist of ~~ten~~ **twelve** members. ~~The Governing Board shall establish the specific criteria that will be considered for selecting the members of the Infrastructure Advisory Group. The Chair and Vice Chair of the Governing Board shall~~ appoint the members of the Infrastructure Advisory Group, following inputs received from ~~the~~ **members of the** Governing Board and the Executive Director.
- (4) The Research and Innovation Advisory Group and the Infrastructure Advisory Group shall meet at least together once a year in order to coordinate their activities.

## Article 11

### Functioning of the Research and Innovation Advisory Group

- (1) The Research and Innovation Advisory Group shall meet at least twice a year.
- (2) The Research and Innovation Advisory Group may appoint working groups where necessary under the overall coordination of one or more members.
- (3) The Research and Innovation Advisory Group shall elect its chair.
- (4) The Research and Innovation Advisory Group shall adopt its rules of procedure, including the nomination of the constituent entities that shall represent the Advisory Group and the duration of their nomination.

## Article 12

### Functioning of the Infrastructure Advisory Group

- (1) The Infrastructure Advisory Group shall meet at least twice a year.
- (2) The Infrastructure Advisory Group may appoint working groups where necessary under the overall coordination of one or more members.
- (3) The Infrastructure Advisory Group shall elect its chair.
- (4) The Infrastructure Advisory Group shall adopt its rules of procedure, including the nomination of the constituent entities that shall represent the Advisory Group and the duration of their nomination.

## Article 13

### Tasks of the Research and Innovation Advisory Group

The Research and Innovation Advisory Group shall:

- (a) draw up and regularly update the draft multiannual strategic programme referred to in Article 19(1) of these Statutes for achieving the objectives of the Joint Undertaking set out in Article 3 of this Regulation. This draft multiannual strategic programme shall include: i) the strategic research and innovation agenda identifying the research and innovation priorities for the development and ~~adoption~~ **uptake** of technologies **and applications** and ~~key competences~~ for High Performance Computing and ~~quantum computing~~ across different application areas, in order to support the development of an integrated High Performance Computing, quantum computing and data ecosystem in the Union, **to** increase ~~its~~ **the Union's** resilience and **to** help create new markets and societal applications; and measures to promote the development and uptake of European technology; ii) potential international cooperation activities in research and innovation that add value and are of mutual interest; iii) training and education priorities for addressing **key competences and** the skills gap in High Performance Computing and Quantum Computing technologies and applications, in particular for industry. ~~It~~ **The draft multiannual programme** shall be reviewed regularly in accordance with the evolution of the scientific and industrial demand;

- (b) submit to the ~~Executive Director~~ **Governing Board** the draft multiannual strategic research and innovation agenda as a basis for **the Executive Director to** drafting the annual work programme within the deadlines set by the Governing Board;
- (c) organise public consultations open to all public and private stakeholders having an interest in the fields of High Performance Computing and quantum computing, to inform them about and collect feedback on the draft multiannual strategic programme and the draft research and innovation activities programme, the international cooperation activities programme and the training and education programme for a given year.

#### *Article 14*

### **Tasks of the Infrastructure Advisory Group**

The Infrastructure Advisory Group shall provide advice to the Governing Board for the acquisition and operation of the EuroHPC supercomputers. For this purpose, it shall:

- (a) draw up and regularly update the draft multiannual strategic programme referred to in Article 19(1) of these Statutes for achieving the objectives of the Joint Undertaking set out in Article 3 of this Regulation. The draft multiannual strategic programme shall address: i) the acquisition of the EuroHPC supercomputers taking into account inter alia, the planning of the acquisition, the needed capacity increases, the types of applications and user communities to be addressed, the relevant user requirements and appropriate system architectures, the user requirements, and the architecture of the infrastructure; ii) the federation and interconnection of this infrastructure, taking into account inter alia, the integration with national High Performance Computing or quantum computing infrastructures, and the architecture of the hyper-connected and federated infrastructure; and iii) the capability building, including the Competence Centres and widening and training activities for end-users, as well as opportunities for promoting the take-up and use of European technology solutions notably by the Competence Centres;

- (b) submit to the **Governing Board** ~~Executive Director~~ the draft multiannual strategic programme for the acquisition of the EuroHPC supercomputers as a basis for **the Executive Director to** ~~drafting~~ the annual work programme within the deadlines set by the Governing Board;
- (c) organise public consultations open to all public and private stakeholders having an interest in the field of High Performance Computing, including quantum computing, to inform them about and collect feedback on the draft multiannual strategic programme for the acquisition and operation of the EuroHPC supercomputers and the related draft activities of the work programme for a given year.

#### *Article 15*

#### **Sources of financing**

- (1) The Joint Undertaking shall be jointly funded by its members through financial contributions paid in instalments and in-kind contributions as set out in paragraphs (2) and (3).
- (2) The administrative costs of the Joint Undertaking shall not exceed EUR [equal to 2.22 times of the amount of the Union contribution for administrative costs referred to in Article 5 of this Regulation] and shall be covered by means of the financial contributions referred to in Articles 5(1), 7(1) and 7(2) of this Regulation.

The contribution of each Participating State to the administrative costs of the Joint Undertaking shall be proportional to their Gross Domestic Product. Each year the contributions shall be calculated based on the GDP of the previous calendar year as determined by EUROSTAT.

If part of the contribution for administrative costs is not used, it may be made available to cover the operational costs of the Joint Undertaking.

- (3) The operational costs of the Joint Undertaking shall be covered by means of:
  - (a) the Union's financial contribution;

- (b) financial contributions by the Participating State where the hosting entity is established or by the Participating States in a hosting consortium to the Joint Undertaking for the acquisition of the high-end EuroHPC supercomputers or quantum machines and for their operation until their ownership is transferred to the hosting entity, they are sold or decommissioned in accordance with Articles 10(4) and 11(5) of this Regulation, less the contributions by the Joint Undertaking and any other Union contribution to those costs;
- (c) in-kind contributions by the Participating State where the hosting entity is established or by the Participating States in a hosting consortium as defined in Article 8(7) of this Regulation;
- (d) financial contributions by the Participating State where the hosting entity is established or by the Participating States in a hosting consortium consisting of the costs incurred for the acquisition, jointly with the Joint Undertaking, of the mid-range EuroHPC supercomputers, less the contributions by the Joint Undertaking and any other Union contribution to those costs;
- (e) financial contributions by the Private Members or a consortium of private partners consisting of the costs incurred for the acquisition and operation, jointly with the Joint Undertaking, of the industrial-grade EuroHPC supercomputers, less the contributions by the Joint Undertaking and any other Union contribution to those costs, until their ownership is transferred to the hosting entity, they are sold or decommissioned in accordance with Article 13(5) of this Regulation;
- (f) financial contributions by Participating States to the eligible costs incurred by beneficiaries established in that Participating State in implementing indirect actions corresponding to the research and innovation agenda as a complement to the reimbursement of these costs made by the Joint Undertaking, less the contributions by the Joint Undertaking and any other Union contribution to those costs. Such contributions shall be without prejudice to state-aid rules;
- (g) in-kind contributions by the Private Members or their constituent entities and affiliated entities as defined in Article 8(7) of this Regulation;

- (4) The resources of the Joint Undertaking entered in its budget shall be composed of the following contributions:
  - (a) members' financial contributions to the administrative costs;
  - (b) members' financial contributions to the operational costs;
  - (c) any revenue generated by the Joint Undertaking;
  - (d) any other financial contributions, resources and revenues.
  - (e) Any interest yielded by the contributions paid to the Joint Undertaking shall be considered to be its revenue.
- (5) Should any member of the Joint Undertaking be in default of its commitments concerning its financial contribution, the Executive Director shall put this in writing and shall set a reasonable period within which such default shall be remedied. If the situation is not remedied within that period, the Executive Director shall convene a meeting of the Governing Board to decide whether the defaulting member's membership is to be revoked or whether any other measures are to be taken until its obligations have been met. The defaulting member's voting rights shall be suspended until the default of its commitments is remedied.
- (6) The resources and activities of the Joint Undertaking shall be intended for the achievement of the objectives set out in Article 3 of this Regulation.
- (7) The Joint Undertaking shall own all assets generated by it or transferred to it for the achievement of its objectives set out in Article 3 of this Regulation. This shall not include the EuroHPC supercomputers whose ownership the Joint Undertaking has transferred to a hosting entity in accordance with Articles 10(4), 11(5), 12(5) and 13(4) of this Regulation.
- (8) Except when the Joint Undertaking is wound up, any excess revenue over expenditure shall not be paid to the members of the Joint Undertaking.

## *Article 16*

### **Contributions of the Participating States**

- (1) Participating States shall entrust the Joint Undertaking with the implementation of their contributions to the participants of their country in indirect actions as referred to in Article 15(3)(f) of these Statutes through the grant agreements concluded by the Joint Undertaking. They shall also entrust the Joint Undertaking with the payment of their contributions to the participants. They shall specify the amounts dedicated to indirect actions.
- (2) The beneficiaries of indirect actions of the Joint Undertaking shall sign a single grant agreement with the Joint Undertaking. Detailed rules of the grant agreement, including the respective framework for intellectual property rights, shall follow the rules of the respective Union programme supporting the corresponding grant activity.
- (3) Participating States shall commit to the payment of the full amount of their contributions referred to in Article 15(3)(f) of these Statutes by means of legally binding agreements between the entities designated by the Participating States for that purpose and the Joint Undertaking. Such agreements shall be concluded ahead of the adoption of the part of the annual work programme related to the research and innovation activities.
- (4) Other arrangements for the cooperation between the Participating States and the Joint Undertaking and for the commitments regarding the contributions mentioned in paragraph 1 shall be established by means of agreements to be concluded between the entities designated by the Participating States for that purpose and the Joint Undertaking.

## *Article 17*

### **Financial commitments**

The financial commitments of the Joint Undertaking shall not exceed the amount of financial resources available or committed to its budget by its members. The Commission might provide multi-annual commitments.

## *Article 18*

### **Financial year**

The financial year shall run from 1 January to 31 December.

## *Article 19*

### **Operational and financial planning**

- (1) The multiannual strategic programme shall specify the strategy and plans for achieving the objectives of the Joint Undertaking set out in Article 3 of this Regulation. The multiannual strategic programme shall be drafted by the Industrial and Scientific Advisory Board and shall include the following: the strategic research and innovation agenda, the capability building and widening activities, the federation, connectivity and international cooperation activities, and the acquisition of supercomputers. It will also include the multiannual financial perspectives received from the Participating States and the Commission.
- (2) The Executive Director shall submit to the Governing Board for adoption a draft annual work programme which shall include the research and innovation activities, the procurement activities, the capability building and widening activities, the federation and connectivity activities, the international cooperation activities, the administrative activities and the corresponding expenditure estimates for the following year. The Executive Director shall also submit to the Governing Board the agreements referred to in Article 16(3) of the Statutes supporting the expenditure estimates of the related research and innovation activities.
- (3) The annual work programme shall be adopted by the end of the year prior to its implementation. The annual work programme shall be made publicly available.
- (4) The Executive Director shall prepare the draft annual budget for the following year and shall submit it to the Governing Board for adoption.
- (5) The annual budget for a particular year shall be adopted by the Governing Board by the end of the year prior to its implementation.

- (6) The annual budget shall be adapted in order to take into account the amount of the Union's financial contribution as set out in the general budget of the Union.

*Article 20*

**Operational and financial reporting**

- (1) The Executive Director shall report annually to the Governing Board on the performance of his or her duties in accordance with the financial rules of the Joint Undertaking referred to in Article 17 of this Regulation. The consolidated annual activity report shall include, inter alia, information on the following matters:
- (a) research, innovation and other actions carried out and the corresponding expenditure;
  - (b) acquisition and operation of infrastructure, including the use of and access to the infrastructure, including the access time effectively used by each Participating State;
  - (c) the proposals and tenders submitted, including a breakdown by participant type, including SMEs, and by country;
  - (d) the indirect actions selected for funding, with a breakdown by participant type, including SMEs, and by country, and indicating the contributions of the Joint Undertaking to the individual participants and actions;
  - (e) the tenders selected for funding, with a breakdown by type of contractor, including SMEs, and by country, and indicating the contributions of the Joint Undertaking to the individual contractors and procurement actions;
  - (f) the outcome of the procurement activities;
  - (g) progress towards the achievement of the objectives set out in Article 3 of this Regulation and proposals for further necessary work to achieve these objectives.

- (2) The accounting officer of the Joint Undertaking shall send the provisional accounts to the Commission's accounting officer and the Court of Auditors in accordance with the financial rules of the Joint Undertaking.
- (3) The Executive Director shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors in accordance with the financial rules of the Joint Undertaking.
- (4) The discharge procedure shall be carried out in accordance with the financial rules of the Joint Undertaking.

#### *Article 21*

#### **Internal audit**

- (1) The Commission's internal auditor shall exercise the same powers over the Joint Undertaking as those exercised in respect of the Commission.
- (2) The Joint Undertaking shall be capable of performing its own internal audit.

#### *Article 22*

#### **Liability of members and insurance**

- (1) The financial liability of the members of the Joint Undertaking for the debts of the Joint Undertaking shall be limited to their contributions already made to the administrative costs.
- (2) The Joint Undertaking shall take out and maintain appropriate insurance.

#### *Article 23*

#### **Conflict of interest**

- (1) The Joint Undertaking, its bodies and staff shall avoid any conflict of interest in carrying out their activities.

- (2) The Governing Board shall adopt rules for the prevention and management of conflicts of interest in respect of the persons serving in the Governing Board and in the other bodies or groups of the Joint Undertaking.

#### *Article 24*

#### **Winding-up**

- (1) The Joint Undertaking shall be wound up at the end of the period laid down in Article 1 of this Regulation.
- (2) In addition to paragraph 1 the winding-up procedure shall be automatically triggered if the Union or all members other than the Union withdraw from the Joint Undertaking.
- (3) For the purpose of conducting the proceedings to wind up the Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.
- (4) When the Joint Undertaking is being wound up, its assets shall be used to cover its liabilities and the expenditure relating to its winding-up. The supercomputers owned by the Joint Undertaking shall be transferred to the respective hosting entities or Private Members or consortium of private partners, sold or decommissioned upon decision of the Governing Board and in accordance with the hosting agreement. The members of the Joint Undertaking shall not be liable for any costs incurred after the transfer of ownership of a supercomputer or its sale or decommissioning. In the event of transfer of ownership, the hosting entity or Private Members or the consortium of private partners shall reimburse the Joint Undertaking the residual value of the supercomputers that are transferred. Any surplus shall be distributed among the members at the time of the winding-up in proportion to their financial contribution to the Joint Undertaking. Any such surplus distributed to the Union shall be returned to the general budget of the Union.
- (5) An *ad hoc* procedure shall be set up to ensure the appropriate management of any agreement concluded or decision adopted by the Joint Undertaking, as well as any procurement contract with a duration longer than the duration of the Joint Undertaking.