



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 January 2002

5691/02

**Interinstitutional File:
2001/0327 (CNS)**

**RECH 20
ATO 9**

COVER NOTE

from : Mr Bernhard ZEPTER, Deputy Secretary-General of the European Commission
date of receipt : 17 January 2002
to : Mr Javier SOLANA, Secretary-General/High Representative

Subject : Amended proposal for a Council Decision concerning the rules for the participation of undertakings, research centres and universities in the implementation of the framework programme 2002-2006 of the European Atomic Energy Community (Euratom)
(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

Delegations will find attached Commission document COM(2001) 823 final/2.

Encl.: COM(2001) 823 final/2



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.01.2002
COM(2001) 823 final/2

2001/0327 (CNS)

CORRIGENDUM :

La cote interinstitutionnelle du document COM(2001)823 final
du 10.01.2002 doit se lire 2001/0327 (CNS) et non 2001/0327 (COD).
Concerne les 11 versions linguistiques.

Amended proposal for a

COUNCIL DECISION

**concerning the rules for the participation of undertakings, research centres and
universities in the implementation of the framework programme 2002-2006 of the
European Atomic Energy Community (Euratom)**

(presented by the Commission pursuant to Article 250 (2)
of the EC Treaty)

EXPLANATORY MEMORANDUM

The rules for participation adopted by the Council are one of the legal instruments implementing the Community framework programme for research.

The new rules have been drawn up with the twofold aim of:

- Adapting the rules on participating in research programmes in line with the philosophy and characteristics of the new framework programme, especially the principles of the proposed new procedures for intervention and financial support;
- Simplifying and streamlining existing provisions to make them clearer and easier to understand.

The framework established complies with the above principles. Moreover, unlike the existing rules, the new rules on participation are not intended to be supported by an implementing regulation.

The current proposal is a revised draft of the proposal concerning the rules for participation adopted by the Commission on 06.12.01 (COM(2001)725 final).

This revision of the initial proposal is intended to ensure consistency by aligning the EURATOM rules for participation on the revised version of those relating to the EC Framework Programme, while taking into account their specificities.

The revision of the initial proposal consists in the deletion of Chapter II (“Instruments”) and the Annex (“RTDT activities and Community financial contribution according to type of instrument”), since these two parts will be transferred either to Annex III to the Framework Programme or Annex III to the EURATOM Specific Programme.

The amendments compared with the Commission's initial proposal have been highlighted by using the "strikethrough" effect for passages deleted and the "bold "and "underlined" effects for new or amended passages.

To assist in the creation of the European Research Area, the 2002-2006 framework programme applies the following principles, especially through the networks of excellence and integrated projects:

- The principle of opening projects to new participants;
- Flexibility in operational conditions, including procedures for launching new activities;
- Great autonomy in project implementation, with participants carrying out their tasks in largely self-determined conditions and internal arrangements best suited to completing projects successfully.

The following new features have been introduced into the rules for participation and financing to apply the above principles and to bring the rules into line with the characteristics and objectives of the new framework programme:

- Participants from Member States and from Associated candidate countries have exactly the same rights and obligations (Articles ~~12 and 13~~ **5 and 6**);

- European scientific co-operation organisations are entitled to participate in the framework programme on exactly the same footing as any entity established in a Member State (this is not the case at present) (Article ~~12~~ **5**);
- General criteria have been drawn up for the selection of proposals taking account of the specific objectives of the new instruments (Article ~~18~~ **11**);
- The Community will make its financial contribution in new forms of 'grants for integration' for the networks of excellence or 'grants to the budget' for integrated projects, providing important flexibility and involving less cumbersome and more effective controls, essentially ex post controls (Article ~~22~~ **15**).
- Consortia responsible for networks and integrated projects are given the opportunity to change the partnership, including through competitive calls, subject to clearly defined conditions (Article ~~23~~ **16**), and on the basis of simplified Commission consent;
- Specific rules for participation to Research and Training activities under the priority thematic area "Fusion Energy Research" have been defined to take into account the characteristics of this field (Articles ~~29 and 30~~ **22 and 23**).

As such, the rules have been drawn up so as to guarantee the smooth operation of projects, capable of involving large numbers of participants and conducted through evolving partnerships.

These rules have been defined in consultation with programme users, the scientific community and industry.

The same principles will apply in the more detailed technical implementation provisions for carrying out the framework programme, in particular, those set out in the model contract and the work programmes. Users and national authorities will be consulted on these provisions.

In accordance with one of the key principles of the 2002-2006 framework programme, the model contract and work programmes will be prepared with the same goals as the reworking of the present rules, namely simplification and streamlining. The current financial provisions in the model contract and grant application forms will, therefore, be simplified.

Amended proposal for a

COUNCIL DECISION

concerning the rules for the participation of undertakings, research centres and universities in the implementation of the framework programme 2002-2006 of the European Atomic Energy Community (Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 7 thereof,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Parliament,²

Having regard to the opinion of the Economic and Social Committee,³

Whereas:

- (1) The framework programme of the European Atomic Energy Community (Euratom) for research and training activities aimed at contributing towards the creation of the European Research Area (2002-2006) (hereinafter referred to as 'the 2002-2006 framework programme') was adopted by Council Decision No .../200./Euratom.⁴ The rules for financial participation by the Community must be supplemented by other provisions to be laid down in accordance with Article 7 of the Treaty.
- (2) These provisions must be in line with a coherent and transparent framework which takes full account of the objectives and characteristics of the instruments defined in Annex III to the specific programme "Nuclear Energy", adopted by Council Decision No .../200./Euratom⁵, in order to guarantee the most efficient implementation possible.
- (3) The rules for the participation of undertakings, research centres and universities must take account of the nature of the research (including demonstration) and training activities in the field of nuclear energy. They may, moreover, vary depending on whether the participant is based in a Member State, in an Associated State - whether a candidate country or not - or in a third country, and on its legal structure, namely whether it is a national organisation, an international organisation - of European interest or not - or an association formed by participants.

¹ OJ C , , p.

² OJ C , , p.

³ OJ C , , p.

⁴ OJ C , , p.

⁵ OJ C , , p.

- (4) Activities under the framework programme must be conducted in compliance with ethical principles, including those set out in the Charter of Fundamental Rights of the European Union, and should strive to improve information for and dialogue with society as well as to increase the role of women in research.
- (5) In conformity with the 2002-2006 framework programme, the participation of legal entities from third countries should be envisaged in line with the objectives of international cooperation, particularly as enshrined in Article 101 of the Treaty.
- (6) International organisations dedicated to developing cooperation in the field of research in Europe and which, because a majority of their members are Member States or Associated States, contribute to the creation of the European Research Area should be encouraged to participate in the 2002-2006 framework programme.
- (7) The Joint Research Centre (hereinafter referred to as the "JRC") takes part in indirect research and technological development actions on the same basis as legal entities established in a Member State.
- (8) Activities under the framework programme must comply with the financial interests of the Community and must safeguard those interests.

HAS DECIDED AS FOLLOWS:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject

This Decision establishes rules for the participation of enterprises, research centres and universities in research carried out under the framework programme of the European Atomic Energy Community for research and training activities aimed at contributing towards the creation of the European Research Area (2002-2006) (hereinafter referred to as the "2002-2006 framework programme").

Article 2

Definitions

For the purposes of this Decision:

- a) **indirect action** means an *RTDT activity* undertaken by one or more *participants* by means of an *instrument* of the 2002-2006 framework programme;
- b) **RTDT activity** means one of the research and technological development activities, including demonstration activities, and training activities, described in Annex to the 2002-2006 framework programme;

- c) **budget** means a financial plan estimating all the resources and expenditure needed to carry out an *indirect action*;
- d) **consortium** means all the *participants* in the same *indirect action*;
- e) **contract** means a grant agreement concerning the performance of an *indirect action* establishing rights and obligations between the Community and the *participants* in that *indirect action*;
- f) **legal entity** means any natural person, or any legal person created under the national law of its place of establishment, under Community law, or international law, having legal personality and being entitled to have rights and obligations of any kinds in its own name;
- g) **Associated State** means a State which is party to an international agreement with the Community, under the terms or on the basis of which it makes a financial contribution to all or part of the budget of the 2002-2006 framework programme;
- h) **Associated candidate country** means an *Associated State* acknowledged by the Community as a candidate for accession to the European Union;
- i) **European Economic Interest Grouping (EEIG)** means any *legal entity* established in accordance with Council Regulation (EEC) No 2137/85;⁶
- j) **instruments** means the mechanisms for indirect Community intervention as laid down in Annex III to the specific programme “Nuclear Energy”;
- k) **irregularity** means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a *legal entity* which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them through unjustified expenditure;
- l) **international organisation** means any *legal entity* resulting from an association of States, other than the Community, established on the basis of a treaty or similar act, having common institutions and an international legal personality distinct from that of its Member States;
- m) **international European interest organisation** means an *international organisation*, the majority of whose members are European Community Member States or *Associated States*, and whose principal objective is to promote scientific and technological cooperation in Europe;
- n) **participant** means a *legal entity* contributing to an *indirect action* and having rights and obligations with regard to the Community under the terms of this Decision or according to the *contract*;
- o) **third country** means a State that is neither a Member State nor an *Associated State*;

Article 3

Independence

⁶ OJ L 199, 31.07.1985, p.1

1. Two *legal entities* shall be independent of one another for the purposes of this Decision where there is no controlling relationship between them. A controlling relationship shall exist where one *legal entity* directly or indirectly controls the other or one *legal entity* is under the same direct or indirect control as the other. Control may result in particular from:

- a) direct or indirect holding of more than 50% of the nominal value of the issued share capital in a *legal entity*, or of a majority of voting rights of the shareholders or associates of that entity;
- b) direct or indirect holding in fact or in law of decision-making powers in a *legal entity*.

2. Direct or indirect holding of more than 50% of the nominal value of the issued share capital in a *legal entity* or a majority of voting rights of the shareholders or associates of the said entity by public investment corporations, institutional investors or venture-capital companies and funds shall not in itself constitute a controlling relationship.

3. Ownership or supervision of *legal entities* by the same public body shall not in itself give rise to a controlling relationship between them.

CHAPTER II

INSTRUMENTS

Article 4

Networks of Excellence

~~1. — The purpose of networks of excellence is to strengthen Community scientific and technological excellence by means of a progressive and permanent integration of existing or emerging research and training capacities at both national and regional level. Each network shall aim at advancing knowledge in a particular area by assembling a critical mass of skills. The activities concerned shall be generally targeted towards long term, multidisciplinary objectives, not at precise, predefined results in terms of products, processes or services.~~

~~2. — To create a virtual centre of excellence, the *participants* shall implement a joint programme of activities involving a considerable part or even all of their research or training capacities and activities in the relevant area. Where necessary, the *legal entity* to which the institute, department, laboratory or team that is the network member belongs shall allow the member sufficient autonomy for this purpose.~~

~~The joint programme of activities shall focus on research or training activities and shall necessarily include integration activities as well as activities related to the spreading of excellence outside the network, as described in Annex III to Council Decision 2007/1926/EC [laying down the specific programme “Nuclear energy”]⁷. With the Commission's agreement, the focus of specific activities may be changed or new activities launched in the annual update of the joint programme of activities.~~

⁷ — OJ L, p.

Article 5

Integrated Projects

1. — ~~Integrated projects are designed to boost the Community's competitiveness or help solve major societal problems by mobilising a critical mass of research, technological development and training resources and competences. In this context, each integrated project shall be assigned clearly defined objectives in terms of scientific and technological knowledge and shall be directed at obtaining specific results applicable to products, processes or services.~~

2. — ~~In principle, integrated projects shall comprise a set of specific components, varying in size and structure according to the task to be carried out, each dealing with different aspects of the research or training needed to achieve common overall objectives integrated to form a coherent whole and implemented in close coordination.~~

~~The activities carried out as part of an integrated project shall include research or training activities, including demonstration activities, activities for the management and use of knowledge in order to promote innovation, and any other type of activity directly related to the objectives of Council Decision 2007/1906/EC [laying down the specific programme "Nuclear energy"], as described in Annex III to that Decision. All these activities shall be set out in an implementation plan, which shall be updated annually with the agreement of the Commission. The focus of specific activities may be changed or new activities launched in the update.~~

Article 6

Specific targeted research or training projects

1. — ~~Specific targeted research projects may take either of the following two forms or a combination of the two:~~

- a) — ~~a research and technological development project designed to gain new knowledge either to considerably improve or to develop new products, processes or services or to meet other needs of society and Community policies;~~
- b) — ~~a demonstration project designed to prove the viability of new technologies offering potential economic advantage but which cannot be commercialised directly.~~

2. — ~~Specific targeted projects on training are designed to facilitate the timely diffusion of new knowledge on a European scale and better integrate national activities.~~

Article 7

Integrated initiatives relating to infrastructure

~~Integrated initiatives relating to infrastructure shall incorporate a range of activities essential to reinforce and develop research infrastructures in order to provide services at the European level. To this end, they shall combine networking activities with a support activity or research activities needed to improve infrastructure performance. They shall include a component of dissemination of knowledge to potential users, including industry and in particular to SMEs.~~

Article 8

Actions to promote human resources and mobility

~~Actions to promote human resources and mobility shall be targeted at training, development of skills or transfer of knowledge. They shall involve support to actions carried out by natural persons, host structures, including training networks, and also by teams of excellence.~~

Article 9

Coordination actions

~~Coordination actions shall be intended to promote and support the coordinated initiatives of a range of research, training and innovation operators. They shall cover a range of activities such as the organisation of conferences, meetings, training courses, the performance of studies, exchanges of personnel, the exchange and propagation of good practices, setting up information systems and expert groups, and may, if necessary, include support for the definition, organisation and management of joint or common initiatives.~~

Article 10

Specific support actions

~~Specific support actions shall be aimed at implementing the objectives identified in the 2002-2006 framework programme or may assist preparations for future Community research and training policy activities or may include monitoring and assessment activities. In particular, they shall involve conferences, seminars, studies and analyses, high level scientific awards and competitions, working groups and expert groups, operational support and dissemination, information and communication activities, or a combination of these, as appropriate in each case.~~

CHAPTER III

RULES FOR PARTICIPATION AND FINANCING

Article 11 4

Scope

The rules set out in this Chapter apply to the participation of *legal entities* in *indirect actions*. They apply without prejudice to specific rules for *RTDT activities* under the priority thematic area 'Fusion energy research' of the specific programme 'Nuclear Energy' set out in chapter IV.

Article 11 5

General principles

1. Any *legal entity* taking part in an *indirect action* may receive a Community financial contribution subject to the provisions of Articles ~~14~~ **7 and 8**.

2. Any *legal entity* established in an *Associated State* may take part in *indirect actions* on the same footing and shall have the same rights and obligations as a *legal entity* established in a Member State, subject to the provisions of Article ~~13~~ 6.
3. The JRC may participate in *indirect actions* on the same footing and shall have the same rights and obligations as a *legal entity* established in a Member State.
4. Any *international European interest organisation* may take part in *indirect actions* on the same footing and shall be entitled to the same rights and bound by the same obligations as a *legal entity* established in a Member State in accordance with its Statute of Establishment.
5. Depending on the type of *instrument* deployed or the objectives of the *RTDT activity*, the work programme for the specific programme may, if necessary, restrict participation in an *indirect action to legal entities* according to their activities or types.

Article ~~13~~ 6

Minimum numbers of *participants* and their place of establishment

1. The work programme shall specify the minimum number of *participants* required for each *indirect action* and also their place of establishment, according to the nature of the *instrument* and the objectives of the *RTDT activity*.
2. For networks of excellence and integrated projects, the minimum number of *participants* shall not be less than three independent *legal entities* established in three different Member States or *Associated States*, of which at least two shall be Member States or *Associated candidate countries*.
3. Specific support actions and actions in favour of human resources and mobility, except for research training networks, may be executed by a single *legal entity*.

When the work programme establishes a minimum number that is greater than or equal to two *legal entities* established in as many Member States or *Associated States*, this number shall be fixed according to the conditions provided for in paragraph 4.

4. For *instruments* other than those covered in paragraphs 2 and 3, the minimum number of *participants* shall not be less than two independent *legal entities* established in two different Member States or *Associated States*, of which at least one shall be a Member State or an *Associated candidate country*.
5. An *EEIG* or any *legal entity* established in a Member State or *Associated State* which is made up of independent *legal entities* meeting the criteria of this Decision may be the sole participant in an *indirect action*, provided that its composition is in accordance with the conditions fixed pursuant to the provisions of paragraph 1 to 4.

Article ~~14~~ 7

Participation by *legal entities* from *third countries*

1. Subject to other restrictions that may be specified in the work programme of the specific programme, any *legal entity* established in a *third country* may participate in *RTDT activities*, over and above the minimum number of *participants* fixed in accordance with the

terms of Article ~~13~~ 6, if such participation is provided for under an *RTDT activity* or if it is necessary for carrying out the *indirect action*.

2. Any *legal entity* established in a *third country* may receive a Community financial contribution, if provision is made for this under an *RTDT activity* or if it is essential for carrying out the *indirect action*.

Article ~~15~~ 8

Participation by *international organisations*

Any *international organisation* other than the *international European interest organisations* referred to in Article ~~12~~ 5(4) may take part in *RTDT activities* subject to the conditions set out in Article ~~14~~ 7.

Article ~~16~~ 9

Conditions relating to technical competence and resources

1. *Participants* shall have the knowledge and technical competence needed to carry out the *indirect action*.

2. At the time when they present their proposal, *participants* shall have at least the potential resources needed to carry out the *indirect action*, and shall specify the relevant source.

As work progresses, *participants* shall have the resources as and when needed to carry out the *indirect action*.

The resources needed to carry out the *indirect action* are understood to be human resources, infrastructure, financial resources and, if necessary, intangible property and other resources made available by a third party on the basis of a prior commitment.

Article ~~17~~ 10

Submission of proposals for *indirect actions*

1. Proposals for *indirect actions* shall be submitted under the terms of calls for proposals published in the *Official Journal of the European Communities* and, as far as possible, widely advertised by other means.

2. Paragraph 1 shall not apply to:

- a) Specific support actions for the activities of *legal entities* identified in the work programme;
- b) Specific support actions consisting of a purchase or service governed by the terms applicable to public procurement procedures;
- c) Specific support actions with particular characteristics and value to the objectives and the scientific and technological content of the specific programme, for which grant applications may be submitted to the Commission if so provided for in the work programme of the specific programme and where such a request does not fall within the scope of an open call for proposals.

d) Specific support actions covered by Article ~~19~~ **12**.

3. Calls for expressions of interest may be issued prior to calls for proposals in order to enable the Commission to identify and evaluate precise objectives and requirements, without prejudice to any decisions it may subsequently take.

*Article ~~18~~ **11***

Evaluation and selection of proposals for *indirect actions*

1. The proposals for *indirect actions* covered in ~~Article 17(1) and Article 17(2)(e)~~ **Article 10(1) and Article 10(2)(c)** shall be evaluated according to the following criteria:

- a) Relevance to the objectives of the specific programme;
- b) Scientific and technological excellence;
- c) Added value to the Community, including the critical mass of resources mobilised, the expected impact or contribution to Community policies;
- d) Quality of the plan for the use or dissemination of the knowledge, potential for promoting innovation, and ability to manage intellectual property;
- e) The ability to successfully carry out the *indirect action*, assessed in terms of resources, competencies and organisation.

2. In applying paragraph 1(c), the following criteria will also be taken into account:

- a) For networks of excellence, the scope and degree of the effort to achieve integration and the network's capacity to promote excellence beyond its membership, as well as the prospects of the long-term integration of their research capabilities and resources after the end of the period covered by the Community financial contribution;
- b) For integrated projects, the scale of ambition of the objectives and the capacity of the resources to make a significant contribution to reinforcing competitiveness or solving societal problems;
- c) For integrated initiatives relating to infrastructure, the prospects of the initiative's continuing long term after the end of the period covered by the Community financial contribution.

3. The work programme of the specific programme shall determine, in accordance with the type of *instruments* deployed or the objectives of the *RTDT activity*, which of the criteria set out in paragraph 1 shall be applied by the Commission. These criteria, and those of paragraph 2, will be clarified or complemented, particularly to take account of the contribution of the proposals for *indirect actions* to improve information for and dialogue with society as well as to increase the role of women in research.

4. Any proposal for an *indirect action* which contravenes fundamental ethical principles, particularly those set out in the Charter of Fundamental Rights of the European Union, or which does not fulfil the conditions set out in the work programme or in the call for proposals may be excluded from the evaluation and selection procedure at any time.

Any *participant* having committed an *irregularity* in the implementation of an *indirect action* may be excluded from the evaluation and selection procedure at any time.

5. The Commission shall evaluate and select the proposals for *indirect actions* in accordance with transparent, fair and impartial procedures laid down in an evaluation manual, which it will make public.

6. The Commission shall evaluate the proposals with the help of independent experts appointed in accordance with the provisions of Article ~~49~~ **12**. For some specific support actions, particularly those covered by Article ~~47~~ **10**(2), independent experts shall be appointed only if the Commission deems it appropriate.

Article ~~49~~ 12

Appointment of independent experts

1. The Commission shall designate independent experts to assist with the evaluation required under the 2002-2006 framework programme and the specific programme, and also for the assistance referred to in Article 18(6) and the second subparagraph of Article 26(1).

It may in addition set up groups of independent experts to advise on the implementation of its research policy.

2. The Commission shall appoint the independent experts in accordance with one of the following procedures:

- a) The independent experts appointed by the Commission for the evaluations provided for in Articles 5 **and** 6 of the 2002-2006 framework programme and Article ~~6~~ **7**(2) of the specific programme shall be very high-ranking individuals from the fields of science, industry or politics with significant experience in research, research policy or research programme management at national or international level.
- b) The independent experts appointed by the Commission to assist in the evaluation of proposals for networks of excellence and integrated projects and in monitoring the projects selected and carried out shall be individuals from the fields of science or industry with the highest level of knowledge and who are internationally recognised authorities in the relevant specialist area.
- c) The independent experts appointed by the Commission to form the groups referred to in the second subparagraph of paragraph 1 shall be professionals renowned for their knowledge, skills and top-level experience in the field or regarding the issues to be dealt with by the group.
- d) For cases other than those covered by subparagraphs (a), (b) and (c), and in order to take the various operators in the research sector into consideration in a balanced manner, the Commission shall appoint independent experts with skills and knowledge appropriate to the tasks assigned to them. To this end, it shall rely on calls for applications from individuals or calls addressed to research institutions with a view to establishing lists of suitable candidates, or may, if it deems appropriate, select any individual with the appropriate skills from outside the lists.

3. When appointing an independent expert, the Commission shall ensure that the expert will not be faced with a conflict of interests in relation to the matter on which he is required to

give an opinion. To this end, the Commission shall require experts to sign a declaration to the effect that there is no such conflict of interest at the time of their appointment and promising to inform the Commission if one should arise in the course of their duties.

*Article ~~20~~ **13***

Contracts

1. *Contracts* for the *indirect action* proposals selected shall be drawn up on the basis of the appropriate model contract established by the Commission in accordance with the provisions of the 2002-2006 framework programme and this Decision, account being taken, as far as is required, of the characteristics of the various *instruments* concerned.

2. The *contract* shall establish the rights and obligations of *participants* in accordance with this Decision, and in particular the arrangements for the technical, technological and financial monitoring of the *indirect action*, for the updating of its objectives, for changes in consortium membership, for the payment of the Community financial contribution and, if applicable, conditions for the eligibility of any necessary expenditure.

The *contract* shall establish rules for dissemination and use of knowledge and results in accordance with Title II, Chapter 2 of the Treaty.

3. In order to ensure the protection of the financial interests of the Community, appropriate penalties shall be included in the *contracts*.

*Article ~~21~~ **14***

Execution of indirect actions

1. In accordance with the terms of the *contract*, and with its own organisation arrangements, the *consortium* shall ensure the technical implementation of the *indirect action*, with the *participants* being jointly and severally liable.

2. The Community financial contribution to an *indirect action* shall be paid, in accordance with the arrangements stipulated in the *contract*, to the *participant* designated by the *consortium* and approved by the Commission.

That participant shall administer the Community financial contribution according to decisions taken by the *consortium* regarding its allocation to *participants* and activities.

3. Subject to the arrangements provided for in the *contract* based on the type of the *instrument* and the extent of the contribution made by *participants*:

- a) each *participant* shall bear unlimited joint and several liability for the use made of the Community financial contribution allocated in accordance with the second subparagraph of paragraph 2, except for the part allocated to the *participants* referred to in subparagraph (b);
- b) a *participant* who cannot for legal reasons be held jointly and severally liable shall be liable only for that part of the Community financial contribution allocated specifically to it in accordance with paragraph 2.

4. The Commission shall have recourse to the liability referred to in paragraph 3(a) only if the damage incurred by the Community has not been rectified by either the *participant* at fault or the *consortium*, on its own initiative, within a reasonable period of time.

5. When several *legal entities* are grouped in a common *legal entity* acting as a single *participant* in accordance with Article ~~43~~ 6(5), that *legal entity* shall take on the duties outlined in paragraphs 1 and 2 of this Article and shall be liable to the Community, notwithstanding the arrangements signed between the *legal entities* forming the common legal entity.

Article ~~22~~ 15

Community financial contribution

In accordance with ~~the Annex to this Decision, and within the limits of the Community framework for State aid for research and development,~~⁸ III to the framework programme, the Community financial contribution may take three distinct forms, as follows:

- a) For networks of excellence, it shall take the form of a grant for integration, the amount of which is determined in relation to the value of the capacities and resources which all the *participants* propose to integrate. It shall complement the resources deployed by the *participants* in order to carry out the joint programme of activities.

The contribution shall be paid with regard to the execution of the joint programme of activities and on the basis of those expenses relating to it which are in addition to those borne by the *participants* themselves and which are certified by an external auditor or, in the case of public *legal entities*, a competent public officer.

- b) For some actions to promote human resources and mobility and some specific support actions, except for the *indirect actions* covered by Article ~~47~~ 10(2)(b), it may take the form of a lump sum payment.

- c) For integrated projects and the other *instruments*, except for those covered by (a) and (b) and *indirect actions* covered by Article ~~47~~ 10(2)(b), it shall take the form of a grant to the *budget*, calculated as a percentage of the *budget* allocated by the *participants* to carry out the *indirect action*, adapted according to the type of activity.

The *contract* shall specify the expenses needed to implement the *indirect action*, which have to be certified by an external auditor or, in the case of public *legal entities*, a competent public officer.

The *contract* may lay down average rates by type of expenditure or pre-set lump sums as well as, with the agreement of the *participants*, a value by activity which shall be closely approximate to the expenses incurred.

Article ~~23~~ 16

Changes in *consortium* membership

⁸ OJ C 45, 17.02.1996, p. 5

1. Within the limits of the Community financial contribution and regardless of the *instrument*, the membership of a *consortium* may, on its own initiative or in execution of the *contract*, be modified with the agreement of the Commission, and in particular be extended to include any *legal entity* contributing to the implementation of the *indirect action*.

With the exception of the changes described in paragraph 2, the *consortium* shall identify new *legal entities* on such terms as it deems appropriate, or in accordance with the *contract*.

2. The joint programme of activities for a network of excellence or the implementation plan for an integrated project shall specify which changes in the membership of the *consortium* shall require the prior publication of a competitive call.

The *consortium* shall publish the competitive call and advertise it widely using specific information support, particularly Internet sites on the 2002-2006 framework programme, the specialist press and brochures.

The *consortium* shall evaluate offers:

- a) in the light of the criteria which governed the evaluation and selection of the *indirect action*, defined according to the terms of Article ~~18~~ **11**(3) and (4) ;
- b) with the assistance of independent experts appointed by the *consortium* on the basis of the criteria described in Article ~~19~~ **12**(2)(b).

In accordance with paragraph 1, the Commission may object if and when the *consortium* proposes, following this evaluation, to extend its membership to new *participants*.

Article 24 **17**

Additional financial contribution

The Commission may increase the Community financial contribution to an *indirect action* already under way in order to expand its scope to cover new activities which may involve new *participants*.

It shall do so by way of a call for proposals, restricted, if necessary, to *indirect actions* under way, after the termination of an evaluation conducted in accordance with Article 11.

Article 25 **18**

Consortium activities in favour of third parties

If the *contract* provides for the *consortium* to undertake all or part of its activities in favour of third parties, the *consortium* shall ensure that this is properly made public, in accordance where applicable with the *contract*.

The *consortium* shall evaluate and select the applications received in accordance with the principles of transparency, fairness and impartiality and also with the terms stipulated in the *contract*.

Article 26 **19**

Technical, technological and financial monitoring and audits

1. The *indirect actions* to which the Community contributes shall be periodically evaluated by the Commission on the basis of progress reports which will also cover the implementation of the plan for the use or dissemination of knowledge submitted by the participants in accordance with the terms of the *contract*.

In monitoring the networks of excellence, the integrated projects and, where necessary, other *indirect actions*, the Commission shall be assisted by independent experts appointed in accordance with the provisions of Article ~~19~~ **12**(2).

2. In accordance with the *contract*, the Commission shall take any useful steps to ensure that the objectives of the *indirect action* are achieved with proper regard for the financial interests of the Community. The Commission may, where necessary for the sake of these interests, adjust the Community financial contribution or suspend the *indirect action* if the terms of this Decision or of the *contract* have been infringed.

3. The Commission, or any representative authorised by it, shall have the right to carry out technical, technological and financial audits on the *participants*, in order to ensure that the *indirect action* is being or has been performed under the conditions claimed and in accordance with the terms of the *contract*.

4. Pursuant to Article 160C of the Treaty, the Court of Auditors may check on the use of the Community's financial contribution, on the basis of its own rules.

*Article ~~27~~ **20***

Protection of the financial interests of the Community

The Commission shall ensure that, when *indirect actions* are implemented, the financial interests of the Community are protected by effective checks and by deterrent measures and, if *irregularities* are detected, by penalties which are effective, proportionate and dissuasive, in accordance with Council Regulations (EC, Euratom) Nos 2988/95⁹; **and** 2185/96¹⁰ and **Council Regulation (Euratom) No** 1074/99¹¹.

CHAPTER ~~IV~~ III

SPECIFIC RULES FOR PARTICIPATION TO RTDT ACTIVITIES UNDER THE PRIORITY THEMATIC AREA 'FUSION ENERGY RESEARCH'

*Article ~~28~~ **21***

Scope

The rules set out in this Chapter apply to *RTDT activities* under the priority thematic area 'Fusion Energy Research'. In the event of any conflict between the rules set out in this Chapter and those set out in Chapters II and III, the rules set out in this Chapter would apply.

⁹ OJ L 312, 23.12.1995, p.1

¹⁰ OJ L 292, 15.11.1996, p.1

¹¹ OJ L 210, 10.08.1999, p.24

Article 29 ~~22~~

Procedures

RTDT activities under the priority thematic area ‘Fusion Energy Research’ may be implemented on the basis of procedures set out in the following frameworks:

- a) Contracts of association with Member States, *Associated States*, or *legal entities* established in those states;
- b) the European Fusion Development Agreement;
- c) any other multilateral agreement concluded by the Community with associated *legal entities*,
- d) *legal entities* which may be set up after the Consultative Committee for the fusion programme referred to in Article 5(2) of the specific programme ‘Nuclear Energy’ has given its opinion;
- e) other Contracts of limited duration with non-associated *legal entities* established in Member States or *Associated State*;
- f) international agreements relating to cooperation with *third countries*, or any *legal entity* which may be established by such an agreement.

Article 30 ~~23~~

Community financial contribution

1. The Contracts of association referred to in Article 29 ~~22~~(a) and Contracts of limited duration referred to in Article 29 ~~22~~(e) shall establish the rules relating to the Community financial contribution to the activities they cover.

The ~~annual~~ base rate for the Community financial contribution shall not exceed 17.5% ~~20%~~ of ~~current expenditure in 2003, and shall decrease annually so that its average value over the duration of the 2002-2006 Framework programme does not exceed 15%.~~

2. After consultation of the Consultative Committee for the fusion programme referred to in Article 5(2) of the specific programme ‘Nuclear Energy’, the Commission may finance :

- a) the capital related expenditures of specifically defined projects to which priority status has been awarded by that committee, at a uniform rate equal to ~~35%~~ 37.5% ;
- b) specifically defined multilateral activities carried out under the European Fusion Development Agreement or by any *legal entity* established for this purpose, including procurements.

3. In the case of projects and activities receiving a financial contribution above the ~~annual~~ base rate referred to in the second subparagraph of paragraph 1, all the *legal entities* referred to in Article 22(a) to (e) shall have the right to take part in the experiments carried out on the equipment concerned.

4. The Community financial contribution to activities carried out within the framework of an international cooperation agreement referred to in Article 29 ~~22~~(f) shall be defined in it or by any *legal entity* established by it.

The Community, together with *legal entities* associated in the programme, may create any appropriate *legal entity* to manage its participation and its financial contribution to such an agreement.

Done at Brussels, [...]

For the European Council
The President

ANNEX

RTDT activities and Community financial contribution according to type of instrument

| <i>TYPE OF INSTRUMENT</i> | <i>RTD ACTIVITIES</i> | COMMUNITY CONTRIBUTION (1) |
|---|--|---|
| Networks of Excellence | <ul style="list-style-type: none"> — Priority thematic areas — Other activities in the field of nuclear safety (2) | Grant for integration: as a general rule up to 25% of the value of the capacity and resources proposed for integration by <i>participants</i> (3) |
| Integrated Projects | <ul style="list-style-type: none"> — Priority thematic areas — Other activities in the field of nuclear safety (2) | Grant to the <i>budget</i> of up to 50% of the <i>budget</i> (4) (5) |
| Specific targeted research or training projects | <ul style="list-style-type: none"> — Priority thematic areas (2) — Other activities in the field of nuclear safety | Grant to the <i>budget</i> of up to 50% of the <i>budget</i> (4) (5) |
| Actions to promote human resources and mobility | <ul style="list-style-type: none"> — Priority thematic areas (2) — Other activities in the field of nuclear safety | Grant to the <i>budget</i> of up to 100% of the <i>budget</i> (4), if necessary as a lump sum |
| Integrated initiatives relating to infrastructure | <ul style="list-style-type: none"> — Priority thematic areas (2) — Other activities in the field of nuclear safety | Grant to the <i>budget</i> : depending on the type of activity, of 50 to 100% of the <i>budget</i> (4) (5) (6) |
| Coordination actions | <ul style="list-style-type: none"> — Priority thematic areas (2) — Other activities in the field of nuclear safety | Grant to the <i>budget</i> of up to 100 % of the <i>budget</i> (4) |
| Specific support actions | <ul style="list-style-type: none"> — Priority thematic areas (2) — Other activities in the field of nuclear safety | Grant to the <i>budget</i> of up to 100% of the <i>budget</i> (4), if necessary as a lump sum |

(1) — The Community financial contribution shall relate to a *budget* made up of expenditure additional to that otherwise borne by the *participants*, with the exception of proposals covered

~~by Article 17(2)(b) where it covers a purchase price, or when it takes the form of a pre-defined lump sum pre-set by the Commission.~~

~~The Community may bear up to 100% of the costs of such proposals. Also, in the specific case of coordination actions, it covers up to 100% of the *budget* necessary for the coordination of activities funded by the *participants* themselves.~~

~~(2) — In duly justified cases.~~

~~(3) — This rate varies for different areas and is established in the work programme. The Community contribution additionally covers the expenditure of the joint programme of activities.~~

~~(4) — The model contract will specify the conditions according to which specific *legal entities*, particularly public bodies, will receive funding of up to 100% of their marginal cost.~~

~~(5) — The rates of assistance may be differentiated in accordance with the rules of the Community framework for State aid for research and development depending on whether activities relate to research or demonstration or to other activities implemented, such as training of researchers or the management of the *consortium*.~~

~~(6) — The activities of an integrated initiative relating to infrastructure must include one networking activity (coordination action: up to 100% of the *budget*) and at least one of the following activities: research activities (up to 50% of the *budget*) or specific service activities (for example, transnational access to research infrastructures: up to 100% of the *budget*).~~