



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

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Subject : Proposal for a Regulation of the European Parliament and the Council laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)
- Progress report

I. INTRODUCTION

On 4 January 2006, the Commission submitted its proposal for the above Regulation which is part of the legislative package for the Seventh R&D Framework Programme of the European Community (2007-2013) and is subject to a co-decision procedure with the European Parliament.¹

¹ On 7 February 2006, the Commission also submitted its proposal for the corresponding Rules for Participation concerning the 7th Euratom Framework Programme (doc. 6185/06 RECH 14 ATO 13). This proposal will be examined at a later stage, taking due account of the results of the examination of the proposal for the Rules for Participation regarding the EC Programme.

The proposal has been examined by the Council's preparatory bodies at a number of meetings, which have served to clarify certain aspects of the Commission proposal, as well as to identify topics which require further examination. These are indicated in Section II below, but do not constitute an exhaustive list.

The European Parliament has not yet given its opinion on the proposal. At this stage, the Commission maintains its original proposal.

II. STATE OF PLAY

On the basis of the discussions, the Presidency has drawn up a revised draft text notably with a view to clarifying a number of points in the Commission proposal in response to delegations' observations. The Presidency considers that there is already a large measure of agreement on the broad principles of the conditions for participation (Chapter II, Sections 1 and 2), pending further detailed examination of the textual adjustments necessary. Broader topics on which discussions have focussed and where further work is required include:

- The details of the evaluation, selection and award process (Articles 15 and 16)².
- The question of the application of the various forms of grants and "cost models" (reimbursement of direct and indirect eligible costs, flat rate financing, lump sum financing, scale of unit costs) in particular as regards the capacity of certain participants (such as universities) to benefit from them and the differences in the resulting funding compared to the Sixth Framework Programme (Articles 30-32).
- The appropriate upper funding limits for the various types of participants (Article 33).
- Certain details concerning provisions for dissemination and access rights (Chapter III).
- Specific provisions relating to security research, notably confidentiality aspects.

² There is a broad agreement that the detailed criteria in this respect should be set out in the Specific Programmes.

- The general question of the necessary detail in the Regulation as regards references to the further implementing measures and related documents to be drawn up by the Commission (rules governing the submission, evaluation, selection and award procedures; model grant agreement; guidance on consortium agreements) and the role/involvement of the representatives of Member States in establishing these documents.

While the examination of the proposal is ongoing, the Presidency has undertaken, under its sole responsibility, to draw up a revised draft text reflecting the state-of-play which is set out in the Annex to this note and on which delegations have not yet taken a position.

III. CONCLUSION

The Council is invited to take note of the state of play regarding the Rules for Participation.

While the Presidency considers that further technical examination of the proposal is still needed in order to identify more clearly any topics which may require future discussion at Council level, Ministers at the Council ("Competitiveness") on 13 March 2006 are invited to raise points which they consider of particular importance to the continuing examination of the proposal.

Presidency text³

DRAFT REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**Laying down the rules for the participation of undertakings, research centres
and universities in actions under the Seventh Framework Programme and
for the dissemination of research results (2007-2013)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 167
and the second paragraph of Article 172 thereof,

Having regard to the proposal from the Commission⁴,

Having regard to the Opinion of the European Economic and Social Committee⁵,

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁶,

Whereas:

...

³ Presidency text reflecting the current state-of-play and provided for reference purposes only. Changes to the Commission proposal (doc. 5057/06) are in **bold and underlined**.

Delegations have not taken a position on this text.

Commission maintains its original proposal.

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

⁶ Opinion of the European Parliament of April 2005, and Council Decision of [...].

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject matter

This Regulation lays down the rules for the participation of undertakings, research centres and universities and other legal entities in actions undertaken by one or more participants by means of funding schemes identified in part (a) of Annex III to Decision [.../...] establishing the Seventh Framework Programme, hereinafter "indirect actions".

It also lays down rules, in accordance with those laid down in Regulation (EC/Euratom) No 1605/2002, hereinafter "the Financial Regulation", and Regulation (EC/Euratom) No 2342/2002, hereinafter "the Implementing Rules", concerning the Community financial contribution to participants in indirect actions under the Seventh Framework Programme.

As regards the results of research carried out under the Seventh Framework Programme, this Regulation lays down rules for the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium, hereinafter "dissemination".

In addition, it lays down rules for the direct or indirect utilisation of foreground in further research activities other than those covered by the indirect action concerned, or for developing, creating and marketing a product or process, or for creating and providing a service, hereinafter "use".

In respect of both foreground and background, this Regulation lays down rules concerning licences and user rights thereto, hereinafter "access rights".

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply in addition to those set out in the Financial Regulation and the Implementing Rules:

- (0) **"legal entity" means any natural person, or any legal person created under the national law of its place of establishment, or under Community law or international law, which has legal personality and which may, acting under its own name, exercise rights and be subject to obligations. In the case of natural persons, references to establishment is deemed to refer to habitual residence.**⁷
- (1) "foreground" means the results, including information, whether or not they can be protected, which are generated by **the indirect actions concerned**. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;
- (2) "background" means information which is held by participants prior to their accession to the grant agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to the grant agreement, and which is needed for carrying out the indirect action or for using the results of the indirect action;
- (2a) **"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 Regulation or according to the grant agreement;**
- (3) "research organisation " means **a legal entity established as a** non-profit making organisation which carries out research **or technological development** as its main objective;
- (4) "third country" means a State that is not a Member State;

⁷ *Ex Art. 4(1), third subparagraph, and 4(2).*

- (5) "associated country" means a third country 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 Seventh Framework Programme;
- (6) "international organisation" means an intergovernmental organisation, other than the European Community, which has legal personality under international public law, as well as any specialised agency set up by such an international organisation;
- (7) "international European interest organisation" means an international organisation, the majority of whose members are Member States or Associated countries, and whose principal objective is to promote scientific and technological cooperation in Europe;
- (8) "international cooperation partner country" means a third country which the Commission classifies as a low-income, lower-middle-income or upper-middle-income country and which is identified as such in the work programmes;
- (9) "public body" means any legal entity established as such by national public law, and international organisations;⁸
- (10) "SMEs" mean micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6 May 2003;
- (11) "work programme" means a plan adopted by the Commission for the implementation of a specific programme as identified in Article 3 of Decision [.../...];
- (12) "funding schemes" mean the mechanisms for the Community funding of indirect actions as established in part (a) of Annex III to Decision [.../...];
- (13) "RTD performer" means a legal entity carrying out research and technological development activities **in funding schemes** for the benefit of specific groups **as identified in Annex III of the Framework Programme.**

⁸ *The definition of "public body" is to be read in the context of the definition of "research organisation" as well as Articles 6(3)(b), 33(1), 34(2) and 38(2), bearing in mind also that "secondary and higher education establishments" are separately referred to.*

Article 3
Confidentiality

Subject to the conditions established in the grant agreement, appointment letter or contract, the Commission and the participants shall keep confidential any data, knowledge and documents communicated to them as confidential.

CHAPTER II
PARTICIPATION

SECTION 1
MINIMUM CONDITIONS

Article 4
General principles

1. Any undertaking, university or research centre or other legal entity, whether established in a Member State or Associated country, or in a third country, may participate in an indirect action provided that the minimum conditions laid down in this Chapter have been met, including any conditions specified pursuant to Article 12.

However, in the case of an indirect action as referred to in Articles 5(1), 7, 8 or 9, under which it is possible for the minimum conditions to be met without the participation of a legal entity established in a Member State, the attainment of the objectives laid down in Articles 163 and 164 of the Treaty must thereby be enhanced.

2. The Joint Research Centre of the European Commission, hereinafter "the JRC", may participate in indirect actions on the same footing and with the same rights and obligations as a legal entity established in a Member State.

Article 5

Minimum conditions

1. The minimum conditions for indirect actions shall be the following:
 - (a) at least three legal entities must participate, each of which is established in a Member State or Associated country, and no two of which are established in the same Member State or Associated country;
 - (b) all three legal entities must be independent of each other in accordance with Article 6.
2. For the purposes of point (a) of paragraph 1, where one of the participants is the JRC, or an international European interest organisation or an entity created under Community law, it shall be deemed to be established in a Member State or Associated country other than any Member State or Associated country in which another participant in the same action is established.

Article 6

Independence

1. Two legal entities shall be regarded as independent of each other where neither is under the direct or indirect control of the other or under the same direct or indirect control as the other.
2. For the purposes of paragraph 1, control may in particular take either of the following forms:
 - (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
 - (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

3. However, the following relationships between legal entities shall not in themselves be deemed to constitute controlling relationships:
- (a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50% of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
 - (b) the legal entities concerned are owned or supervised by the same public body.

Article 7

Indirect actions **for specific cooperation activities dedicated to**
international cooperation partner countries

For collaborative projects **for specific cooperation actions dedicated to** international cooperation partner countries, the minimum conditions shall be the following:

- (a) at least four legal entities must participate;
- (b) at least two of the legal entities referred to in point (a) must be established in Member States or Associated countries, but **not** established in the same Member State or Associated country;
- (c) at least two of the legal entities referred to in point (a) must be established in international cooperation partner countries, but **not** established in the same international cooperation partner country, **unless otherwise specified in the work programme**;
- (d) all four legal entities referred to in point (a) must be independent of each other in accordance with Article 6.

Article 8

Coordination and support actions, and training and career development of researchers

For coordination and support actions, and actions in favour of training and career development of researchers, the minimum condition shall be the participation of one legal entity.

The first paragraph shall not apply in the case of actions **whose purpose is to** coordinate research **activities**.

Article 9

Investigator-driven "frontier" research projects⁹

For indirect actions to support investigator-driven "frontier" research projects funded in the framework of the European Research Council, the minimum condition shall be the participation of one legal entity established in a Member State or in an Associated country.

Article 10

Sole participants

Where the minimum conditions for an indirect action are satisfied by a number of legal entities, which together form one legal entity, the latter may be the sole participant in an indirect action, provided that it is established in a Member State or Associated country.

Article 11

International organisations and legal entities established in third countries

Participation in indirect actions shall be open to international organisations and legal entities established in third countries after the minimum conditions laid down in this Chapter have been met, as well as any conditions specified in the specific programmes or relevant work programmes.

⁹ *These actions are referred to as "individual projects" in Annex III to the Partial General Approach on FP7.*

Article 12

Additional conditions

In addition to the minimum conditions laid down in this Chapter, specific programmes or work programmes may lay down conditions regarding the minimum number of participants.

They may also lay down, according to the nature and objectives of the indirect action, additional conditions to be met as regards type of participant and, where appropriate, place of establishment.

SECTION 2

PROCEDURES

SUBSECTION 1

CALLS FOR PROPOSALS

Article 13

Calls for proposals

1. The Commission shall issue calls for proposals for indirect actions in accordance with the requirements laid down in the relevant specific programmes and work programmes, **which may include calls targeted at special groups such as SMEs.**

In addition to the publicity specified in the Implementing Rules, the Commission shall publish calls for proposals in the Internet pages of the Seventh Framework Programme, through specific information channels, and at the national contact points set up by the Member States and the Associated countries.

2. Where appropriate, the Commission shall specify in the call for proposals that the participants need not establish a consortium agreement.

Article 14
Exceptions

The Commission shall not issue calls for proposals for the following:

- (a) coordination and support actions to be carried out by legal entities identified in the specific programmes or in the work programmes when the specific programme permits the work programmes to identify beneficiaries, in accordance with the Implementing Rules;
- (b) coordination and support actions consisting of a purchase **of goods** or services subject to the rules on public procurement set out in the Financial Regulation;
- (c) coordination and support actions relating to the appointment of independent experts;
- (d) other actions, where so provided by the Financial Regulation or the Implementing Rules.

SUBSECTION 2
EVALUATION OF PROPOSALS

Article 15
Evaluation, selection and award

1. The Commission shall evaluate all the proposals submitted in response to a call for proposals on the basis of the principles for evaluation, and the selection and award criteria set out in the specific programme and the work programme.

The work programme may set out specific criteria or further details on the application of the criteria.

2. A proposal which contravenes fundamental ethical principles or which does not fulfil the conditions set out in the specific programme, the work programme or in the call for proposals shall not be selected. Such a proposal may be excluded from the evaluation, selection and award procedures at any time.

3. Proposals shall be **ranked according to** the evaluation results. **Funding decisions shall be made on the basis of this ranking.**

Article 16

Submission, evaluation, selection and award procedures

- 1.** Where a call for proposals specifies a two-step evaluation procedure, only those proposals that pass the first step, based on the evaluation of a limited set of criteria, shall go forward for further evaluation.
- 2.** Where a call for proposals specifies a two-stage submission procedure, only those proposals that pass the evaluation criteria for the first stage shall be requested to submit a complete proposal in the second stage.
- 3.** The Commission shall adopt and publish rules governing the procedure for the submission of proposals, as well as the related evaluation, selection and award procedures. In particular, it shall lay down detailed rules for the two-stage procedure for submission, and rules for the two-step evaluation procedure¹⁰.

The Commission shall also provide information to applicants on procedures for redress.

4. The Commission shall adopt and publish rules to ensure consistent verification of the existence and legal status of participants in indirect actions as well as their financial capacity.

Article 17

Appointment of independent experts

1. **Where required under the Seventh Framework Programme and its specific programmes,** the Commission shall appoint independent experts to assist with evaluations **and monitoring.**

¹⁰ **In addition, the Commission will include in these rules internal procedures for review of eligibility and evaluation complaints.**

For coordination and support actions, referred to in Article 14, independent experts shall be appointed only if the Commission deems it appropriate.

2. Independent experts shall be chosen **on the basis of** skills and knowledge appropriate to the tasks assigned to them. **In cases where independent experts will have to deal with classified information, the appropriate security clearance shall be required for nomination.**

Independent experts shall be identified and selected on the basis of calls for applications from individuals and calls addressed to national research agencies, research institutions or enterprises with a view to establishing lists of suitable candidates.

The Commission may, if deemed appropriate, select any individual with the appropriate skills from outside the lists.

Appropriate measures shall be taken to ensure reasonable gender balance when appointing groups of independent experts.

3. When appointing an independent expert, the Commission shall take all necessary steps to ensure that the expert is not faced with a conflict of interests in relation to the matter on which the expert is required to provide an opinion.
4. The Commission shall adopt a model appointment letter, hereinafter "the appointment letter", which shall include a declaration that the independent expert has no conflict of interest at the time of appointment and that he undertakes to inform the Commission if any conflict of interest should arise in the course of providing his opinion or carrying out his duties. The Commission shall conclude an appointment letter between the Community and each independent expert.
5. The Commission shall publish **regularly** in any appropriate medium the list of the independent experts that have assisted it for **the Framework Programme and** each specific programme.

SUBSECTION 3
IMPLEMENTATION AND GRANT AGREEMENTS

Article 18

General

1. The participants shall implement the indirect action and shall take all necessary and reasonable measures to that end. Participants in the same indirect action shall implement the work jointly and severally towards the Community.
2. The Commission shall draw up, on the basis of the model provided for in Article 19.7 and taking into account the characteristics of the funding scheme concerned, a grant agreement between the Community and the participants.
3. Participants shall make no commitments incompatible with the grant agreement.
4. Where a participant fails to comply with its **scientific and technical** obligations, the other participants shall comply with the grant agreement without any complementary Community contribution unless the Commission expressly relieves them of that obligation.
5. If the implementation of an action becomes impossible or if the participants fail to implement it, the Commission shall ensure the termination of the action.
6. Participants shall ensure that the Commission is informed of any event which might affect the implementation of the indirect action or the interests of the Community.

Article 19

General provisions for inclusion in grant agreements

1. The grant agreement shall establish the rights and obligations of the participants with regard to the Community, in accordance with Decision [.../...], this Regulation, the Financial Regulation, and the Implementing Rules, and in accordance with the general principles of Community law.

It shall also establish, in accordance with the same conditions, the rights and obligations of legal entities who become participants when the indirect action is ongoing.

2. Where appropriate, the grant agreement shall **specify** which part of the Community financial contribution will be based on the reimbursement of eligible costs, and which part will be based on flat rates (including scale of unit costs) or lump-sums.
3. The grant agreement shall specify which changes in the composition of the consortium are to require the prior publication of a competitive call.
4. The grant agreement shall require the submission to the Commission of periodic progress reports concerning the implementation of the indirect action concerned.
5. Where appropriate, the grant agreement may provide that the Commission is to be notified in advance of any intended transfer of ownership of foreground to a third party.
6. Where the grant agreement requires participants to carry out activities that benefit third parties, the participants shall advertise this widely and identify, evaluate and select third parties transparently, fairly and impartially. If provided for in the work-programme, the grant agreement shall establish criteria for the selection of such third parties. The Commission reserves the right to object to the selection of the third parties.
7. The Commission shall, **in close cooperation with Member States,** establish a model grant agreement in accordance with this Regulation.
8. The model grant agreement shall reflect the **general** principles laid down in the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers^{11 12}. It shall address, as appropriate, synergies with education at all levels; readiness and capacity to foster dialogue and debate on scientific issues and research results with a broad public beyond the research community; activities to increase the participation and role of women in research; and activities addressing socio-economic aspects of the research.

¹¹ OJ L 75, 22.3.2005, p. 67.

¹² *The voluntary character of the Charter and Code of Conduct should be addressed in a recital.*

9. **The model grant agreement shall provide for supervision and financial control by the Commission or any representative authorised by it, and the Court of Auditors.**

Article 20

Provisions concerning access rights, use and dissemination

1. The grant agreement shall establish the respective **rights and** obligations of the participants with regard to access rights, use and dissemination, in so far as those **rights and** obligations have not been laid down in this Regulation.

For those purposes, it shall require the submission to the Commission of a plan for the use and dissemination of foreground.

2. The grant agreement may specify the conditions under which the participants may object to a technological audit of the use and dissemination of the foreground being carried out by certain authorised representatives of the Commission.

Article 21

Provisions concerning termination

The grant agreement shall specify the grounds for its termination, in whole or in part, in particular for non-compliance with this Regulation, non-performance or breach, as well as the consequences for participants of any non-compliance on the part of another participant.

Article 22

Specific provisions

1. In the case of indirect actions to support existing research infrastructures and, where applicable, new research infrastructures, the grant agreement may lay down specific provisions relating to confidentiality, publicity and access rights and commitments that might affect users of the infrastructure.

2. In the case of indirect actions to support training and career development of researchers, the grant agreement may lay down specific provisions on confidentiality, access rights and commitments relating to the researchers benefiting from the action.
3. In the case of indirect actions in the field of security and space research, the grant agreement may lay down specific provisions **in particular** on **changes to the consortium's composition**, confidentiality, classification of information **and information to Member States**, access rights, transfer of ownership of foreground and the use thereof.
4. Where appropriate, the grant agreement for indirect actions addressing security issues, other than those referred to in paragraph 3, may also include such specific provisions.
- 5. In case of frontier research actions, the grant agreement may lay down specific provisions relating to dissemination.**¹³

Article 23

Signature and accession

The grant agreement shall enter into force upon signature by the coordinator and the Commission. It shall apply to each participant that has formally acceded thereto.¹⁴

**SUBSECTION 4
CONSORTIA**

Article 24

Consortium agreements

1. Save where otherwise provided in the call for proposals, all legal entities wishing to participate in an indirect action shall **conclude** an agreement, hereinafter "the consortium agreement", to govern **inter alia** the following:

¹³ *Replaces ex-Art. 47.*

¹⁴ **A legal entity becomes a participant upon signature of the grant agreement.**

- (a) the internal organisation of the consortium;
- (b) the distribution of the Community financial contribution;
- (c) **rules additional to those in Chapter III and related provisions in the grant agreement;**
- (d) the settlement of internal disputes;

2. The Commission shall establish and publish guidelines on the main issues that may be addressed by participants in their consortium agreements.

Article 25

Coordinator

1. The legal entities wishing to participate in an indirect action shall appoint one of their number to act as coordinator to carry out the following tasks in accordance with this Regulation, the Financial Regulation, the Implementing Rules, and the grant agreement:
 - (a) to **endeavour to** ensure that the legal entities identified in the grant agreement complete the necessary formalities for accession to the grant agreement;
 - (b) to receive the Community financial contribution and to distribute it **in accordance with the consortium and grant agreement;**
 - (c) to keep the **records and** financial accounts **relating to the Community financial contribution** and to inform the Commission of **its** distribution in accordance with Article 36;
 - (d) to **be intermediary for** efficient and correct communication between the participants and the Commission.

2. The coordinator shall be identified in the grant agreement.

The appointment of a new coordinator shall require the written approval of the Commission.

Article 26

Changes in the consortium

1. The participants in an indirect action may propose the addition of a new participant or the removal of an existing participant.
2. Any legal entity which joins an ongoing action shall accede to the grant agreement.
3. Where provided for in the grant agreement, the consortium shall publish a competitive call and advertise it widely using specific information support, particularly Internet sites on the seventh framework programme, the specialist press and brochures, and the national contact points set up by the Member States and Associated countries for information and support.

The consortium shall evaluate offers in the light of the criteria which governed the initial action and with the assistance of independent experts appointed by the consortium, in accordance with the principles laid down in Articles 15, and Article 17, respectively.

4. The consortium shall notify any **proposed** change of its composition to the Commission, which may object within 45 days of the notification.¹⁵

Changes in the composition of the consortium associated with proposals for other changes to the grant agreement which are not directly related to the change in composition shall be subject to written approval by the Commission.

¹⁵ **The Commission will inform Member States of the changes in the consortia through the Programme Committee.**

SUBSECTION 5
MONITORING OF PROGRAMMES AND INDIRECT ACTIONS AND
COMMUNICATION OF INFORMATION

Article 27

Monitoring

The Commission shall monitor the implementation of indirect actions on the basis of the periodic progress reports submitted pursuant to Article 19(4). In particular, the Commission shall monitor the implementation of the plan for the use and dissemination of foreground, submitted pursuant to the second subparagraph of Article 20(1).

For those purposes, the Commission may be assisted by independent experts appointed in accordance with Article 17.

With the assistance of independent experts appointed in accordance with Article 17, the Commission shall monitor the seventh framework programme, its specific programmes and, where appropriate, previous framework programmes. In addition, it may set up groups of independent experts appointed in accordance with Article 17, to advise on the implementation of Community research policy.

Article 28

Information to be made available

1. Upon request, the Commission shall make available to any Member State or Associated country any useful information in its possession on foreground arising from work carried out in the context of an indirect action, provided that the following conditions are met:
 - (a) the information concerned is relevant to public policy;
 - (b) the participants have not provided sound and sufficient reasons for withholding the information concerned.

2. Under no circumstances shall the provision of information pursuant to paragraph 1 be deemed to transfer to the recipient any rights or obligations of the Commission or of the participants.

However, the recipient shall treat any such information as confidential unless it becomes public or is made available publicly by the participants, or unless it was communicated to the Commission without restrictions on its confidentiality.

SECTION 3 COMMUNITY FINANCIAL CONTRIBUTION

SUBSECTION 1 ELIGIBILITY FOR FUNDING AND FORMS OF GRANTS

Article 29

Eligibility for funding

1. Where any of the following legal entities participates in an indirect action, it may receive a Community financial contribution:
 - (a) any legal entity established in a Member State or an Associated country, or created under Community law,
 - (b) any international European interest organisation,
 - (c) any legal entity established in an international cooperation partner country.
2. In the case of a participating international organisation, other than an international European interest organisation, or a legal entity established in a third country other than an **Associated country or** international cooperation partner country, a Community financial contribution may be granted provided that at least one of the following conditions is satisfied:
 - (a) provision is made to that effect in the specific programmes or in the relevant work programme,

- (b) it is essential for carrying out the indirect action,
- (c) such funding is provided for in a bilateral scientific and technological agreement or any other arrangement between the Community and the country in which the legal entity is established.

Article 30

Forms of grants

1. The Community financial contribution for grants identified in part a) of Annex III to the Seventh Framework Programme shall be based on the reimbursement, **in whole or in part**, of eligible costs.

However, the Community financial contribution may take the form of flat rate financing, including scale of unit costs, or lump sum financing, or it may combine the reimbursement of eligible costs with flat rates and lump sums. The Community financial contribution may also take the form of scholarships or prizes.

2. While the Community financial contribution shall be calculated by reference to the cost of the indirect action as a whole, it shall be based on the reported costs of each participant.

Article 31

Reimbursement of eligible costs

1. **Indirect actions financed by grants** shall be co-financed by the participants.

The Community financial contribution to reimburse eligible costs shall not give rise to a profit.

2. Receipts shall be taken into consideration for the payment of the grant at the end of the implementation of the action.

3. In order to be considered eligible, costs incurred for the implementation of an indirect action shall meet the following conditions:
- (a) they must be actual;
 - (b) they must have been incurred during the duration of the action, with the exception of final reports when provided for in the grant agreement;
 - (c) they must have been determined in accordance with the usual accounting and management principles and practices of the participant and used for the sole purpose of achieving the objectives of the indirect action and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;
 - (d) they must be recorded in the accounts of the participant and paid and, in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;
 - (e) they must be exclusive of non-eligible costs, in particular identifiable indirect taxes including value added tax, duties, interest owed, provisions for possible future losses or charges, exchange losses, cost related to return on capital, costs declared or incurred, or reimbursed in respect of another Community project, debt and debt service charges, excessive or reckless expenditure, and any other cost that does not meet the conditions referred to in points (a) to (d).

For the purposes of point (a), average personnel costs may be used if they are consistent with the management principles and accounting practices of the participant and do not differ significantly from actual costs.

Article 32

Direct eligible costs and indirect eligible costs

1. Eligible costs shall be composed of costs attributable directly to the action, hereinafter "direct eligible costs" and, where applicable, of costs which are not attributable directly to the action, but which have been incurred in direct relationship with the direct eligible costs attributed to the action, hereinafter "indirect eligible costs".
2. For the coverage of indirect eligible costs, a participant may opt for a flat-rate of its total direct eligible costs, excluding its direct eligible costs for subcontracting.
3. The grant agreement may provide that the reimbursement of indirect eligible costs is to be limited to a maximum percentage of the direct eligible costs, excluding the direct eligible costs for subcontracting, in particular in the case of coordination and support actions, and, where appropriate, actions for training and career development of researchers.

Article 33

Upper funding limits

1. For research and technological development activities, the Community financial contribution may reach a maximum of 50% of the total eligible costs.

However, in the case of public bodies, secondary and higher education establishments, research organisations and SMEs, it may reach a maximum of 75% of the total eligible costs.

2. For demonstration activities, the Community financial contribution may reach a maximum of 50% of the total eligible costs.
3. For activities supported by frontier research actions, coordination and support actions, and actions for the training and career development of researchers, the Community financial contribution may reach a maximum of 100% of the total eligible costs.

4. For management **activities including** audit certificates, and other activities not covered by paragraphs 1, 2 and 3, the Community financial contribution may reach a maximum of 100% of the total eligible costs.

The other activities referred to in the first subparagraph include, *inter alia*, training in actions that do not fall under the funding scheme for training and career development of researchers, coordination, networking, and dissemination.

5. For the purposes of paragraphs 1 to 4, eligible costs minus receipts shall be taken into consideration in order to determine the Community financial contribution.
6. Paragraphs 1 to 5 shall apply, as appropriate, in the case of indirect actions where flat rate financing or lump sum financing is used for the whole indirect action.

Article 34

Reporting and audit of eligible costs

1. Periodic reports shall be submitted to the Commission regarding eligible costs, financial interest yielded by pre-financing, and receipts in relation with the indirect action concerned and, where appropriate, certified by an audit certificate, in accordance with the Financial Regulation and the Implementing Rules.

The existence of co-financing in relation with the concerned action shall be reported and, where appropriate, certified at the end of the action.

2. In the case of public bodies, research organisations, and higher and secondary education establishments, an audit certificate as required under paragraph 1 may be established by a competent public officer.

Article 35

Networks of Excellence

1. Unless otherwise provided for in the work programme, the Community financial contribution to Networks of Excellence shall be in the form of a lump-sum calculated according to the number of researchers to be integrated in the Network of Excellence and the duration of the action.
2. The unit value for lump sums paid under paragraph 1 shall be EUR 23 500 per year and per researcher.

That amount shall be adjusted by the Commission in accordance with the Financial Regulation and the Implementing Rules.

3. The work programme shall establish the maximum number of participants and, where appropriate, the maximum number of researchers that may be used as the basis for the calculation of the maximum lump sum pursuant to paragraph 1. However, participants over and above the maxima for the establishment of the financial contribution may participate as appropriate.
4. The payment of lump sums under paragraph 1 shall be effected by means of periodic releases.

Those periodic releases shall be made according to the assessment of the progressive implementation of the Joint Programme of Activities through the measurement of integration of research resources and capacities based on performance indicators negotiated with the consortium and specified in the grant agreement.

SUBSECTION 2
PAYMENT, DISTRIBUTION, RECOVERY AND GUARANTEES

Article 36

Payment and distribution

1. The Community financial contribution shall be paid to the participants via the coordinator.
2. The coordinator shall keep records making it possible to determine at any time what portion of the Community funds has been distributed to each participant.

The coordinator shall communicate that information to the Commission upon request.

Article 37

Recovery

The Commission may adopt a recovery decision in accordance with the Financial Regulation.

Article 38

Retained amounts for risk avoidance

1. Depending on the level of risk associated with non-recovery of sums due to the Community, the Commission may retain a small percentage **(to be fixed after a risk-assessment)** of the Community financial contribution to each participant in an indirect action in order to cover any amounts due and not reimbursed by defaulting participants in indirect actions.
2. Paragraph 1 shall not apply to the following:
 - (a) public bodies, legal entities whose participation in the indirect action is guaranteed by a Member State or an Associated country, and higher and secondary education establishments;

- (b) participants in actions to support training and career development of researchers, frontier research actions, and actions for the benefit of specific groups with the exception actions for the benefit of SMEs.

The types of participant referred to in points (a) and (b) shall each be responsible for their own debts.

- 3. The amounts retained shall constitute revenue assigned to the Seventh Framework Programme within the meaning of Article 18(2) of the Financial Regulation.
- 4. At the end of the framework programme an assessment shall be made of the amounts required to cover outstanding risks. Any sums in excess of these amounts shall be reimbursed to the framework programme and constitute earmarked revenue.

CHAPTER III DISSEMINATION AND USE, AND ACCESS RIGHTS

SECTION 1 FOREGROUND

SUBSECTION 1 OWNERSHIP

Article 39

Ownership of foreground

- 1. Foreground shall be the property of the Community in the following cases:
 - (a) coordination and support actions consisting in a purchase **of goods** or services subject to the rules on public procurement set out in the Financial Regulation;
 - (b) coordination and support actions relating to independent experts.

2. Foreground arising from work carried out under indirect actions other than those referred to in paragraph 1 shall be the property of the participants carrying out the work generating that foreground.
3. If employees or other personnel working for a participant are entitled to claim rights to foreground, the participant shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under the grant agreement.

Article 40

Joint ownership of foreground

1. Where several participants have jointly carried out work generating foreground and where their respective share of the work cannot be ascertained, they shall have joint ownership of such foreground.
2. Where no joint ownership agreement has been concluded regarding the allocation and terms of exercising that joint ownership, each of the joint owners shall be entitled to grant non-exclusive licenses to third parties, without any right to sub-licence, subject to the following conditions:
 - (a) prior notice must be given to the other joint owners;
 - (b) fair and reasonable compensation must be provided to the other joint owners.

Article 41

Ownership of foreground by specific groups

In the case of actions for the benefit of specific groups, Article 39(2) and Article 40(1) shall not apply. In such cases, foreground shall be jointly owned by the participants which are members of the specific group benefiting from the action, unless otherwise agreed by those participants.

Where the owners of the foreground are not members of that group, they shall ensure that the group is provided with all the rights to foreground that are required for the purposes of using and disseminating that foreground in accordance with the technical annex to the grant agreement.

Article 42

Transfer of foreground

1. Where a participant transfers ownership of foreground, it shall pass on its obligations to the assignee **including the obligation to pass them on to any subsequent assignee**, in accordance with the grant agreement.
2. Subject to its obligations concerning confidentiality, where the participant is required to pass on access rights, it shall give prior notice to the other participants in the same action, together with sufficient information concerning the new owner of the foreground to permit them to exercise their access rights under the grant agreement.

However, the other participants may, by written agreement, waive their right to individual prior notice in the case of transfers of ownership from one participant to a specifically identified third party.

3. Following notification in accordance with the first subparagraph of paragraph 2, **any** other participants may object to any transfer of ownership on the ground that it would adversely affect their access rights.

Where **any of** the other participants demonstrate that their rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the participants concerned.

4. **Unless otherwise foreseen in the grant agreement**, the Commission is to be notified in advance of any intended transfer of ownership **or any intended grant of an exclusive licence** to a third party **which is established in a third country not associated to the Seventh Framework Programme**.

Article 43

Preservation of European competitiveness and ethical principles

The Commission may object to the transfer of ownership of foreground, or to the granting of an exclusive licence regarding foreground, to **third parties** established in a third country not associated to the Seventh Framework Programme, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles.

In such cases, the transfer of ownership or grant of exclusive licence shall not take place unless the Commission is satisfied that appropriate safeguards will be put in place.

SUBSECTION 2

PROTECTION, PUBLICATION, DISSEMINATION AND USE

Article 44

Protection of foreground

1. Where foreground is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection in conformity with relevant legislation, having due regard to **its legitimate interests and** the legitimate interests, particularly the commercial interests, of the **other** participants in the indirect action concerned.

Where a participant **who is not the owner of the foreground** invokes **its** legitimate interest, it must, in any given instance, show that it would suffer disproportionately great harm.

2. Where the owner of foreground does not protect foreground that it owns, and does not transfer it to another participant in accordance with Article 42(1) and (2), no dissemination activities may take place before the Commission has been informed.

In such cases, the Commission may, with the consent of the participant concerned, assume ownership of that foreground and adopt measures for its adequate and effective protection. The participant concerned may refuse consent only if it can demonstrate that its legitimate interests would suffer disproportionately great harm.

Article 45

Statement relating to Community financial support

All publications, patent applications filed by or on behalf of a participant, or any other dissemination relating to foreground, shall include a statement that the foreground concerned was generated with the assistance of financial support from the Community.

The terms of that statement shall be established in the grant agreement.

Article 46

Use and dissemination

1. The participants shall use the foreground which they own, or ensure that it is used.
2. Each participant shall ensure that the foreground of which it has ownership is disseminated as swiftly as possible. If it fails to do so, the Commission may disseminate that foreground.
3. Dissemination activities shall be compatible with **the protection of** intellectual property rights, confidentiality **obligations**, and the legitimate interests of the owner of the foreground.
4. Prior notice of any dissemination activity shall be given to the other participants concerned.

Following notification, any of those participants may object if it considers that its legitimate interests in relation to its foreground **or background** could suffer disproportionately great harm. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.

[...] ¹⁶

¹⁶ *Article 47 replaced by new Article 22(5).*

SECTION 2
ACCESS RIGHTS TO BACKGROUND AND FOREGROUND

Article 48

Background covered

Participants may define the background needed for the purposes of the indirect action in a written agreement and, where appropriate, may exclude specific background.

Article 49

Principles

1. All requests for access rights shall be made in writing.
2. Unless otherwise agreed by the owner of the foreground or background, access rights shall confer no entitlement to grant sub-licences.
3. Exclusive licences for foreground or background may be granted, subject to written confirmation by all the other participants that they waive their access rights thereto.
4. Without prejudice to paragraph 3, any agreement providing access rights to foreground or background to participants or third parties shall be such as to ensure that potential access rights for other participants are maintained.
5. Participants in the same action shall inform each other as soon as possible of any limitation to the granting of access rights to background, or of any other restriction which might substantially affect the granting of access rights.
6. The termination of its participation in an indirect action shall in no way affect the obligation of that participant to grant access rights to the remaining participants in the same action under the terms and conditions established by the grant agreement.

Article 50

Access rights for implementation of indirect actions

1. Access rights to foreground shall be granted to **the** other participants in the same indirect action, if it is needed to enable those participants to carry out their own work under that indirect action.

Such access rights shall be granted on a royalty-free basis.

2. Access rights to background shall be granted to the other participants in the same indirect action, if it is needed to enable those participants to carry out their own work under that indirect action provided that the participant concerned is entitled to grant them.

Such access rights shall be granted on a royalty-free basis, unless otherwise agreed by all participants before their accession to the grant agreement.

However, RTD Performers shall grant access rights to background on a royalty-free basis.

Article 51

Access rights for use

1. Participants in the same indirect action shall enjoy access rights to foreground, if it is needed to use their own foreground.

Such access rights shall be granted either under fair and reasonable conditions, or royalty-free.

2. Participants in the same indirect action shall enjoy access rights to background, if it is needed to use their own foreground provided that the participant concerned is entitled to grant them.

Such access rights shall be granted either under fair and reasonable conditions, or royalty-free.

3. A request for access rights under paragraphs 1 or 2 may be made up to one year after either of the following events:

(a) the end of the indirect action ;

(b) termination of participation by the owner of the background or foreground concerned.

However, the participants concerned may agree on a different time-limit.

4. Subject to the agreement of all the owners concerned, access rights to foreground shall be granted to a RTD performer, on fair and reasonable conditions to be agreed, for the purposes of pursuing further research activities.

5. RTD performers shall grant access on a royalty-free basis to background needed to use the foreground generated in the indirect action.

Article 52

Additional provisions regarding access rights for "frontier" research actions
and for actions for the benefit of specific groups

1. **Participants in the same frontier research action shall enjoy royalty-free** access rights to foreground and background for implementation or use, notwithstanding Articles 50 and 51.
2. Where the specific group benefiting from the action is represented by a legal entity that participates in the action in their place, that legal entity may grant a sub-licence, in respect of any access right granted to it, to those of its members which are established in a Member State or an Associated country.

CHAPTER IV
EUROPEAN INVESTMENT BANK

Article 53

1. The Community may award a grant to the European Investment Bank (EIB) to cover the risk for loans **or guarantees** the EIB makes in support of research objectives set out under the seventh Framework Programme (Risk-Sharing Finance Facility).
2. The EIB shall provide these loans **or guarantees** in accordance with the principles of fairness, transparency, impartiality and equal treatment.
3. The Commission has the right to object to the use of the Risk-Sharing Finance Facility for certain loans **or guarantees**, on terms to be defined in the grant agreement in accordance with the Work Programmes.

CHAPTER V
FINAL PROVISIONS

Article 54

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
