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THE EUROPEAN UNION**

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**RECH 55
ATO 10
COMPET 86**

PROPOSAL

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

dated: 8 March 2011

Subject: Proposal for a Council regulation (Euratom) laying down the rules for the participation of undertakings, research centres and universities in indirect actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013)

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union.

Encl.: COM(2011) 71 final



EUROPEAN COMMISSION

Brussels, 7.3.2011
COM(2011) 71 final

2011/0045 (NLE)

Proposal for a

COUNCIL REGULATION (Euratom)

laying down the rules for the participation of undertakings, research centres and universities in indirect actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013)

{COM(2011) 72 final}

{COM(2011) 73 final}

{COM(2011) 74 final}

{SEC(2011) 204 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Commission's proposal for the Euratom Framework Programme for 2012-2013 is accompanied by a proposal for the Rules for Participation.

This proposal provides the vehicle for implementing the Framework programme 2012-2013, building on the same principles established in the Seventh Euratom Framework Programme (2007-2011). In accordance with Article 18 of this Regulation, the **model grant agreement** adopted under Council Decision 2006/970/Euratom will also be used for the Euratom Framework programme for 2012 and 2013. As a consequence, this Framework Programme will also benefit from the initiatives included in the Commission Decision on **three measures for simplifying** the implementation of Decision No 1982/2006/EC of the European Parliament and of the Council and Council Decision 2006/970/Euratom and amending Decisions C(2007) 1509 and C(2007) 1625¹. These measures concern the acceptance of average personnel costs methodologies, the use of scale-of-units to determine the value of the work carried out by owners of small and medium-sized enterprises (SMEs) or other natural persons not receiving a salary and the establishment of an internal Commission committee to achieve a uniform interpretation and application of the legal and financial rules in the implementation of the Seventh Framework Programmes.

2. LEGAL BASIS

This proposal for a Council Regulation is based on Articles 7 and 10 of the European Atomic Energy Community (Euratom) Treaty. The rules for participation define the rights and obligations of legal entities wishing to take part in the framework programme and establish the principles for the use and dissemination of their work resulting from that participation. The Euratom Framework Programme for 2012-2013 is implemented in accordance with the provisions established by the Financial Regulation, its implementing rules, and the state aid rules, in particular the rules on state aid for research and development.

3. CONTENT

The present proposal contains four chapters: **introductory provisions** (subject matter, definitions and confidentiality), **participation** (minimum conditions for participation, procedural aspects, including minimum numbers of participants, their place of establishment, proposal submission and evaluation, implementation and grant agreements, monitoring of projects and programmes, Community financial contribution: eligibility for funding and forms of grants, reimbursement rates, payment, distribution, recovery and guarantees), the **rules for dissemination and use and access rights** (ownership, protection, publication, dissemination and use, and access rights to background and foreground) and the **specific rules for participation in activities under the thematic area "fusion energy research"**.

The **minimum number of participants** and the conditions for the place of establishment of the participants continue to depend on the type of action. Legal entities established in Associated countries may also participate on the same basis as those established in Member States.

¹ C(2011) 174, 24.1.2011.

The Rules identify the procedures for issuing **calls for proposals** and the exceptions to calls for proposals, and for the submission, evaluation and selection of proposals and the award of grants. In addition, they establish the procedures for the appointment of external experts. The detailed internal rules governing the submission, evaluation, selection and award procedures established by the Commission under the Seventh Framework Programme will continue to apply, including the provisions for the appointment of independent experts. The present rules keep the special provisions for two-stage submission to be used to a greater extent where applicable, for example where high over-subscription is expected, for very large projects and in order to limit costs of preparing proposals that may never be funded, etc. and for two-step evaluation (with single submission). The **evaluation process** developed over the previous Framework Programme and reflected in these internal rules will continue without substantial changes. Greater use is to be made of remote evaluation whenever possible.

As in the past Framework Programme, full **electronic submission** will be the rule for this Framework Programme as well (although not specified in the Rules). Also, the use of pre-filled forms/pre-registration using data from a central source and changes to the content and format of proposals will continue to be used to permit successful proposals to begin earlier.

In order to ensure consistent assessment of the financial viability of participants and related matters, the Commission will continue to use the internal rules established under the Seventh Framework Programme for the new Euratom Framework Programme (2012-2013).

The model grant agreement adopted under the Euratom Seventh Framework Programme, as modified by Commission Decision C(2011) 174, will continue to be used in this Framework Programme. This grant agreement establishes the rights and obligations of participants vis-à-vis the Community and each other. The autonomy and flexibility of the consortia, in particular with respect to changes in their composition as established in the grant agreement will continue to apply. The grant agreement will come into force upon signature by the coordinator and Commission authorising officer. All participants must accede to the grant agreement in order to benefit from the rights and obligations under the project.

Participants will be required, as under the Seventh Framework Programme, to conclude consortium agreements, except where exempted under the call for proposals.

The Commission will monitor all indirect actions financed by the Community as well as the Framework Programme and its Specific Programmes for 2012-2013, as and when necessary with the assistance of external experts.

Participants eligible for Community funding are identified in the subsection on Community financial contribution which also covers the forms of grants, reimbursement rates, payment, distribution, recovery and guarantees.

Three **forms of grants** continue to be proposed for the Community financial contribution: reimbursement of eligible costs, lump sums, and flat-rate financing (the latter can be based on the scale of unit costs but also includes flat rates for indirect costs). These may be used to cover the entire Community financial contribution for a funding scheme or in combination. For most funding schemes, the reimbursement of eligible costs is the preferred method.

Participants can charge all their direct and indirect costs and have the option of a flat rate for indirect costs. Costs will be determined, as in the previous Euratom Framework Programme, according to the usual accounting and management principles of the participants to achieve the project objectives based on principles of economy, efficiency and effectiveness.

The **Community financial contribution** will cover a maximum of 50% of eligible costs minus receipts both for research and for demonstration activities. For SMEs, non profit public bodies, secondary and higher education establishments and research organisations, there will be a top up of up to 25% for research activities. All other activities, including coordination and support actions, and actions for the training and career development of researchers will be reimbursed at up to 100% for all entities.

The above maximum amounts apply to all the eligible costs of entities, even where part of the reimbursement of costs is based on lump sums or flat rates. The maximum amounts also apply to entities participating in projects where flat-rate financing and, where appropriate, lump sum financing is used for the whole project.

For Networks of Excellence, a special **lump sum** is paid. The amount of the lump sum is established as a fixed amount per researcher per year. Periodic payments of portions of the lump sum will be paid according to the attainment of indicators showing progressive implementation of the Joint Programme of Activities (JPA).

Public bodies, research organisations, and higher and secondary education establishments may provide an audit certificate established by a competent public officer.

Participants in a consortium are fully responsible for carrying out the tasks entrusted to them even if one of the participants fails to complete assigned tasks. The **financial risk** mechanism for reimbursing any amount due to the Community because of a participant's failure is retained in the present proposal. This mechanism is financed by a small contribution from undertakings and any other participants that are not public bodies or secondary and higher education establishments, or whose participation is not guaranteed by their Member State or Associated country.

Provisions governing **dissemination and use and access rights** (ownership, protection, publication, dissemination and use, and access rights to background and foreground) **are the same as in the past Framework Programme**. The Rules specify the definitions and rules for background, foreground and access rights, taking into account the specific provisions laid down in the Treaty. In particular, Article 45 of the Rules confers on the Commission the right to disseminate foreground where participants fail to do so. The provisions on intellectual property for the area "Fusion Energy Research" are set out in the specific instruments.

Finally, the Rules keep the same specific rules for participation in activities under the thematic area "fusion energy research" as in the previous Euratom Seventh Framework Programme.

4. Budgetary implications

The proposal for a Council Regulation laying down the rules for participation has no budgetary implications.

Proposal for a

COUNCIL REGULATION (Euratom)

laying down the rules for the participation of undertakings, research centres and universities in indirect actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 7 and 10 thereof,

Having regard to the proposal from the European Commission,

Having regard to the Opinion of the European Parliament²,

Having regard to the Opinion of the European Economic and Social Committee³,

Having regard to the Opinion of the Court of Auditors⁴,

Having consulted the Scientific and Technical Committee,

Whereas:

- (1) The Framework Programme of the European Atomic Energy Community for nuclear research and training activities for 2012-2013, hereinafter 'the Framework Programme (2012-2013)', was adopted by Council Decision No .../.../Euratom⁵ of ... concerning the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)⁶. It is the responsibility of the Commission to ensure the implementation of the Framework Programme (2012-2013) and its specific programmes, including the related financial aspects.
- (2) The Framework Programme 2012-2013 should be implemented in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁷, hereinafter "the Financial Regulation", and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council

² Opinion of

³ Opinion

⁴ OJ C

⁵ OJ

⁶ OJ C

⁷ OJ L 248, 16.9.2002, p. 1.

Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁸.

- (3) The Framework Programme 2012-2013 should also be implemented in accordance with the state aid rules, in particular the rules on state aid for research and development, currently the Community framework for state aid for research and development and innovation⁹.
- (4) The Framework Programme for 2012-2013 retains the overall scope and principles as regards the Seventh Framework Programme of the Community adopted by Council Decision 2006/970/Euratom of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)¹⁰.
- (5) The rules for the participation of undertakings, research centres and universities should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access for all participants through simplified procedures, in accordance with the principle of proportionality.
- (6) This Framework Programme should benefit from the Commission initiative to simplify the implementation of the research framework programmes included in the Commission Decision on three measures for simplifying the implementation of Decision No 1982/2006/EC of the European Parliament and of the Council and Council Decision 2006/970/Euratom and amending Decisions C(2007) 1509 and C(2007) 1625¹¹. This Commission Decision modifies the model grant agreement adopted under Council Decision 2006/970/Euratom.
- (7) These rules should continue to facilitate the exploitation of intellectual property developed by participants, also taking into account the way in which the participant may be organised internationally, while protecting legitimate interests of the other participants and the Community.
- (8) The Framework Programme (2012-2013) should promote participation from the outermost regions of the Community, as well as from a wide range of undertakings, research centres and universities.
- (9) The definition of micro, small and medium-sized enterprises (SMEs) given in the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹² should apply to ensure coherence and transparency.
- (10) The minimum conditions for participation need to be established, both as a general rule and for specific indirect actions under the Framework Programme 2012-2013.

⁸ OJ L 357, 31.12.2002, p. 1.

⁹ OJ C 323, 30.12.2006, p. 1.

¹⁰ OJ L 460, 30.12.2006, p. 60.

¹¹ C(2011) 174, 24.1.2011.

¹² OJ L 124, 20.5.2003, p. 36.

- (11) Any legal entity should be free to participate once the minimum conditions have been satisfied. Participation over and above the minimum should ensure the efficient implementation of the indirect action concerned.
- (12) International organisations dedicated to developing cooperation in the field of nuclear research and training in Europe and largely made up of Member States or associated countries should be encouraged to participate in the Framework Programme 2012-2013.
- (13) The participation of legal entities established in third countries and the participation of international organisations should also be envisaged, as enshrined in Article 101 of the Treaty. However, such participation should be justified in terms of the enhanced contribution made to the objectives of the Framework Programme 2012-2013.
- (14) In accordance with Article 198 of the Treaty, legal entities of Member States' non-European territories under their jurisdiction are eligible for the Framework Programme 2012-2013.
- (15) It is necessary to establish the terms and conditions for providing Community funding to participants in indirect actions.
- (16) The Commission has to establish further rules and procedures, in addition to those provided for in the Financial Regulation and Regulation (EC, Euratom) No 2342/2002 and in this Regulation, to govern the submission, evaluation and selection of proposals and the award of grants, as well as redress procedures for participants. In particular, rules should be established for the use of independent experts.
- (17) The duration of the Framework Programme 2012-2013 is limited to two years, whereas the Seventh Framework Programme of the Union, adopted by Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)¹³, with similar rules to the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011)¹⁴, adopted by Decision 2006/970/Euratom of the Council of 18 December 2006, will be in force in parallel until the end of 2013. It is thus appropriate to apply similar rules to those for the Seventh Framework Programme of the European Union and avoid major changes for participants.
- (18) The Commission should establish further rules and procedures under the Framework Programme 2012-2013 in addition to those provided for in the Financial Regulation and Regulation (EC, Euratom) No 2342/2002, to govern the assessment of the legal and financial viability of participants in indirect actions under the Framework Programme 2012-2013. Such rules should strike the right balance between protecting the Union's financial interests and simplifying and facilitating the participation of legal entities in the Framework Programme (2012-2013). In order to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions and to avoid major changes for the

¹³ OJ L 412, 30.12.2006, p. 1.

¹⁴ OJ L 400, 30.12.2006, p.60.

participants it is advisable to apply to the Framework Programme (2012-2013) the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) and under the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011) adopted by Commission Decision C(2007) 2466 of 13 June 2007.

- (19) In this context, the Financial Regulation and Regulation (EC, Euratom) No 2342/2002 and Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests¹⁵, govern inter alia the protection of the Union's financial interests, the fight against fraud and irregularity, the procedures for the recovery of sums owed to the Commission, exclusion from contract and grant procedures and related penalties, and audits, checks, and inspections by the Commission and the Court of Auditors.
- (20) The Community financial contribution should reach participants without undue delay.
- (21) The agreements concluded for each action should provide for supervision and financial control by the Commission, or any representative authorised by the Commission, as well as audits by the Court of Auditors and on-the-spot checks carried out by the European Anti-Fraud Office (OLAF), in accordance with the procedures laid down in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities¹⁶.
- (22) The Commission should monitor the indirect actions carried out under the Framework Programme 2012-2013 and the Framework Programme 2012-2013 and its Specific Programmes 2012-2013. With a view to ensuring efficient and coherent monitoring and evaluation of the implementation of indirect actions, the Commission should set-up and maintain an appropriate information system.
- (23) The Framework Programme 2012-2013 should reflect and promote the general principles laid down in the Recommendation 2005/251/EC of 11 March 2005 on the European Charter for Researchers and Code of Conduct for the Recruitment of Researchers¹⁷, while respecting their voluntary character.
- (24) The rules governing the dissemination of research results should ensure that, where appropriate, the participants protect the intellectual property generated in actions, and use and disseminate those results.
- (25) While respecting the rights of the owners of intellectual property, those rules should be designed to ensure that participants and, where appropriate their affiliated entities established in a Member State or associated country, have access to information they bring to the project and to knowledge arising from research work carried out in the

¹⁵ OJ L 312, 23.12.1995, p. 1.

¹⁶ OJ L 292, 15.11.1996, p. 2.

¹⁷ OJ L 75, 22.3.2005, p. 67.

project to the extent necessary to conduct the research work or to use the resulting knowledge.

- (26) The "Participants Guarantee fund", set-up under the seventh Framework Programme of the Community and managed by the Commission, should continue to operate and to cover amounts due and not reimbursed by defaulting partners under the Framework Programme 2012-2013. The creation of such a fund has promoted the simplification and facilitated the participation while safeguarding the Union's financial interests in a manner that is also appropriate for the Framework Programme (2012-2013).
- (27) Community contributions to a joint undertaking set up pursuant to Articles 45 to 51 of the Treaty do not fall within the scope of this Regulation.
- (28) This Regulation respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union.
- (29) The Community should provide financial support, in accordance with the Financial Regulation, inter alia by means of public procurements, in the form of a price for goods or services established by contract and selected on the basis of calls for tender, grants, subscriptions to an organisation in the form of a membership fee, and honorarium for independent experts.

HAS 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 under funding schemes identified in the Annex II to Decision No.../.../Euratom¹⁸ establishing the Framework Programme 2012-2013, hereinafter "indirect actions".

It also lays down rules, in accordance with those in the Regulation (EC, Euratom) No 1605/2002, hereinafter the "Financial Regulation" and Regulation (EC, Euratom) No 2342/2002, concerning the Community financial contribution to participants in indirect actions under the Framework Programme 2012-2013.

As regards the results of research carried out under the Framework Programme 2012-2013, this Regulation lays down rules for the disclosure of foreground by any appropriate means other than those resulting from the formalities for protecting it, including the publication of foreground in any medium, hereinafter "dissemination".

In addition, it lays down rules for the direct or indirect use of foreground in further research activities other than those covered by the indirect action concerned, including developing,

¹⁸ OJ: Insert number of the Decision referred to in Recital 1

creating and marketing a product or process, 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:

- (1) "legal entity" means any natural person, or any legal person created under the national law of its place of establishment, or under European Union law or international law, which has legal personality and which may, acting under its own name, exercise rights and be subject to obligations;
- (2) "affiliated entity" means any legal entity that is under the direct or indirect control of a participant, or under the same direct or indirect control as the participant, control taking any of the forms set out in Article 7(2);
- (3) "fair and reasonable conditions" means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged;
- (4) "foreground" means the results, including information, whether or not they can be protected, which are generated by the indirect action concerned, including rights related to copyright, design rights, patent rights, plant variety rights or similar forms of protection;
- (5) "background" means information which is held by participants prior to their accession to the grant agreement, including copyright or other intellectual property rights pertaining to such information, for which they have filed applications before acceding to the grant agreement, and which is needed for carrying out the indirect action or for using the results of the indirect action;
- (6) "participant" means a legal entity contributing to an indirect action and having rights and obligations with regard to the Community;
- (7) "research organisation" means a legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives;
- (8) "third country" means a country that is not a Member State;
- (9) "associated country" means a third country that is party to an international agreement with the European Atomic Energy Community, under the terms of which or on the basis of which it makes a financial contribution to all or part of the Framework Programme 2012-2013;

- (10) "international organisation" means an intergovernmental organisation, which has legal personality under international public law, other than the European Union, as well as any specialised agency set up by such an international organisation;
- (11) "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;
- (12) "public body" means any legal entity established as such by national law, and international organisations;
- (13) "SMEs" mean micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC;
- (14) "work programme" means a plan adopted by the Commission for the implementation of a specific programme as identified in Article 6 of Decision No .../.../Euratom¹⁹;
- (15) "funding schemes" mean the mechanisms for Community funding of indirect actions as established in the Annex II to Decision No .../.../Euratom⁺.

For the purposes of point (1) of the first paragraph, in the case of natural persons, references to establishment are deemed to refer to habitual residence.

Article 3 *Confidentiality*

Subject to the conditions established in the model grant agreement, the model 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**

Article 4 *Specific rules for fusion energy research*

The rules set out in this Chapter apply without prejudice to specific rules for activities under the thematic area "Fusion energy research" set out in Chapter IV.

¹⁹ OJ: Insert number of the Decision referred to in recital 1.

SECTION 1 MINIMUM CONDITIONS

Article 5 General principles

1. Any undertaking, university or research centre or other legal entity, whether established in a Member State, an associated country, or a third country, may participate in an indirect action provided that the minimum conditions laid down in this Chapter are met, including any conditions specified pursuant to Article 11.
2. However, in the case of an indirect action as referred to in Articles 6 or 8, under which the minimum conditions may be met without the participation of a legal entity established in a Member State, participation shall be subject to the further condition that the attainment of the objectives laid down in Articles 1 and 2 of the Treaty is thereby enhanced.
3. 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 6 Minimum conditions

1. The minimum conditions for indirect actions shall be the following:
 - (a) at least three legal entities shall 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 shall be independent of each other in accordance with Article 7.
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 European Union law, these participants shall be deemed to be established in a Member State or an associated country other than a Member State or associated country in which is established another participant in the same action.

Article 7 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 8
Coordination and support actions, and training
and career development of researchers

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

The first paragraph shall not apply to actions with the aim of coordinating research activities.

Article 9
Sole participants

Where the minimum conditions for an indirect action are satisfied by a number of legal entities that 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 an associated country.

Article 10
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 once the minimum conditions laid down in this Chapter are met, as well as any conditions specified in the specific programmes or relevant work programmes.

Article 11
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 12 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.

In addition to the publicity specified in Regulation (EC, Euratom) No 2342/2002, the Commission shall publish calls for proposals on the website of the European Commission for the Framework Programme 2012-2013, 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.
3. Calls for proposals shall have clear objectives so as to ensure that applicants do not respond needlessly.

Article 13 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 Regulation (EC, Euratom) No 2342/2002;
- (b) coordination and support actions consisting of the 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 for by the Financial Regulation or Regulation (EC, Euratom) No 2342/2002.

SUBSECTION 2
EVALUATION AND SELECTION OF
PROPOSALS AND AWARD OF GRANTS

Article 14
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 evaluation principles and the selection and award criteria.

The criteria shall be those of excellence, impact and implementation. Within these conditions, the work programme shall further specify the evaluation and selection criteria and may add additional requirements, weightings and thresholds, or set out further details on the application of the criteria.

2. A proposal that 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 that ranking.

Article 15
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 an evaluation against 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 applicants whose proposals pass the evaluation for the first stage shall be requested to submit a complete proposal in the second stage.

All applicants shall be swiftly informed of the results of the first stage evaluation.

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, and shall publish guides for applicants, including guidelines for evaluators. In particular, it shall lay down detailed rules for the two-stage procedure for submission (including as regards the scope and nature of the first-stage proposal and the complete second-stage proposal) and rules for the two-step evaluation procedure.

The Commission shall provide information and set out redress procedures for applicants.

4. The Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) and under the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011) adopted by Commission Decision C(2007)/2466 of 13 June 2007 will apply under the Framework Programme (2012-2013).

The Commission shall refrain from repeating such verification unless the situation of the participant concerned has changed.

Article 16
Appointment of independent experts

1. The Commission shall appoint independent experts to assist with evaluations of proposals.

For coordination and support actions, as referred to in Article 13, 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 have to deal with classified information, they shall be required to have the appropriate security clearance for nomination.

Independent experts shall be identified and selected on the basis of calls for applications from individuals and calls addressed to relevant organisations such as 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 a 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 sign an appointment letter between the Community and each independent expert based on the model appointment letter adopted by the Commission under the Seventh Framework Programme (2007-2011)²⁰.
5. The Commission shall publish once a year in any appropriate medium the list of the independent experts that have assisted it for the Framework Programme (2012-2013) and each specific programme.

²⁰ C(2008) 4617.

SUBSECTION 3 IMPLEMENTATION AND GRANT AGREEMENTS

Article 17 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 vis-à-vis the Community.
2. The Commission shall draw up, on the basis of the model referred to in Article 18 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 obligations regarding the technical implementation of the indirect action, 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 that might affect the implementation of the indirect action or the interests of the Community.
7. Where provided for in the grant agreement, the participants in the indirect action may subcontract certain elements of the work to be carried out to third parties.
8. The Commission shall set out redress procedures for participants.

Article 18 General provisions of the grant agreement

1. The model Grant Agreement adopted by the Commission Decision C(2007) 1509 of 10 April 2007, under the seventh Framework Programme (2007-2011) will apply under the Framework Programme 2012-2013.

The grant agreement establishes the rights and obligations of the participants with regard to the Community, in accordance with Decision 2006/970/Euratom, this Regulation, the Financial Regulation, and the Implementing Rules, and in accordance with the general principles of Community law.

It 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 specifies which part of the Community financial contribution is based on the reimbursement of eligible costs, and which part is based on flat rates (including scale of unit costs) or lump-sums.

3. The grant agreement specifies which changes in the composition of the consortium are to require the prior publication of a competitive call.
4. The grant agreement requires the submission to the Commission of periodic progress reports concerning the implementation of the indirect action concerned.
5. Where appropriate, the grant agreement provides 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 establishes 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, in close cooperation with Member States, established this model grant agreement. If a significant modification of the model grant agreement proves necessary, the Commission shall, in close cooperation with Member States, revise it as appropriate.
8. The model grant agreement reflects the general principles laid down in the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers. It addresses, 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.
9. The model grant agreement provides for supervision and financial control by the Commission or any representative authorised by it, and the Court of Auditors.
10. The grant agreement lay down time limits for participants to give the various notifications referred to in this Regulation.

Article 19
Provisions concerning access rights
use and dissemination

1. The grant agreement establishes 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 requires the submission to the Commission of a plan for the use and dissemination of foreground.

2. The grant agreement specifies 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 20
Provisions concerning termination

The grant agreement specifies 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 21
Specific provisions

1. In the case of indirect actions to support existing research infrastructures and, where applicable, new research infrastructures, the grant agreement 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 lays down specific provisions on confidentiality, access rights and commitments relating to the researchers benefiting from the action.
3. To safeguard the defence interests of the Member States within the meaning of Article 24 of the Treaty, the grant agreement lays down, where appropriate, specific provisions on confidentiality, classification of information, access rights, transfer of ownership of foreground and the use thereof.

Article 22
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.

SUBSECTION 4
CONSORTIA

Article 23
Consortium agreements

1. Save where otherwise provided in the call for proposals, all participants in an indirect action shall conclude an agreement, hereinafter "the consortium agreement", to govern inter alia the following:
 - (a) the internal organisation of the consortium;
 - (b) the distribution of the Community financial contribution;
 - (c) rules additional to those in Chapter III as well as to related provisions in the grant agreement;
 - (d) the settlement of internal disputes, including the cases of abuses of power;

- (e) liability, indemnification and confidentiality arrangements between the participants.
2. The Commission shall establish and publish guidelines on the main issues that may be addressed by participants in their consortium agreements.

Article 24
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, Regulation (EC, Euratom) No 2342/2002, and the grant agreement:
 - (a) monitoring compliance by participants in the indirect action with their obligations;
 - (b) verifying whether the legal entities identified in the grant agreement complete the necessary formalities for accession to the grant agreement;
 - (c) receiving the Community financial contribution and distributing it in accordance with the consortium and grant agreement;
 - (d) keeping the records and financial accounts relevant for the Community financial contribution and informing the Commission of its distribution in accordance with Article 23(1)(b) and Article 35;
 - (e) acting as an intermediary for efficient and correct communication between the participants and reporting regularly to the participants and to the Commission on the progress of the project.
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 25
Changes in the consortium

1. The participants in an indirect action may agree to add a new participant or to remove an existing participant in accordance with the provisions established to this effect in the consortium agreement.
2. Any legal entity that joins an ongoing action shall accede to the grant agreement.
3. In specific cases, 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 for the Framework Programme 2012-2013, 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 governing the initial action and with the assistance of independent experts appointed by the consortium, in accordance with the principles laid down in Articles 14 and 16

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

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.

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

Article 26

Monitoring and evaluation

1. The Commission shall monitor the implementation of indirect actions on the basis of the periodic progress reports submitted in accordance with the model grant agreement referred to in Article 18.

In particular, the Commission shall monitor the implementation of the plan for the use and dissemination of foreground, submitted in accordance with the second subparagraph of Article 19(1).

For those purposes, the Commission may be assisted by independent experts appointed in accordance with Article 16.

2. The Commission shall set up and maintain an information system to enable the monitoring referred to in paragraph 1 to be carried out in an efficient and coherent manner across the Framework Programme 2012 -2013.

Subject to Article 3, the Commission shall publish on any appropriate medium information on the funded projects.

3. The monitoring and evaluation referred to in Article 6 of Decision No .../.../Euratom²¹ shall include aspects relating to the application of this Regulation and shall address the budgetary impact of the changes in the cost calculation regime as compared to the Sixth Framework Programme adopted by Council Decision 2002/668/Euratom²² and its effects on the administrative burden for participants.
4. The Commission shall appoint, in accordance with Article 16, independent experts to assist with evaluations required under the Framework Programme 2012-2013 and its specific programme, and, as deemed necessary, for the evaluation of previous Framework Programmes.

²¹ OJ: Insert the number of the Decision referred to in recital 1.

²² OJ L 232, 29.8.2002, p. 34.

5. In addition, the Commission may set up groups of independent experts appointed in accordance with Article 16, to advise on the design and implementation of Community research policy.

Article 27
Information to be made available

1. Subject to Article 3, the Commission shall, upon request, 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 28
Eligibility for funding

1. The following legal entities participating in an indirect action may receive a Community financial contribution:
 - (a) any legal entity established in a Member State or an associated country, or created under European Union law;
 - (b) any international European interest organisation.
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, a Community financial contribution may be granted provided that at least one of the following conditions is met:
 - (a) provision is made to that effect in the specific programmes or in the relevant work programme;

- (b) the contribution is essential for carrying out the indirect action;
- (c) the contribution 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 29
Forms of grants

The Community financial contribution for grants identified in the Annex II to the Decision No .../...Euratom²³ 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.

The work programmes and calls for proposals shall specify the forms of grants to be used in the actions concerned.

Article 30
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, in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;

²³ OJ: Insert the number of the Decision referred to in recital 1.

- (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 Union 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) of the first subparagraph, 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.

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

Article 31

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 that 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. The reimbursement of participants' costs shall be based on their eligible direct and indirect costs.

In compliance with Article 30(3)(c), a participant may use a simplified method for calculating its indirect eligible cost at the level of its legal entity if this method is in accordance with its usual accounting and management principles and practices. Principles to be followed in this respect shall be set out in the model grant agreement.

- 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 the training and career development of researchers.
- 4. By way of derogation from paragraph 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 or reimbursement of third parties' costs.

The Commission shall establish appropriate flat rates based on a close approximation of the real indirect costs concerned, in accordance with the Financial Regulation and Regulation (EC, Euratom) No 2342/2002.

- 5. Non-profit public bodies, secondary and higher education establishments, research organisations and SMEs that are unable to identify with certainty their real indirect costs for the action concerned, when participating in funding schemes which include

research and technological development and demonstration activities, as referred to in Article 32, may opt for a flat-rate equal to 60% of the total direct eligible costs.

6. All flat rates shall be set out in the model grant agreement.

Article 32
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 non-profit 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 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 certificates for the financial statements, 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 the training and career development of researchers, coordination, networking, and dissemination.

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

Article 33
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 to the indirect action concerned and, where appropriate, a certificate for the financial statements, in accordance with the Financial Regulation and Regulation (EC, Euratom) No 2342/2002.

Any co-financing of the action concerned shall be reported and, where appropriate, certified at the end of the action.

2. Notwithstanding the Financial Regulation and Regulation (EC, Euratom) No 2342/2002, a certificate for the financial statements shall be compulsory only

whenever the cumulative amount of interim payments and balance payments made to a participant is equal to EUR 375 000 or more for an indirect action.

However, for indirect actions of duration of two years or less, not more than one certificate on the financial statements shall be requested from the participant, at the end of the project.

Certificates for the financial statements shall not be required for indirect actions entirely reimbursed by means of lump sums or flat rates.

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

Article 34

Networks of Excellence

1. The work programme shall provide for the forms of grants to be used for Networks of Excellence.
2. Where the Community financial contribution to Networks of Excellence takes the form of a lump sum, it shall be calculated according to the number of researchers to be included in the Network of excellence and the duration of the action. The unit value for lump sums paid 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 Regulation (EC, Euratom) No 2342/2002.

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. However, participants over and above the maximum number for the establishment of the financial contribution may participate as appropriate.
4. The payment of the financial contribution 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 measurement of the integration of research resources and capacities based on the basis of performance indicators negotiated with the consortium and specified in the grant agreement.

SUBSECTION 2 PAYMENT, DISTRIBUTION, RECOVERY AND GUARANTEES

Article 35
Payment and distribution

1. The Community financial contribution shall be paid to the participants via the coordinator without undue delay.
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 36
Recovery

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

Article 37
Risk avoidance mechanism

1. The financial responsibility of each participant shall be limited to its own debt, subject to paragraphs 2 to 5.
2. In order to manage the risk associated with the non-recovery of sums due to the Community, the Commission has established and operates a "Participant guarantee fund" (hereinafter "the Fund") in accordance with the Annex.

Financial interests generated by the Fund shall be added to the Fund and shall serve exclusively for the purposes set out in point 3 of the Annex, without prejudice to point 4 thereto.

3. The contribution to the Fund by a participant to an indirect action taking the form of a grant shall not exceed 5 % of the Community financial contribution due to the participant. At the end of the action the amount contributed to the Fund shall be returned to the participant, via the coordinator, subject to paragraph 4.
4. If the interests generated by the Fund are insufficient to cover sums due to the Community, the Commission may deduct from the amount to be returned to a participant a maximum of one per cent of the Community financial contribution to it.
5. The deduction referred to in paragraph 4 shall not apply to 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.
6. The Commission shall only verify *ex-ante* the financial capacity of coordinators, and of participants other than those referred to in paragraph 5 applying for a Community financial contribution in an indirect action in excess of EUR 500 000, unless there are exceptional circumstances when, on the basis of information already available, there are justified grounds to doubt the financial capacity of these participants.

7. The Participant guarantee fund shall be considered as a sufficient guarantee under the Financial Regulation. No additional guarantee or security may be requested from participants or imposed on them.

CHAPTER III DISSEMINATION AND USE, AND ACCESS RIGHTS

SECTION 1 FOREGROUND

Article 38 Specific rules for fusion energy research

The rules set out in this Chapter apply without prejudice to the specific rules for activities under the thematic area "Fusion energy research" set out in Chapter IV.

SUBSECTION 1 OWNERSHIP

Article 39 Ownership of foreground

1. Foreground arising from work carried out under indirect actions other than those referred to in paragraph 3 shall be the property of the participant carrying out the work generating that foreground.
2. 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.
3. Foreground shall be the property of the Community in the following cases:
 - (a) coordination and support actions consisting in the 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.

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.

They shall establish an agreement regarding the allocation and terms of exercising that joint ownership in accordance with the terms of the grant agreement.
2. Where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to grant non-exclusive licences 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.
3. Upon request, the Commission shall give guidance on possible aspects to be included in the joint ownership agreement.

Article 41 Transfer of foreground

1. The owner of the foreground may transfer it to any legal entity, subject to paragraphs 2 to 5 of this Article and Article 42.

2. Where a participant transfers ownership of foreground, it shall pass on its obligations regarding that foreground to the assignee, including the obligation to pass them on to any subsequent assignee, in accordance with the grant agreement.
3. 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.

4. Following notification in accordance with the first subparagraph of paragraph 3, any other participant may object to any transfer of ownership on the ground that it would adversely affect its 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.

5. Where appropriate, the grant agreement may provide, that the Commission is to be notified in advance of any intended transfer of ownership or any intended grant of a licence to a third party established in a third country not associated with the Framework Programme 2012-2013.

Article 42
Preservation of European competitiveness,
defence interest of Member States and ethical principles

The Commission may object to the transfer of ownership of foreground, or to the granting of a licence regarding foreground, to third parties established in a third country not associated with the Framework Programme 2012-2013, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or with the defence interests of the Member States within the meaning of Article 24 of the Treaty or is inconsistent with ethical principles.

In such cases, the transfer of ownership or granting of a licence shall not take place unless the Commission is satisfied that appropriate safeguards are put in place.

SUBSECTION 2
PROTECTION, PUBLICATION,
DISSEMINATION AND USE

Article 43
Protection of foreground

Where foreground is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection, 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 that is not the owner of the foreground invokes its legitimate interests, it shall, in any given instance, show that it would suffer disproportionately great harm.

Where the foreground is capable of industrial or commercial application and its owner does not protect it, and does not transfer it to another participant, to an affiliated entity established in a Member State or associated country or to any other third party established in a Member State or associated country along with the associated obligations in accordance with Article 41, 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 44

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, which may include visual means, 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 45

Use and dissemination

1. The participants shall use the foreground that 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 in accordance with Article 12 of the Treaty.

The grant agreement may set out time limits in this respect.

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 and the defence interests of the Member States within the meaning of Article 24 of the Treaty.
4. Prior notice of any dissemination activity shall be given to the other participants concerned.

Following notification, any of those participants may object if they consider that their legitimate interests in relation to their 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.

SECTION 2

ACCESS RIGHTS TO BACKGROUND AND FOREGROUND

Article 46 *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 47 *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. Without prejudice to Articles 48 and 49 and the grant agreement, participants in the same action shall inform each other as soon as possible of any limitation on the granting of access rights to background, or of any other restriction that 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 48 *Access rights for the implementation of indirect actions*

1. Access rights to foreground shall be granted to the other participants in the same indirect action, if this 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 this 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.

Article 49
Access rights for use

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

Subject to agreement, such access rights shall be granted either under fair and reasonable conditions or be royalty-free.

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

Subject to agreement, such access rights shall be granted either under fair and reasonable conditions or royalty-free.

3. An affiliated entity established in a Member State or associated country shall also have access rights, as referred to in paragraphs 1 and 2, to foreground or background under the same conditions as for the participant to which it is affiliated, unless otherwise provided for in the grant agreement or consortium agreement.

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

- (a) the end of the indirect action;
- (b) termination of its participation by the owner of the background or foreground concerned.

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

CHAPTER IV
SPECIFIC RULES FOR PARTICIPATION IN
ACTIVITIES UNDER THE THEMATIC AREA
FUSION ENERGY RESEARCH

Article 50
Scope

The rules set out in this Chapter apply to activities under the thematic area Fusion energy research as set out in the specific programme. 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 shall apply.

Article 51
Implementation of fusion energy research

Activities under the thematic area "Fusion energy research" may be implemented on the basis of procedures and rules for dissemination and use as set out in the following frameworks:

- (a) The Contracts of Association, concluded between the Community and Member States or associated third countries or legal entities within Member States or associated third countries;
- (b) The European Fusion Development Agreement (EFDA), concluded between the Community and organisations in, or acting for, Member States and associated countries;
- (c) The European Joint Undertaking for International Thermonuclear Experimental Reactor (ITER), based on the provisions of Title II, Chapter 5 of the Treaty;
- (d) International agreements relating to cooperation with third countries, or with any legal entity which may be established by such an agreement, in particular the ITER and the Broader Approach agreements;
- (e) Any other multilateral agreement concluded between the Community and associated organisations, in particular the Agreement on Staff Mobility;
- (f) Cost sharing actions to promote and contribute to fusion energy research with bodies in Member States or countries associated with the Framework Programme 2012-2013 with which there is no Contract of Association.

Article 52
Community financial contribution

1. The Contracts of Association referred to in point (a) of Article 51 and cost sharing actions referred to in point (f) of Article 51 shall establish the rules relating to the Community financial contribution to the activities concerned.

The annual rate for the Community financial contribution ("baseline support"), established in the Contracts of Association, shall not exceed 20% of the expenditure of the Associations on activities specified in their Annual Work Programmes over the total duration of the Seventh Framework Programme of the Community (2007-2011) adopted by the Council Decision 2006/970/Euratom and the Framework Programme 2012-2013.

2. After consultation of the consultative committee for the fusion programme referred to in Article 7 of Council Decision No .../.../Euratom²⁴, the Commission may finance:
 - (a) under the Contracts of Association at a rate not exceeding 40 %: expenditure of specific cooperative projects between the Associates which have been recommended for priority support by the consultative committee and approved

²⁴ OJ: Fill in the number and date of the Decision.

by the Commission; priority support will concentrate on actions of relevance to the ITER/DEMO, except in the case of projects already awarded priority status in earlier framework programmes;

- (b) actions carried out under the European Fusion Development Agreement including procurements, or under the Joint Undertaking referred to in point (c) of Article 51;
 - (c) actions carried out under the Agreement on Staff Mobility.
3. In the case of projects and actions receiving a financial contribution according to points (a) or (b) of paragraph 2, all the legal entities referred to in points (a) and (b) of Article 51 shall have the right to take part in the experiments carried out on the equipment concerned.
4. The Community financial contribution to actions carried out under an international cooperation agreement as referred to in point (d) of Article 51 shall be determined in accordance with the terms of this agreement or by any legal entity established by the agreement. The Community may manage its participation and its financial contribution to such an agreement through any appropriate legal entity.

CHAPTER V FINAL PROVISIONS

Article 53

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

It shall apply from 1 January 2012.

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

Done at Brussels,

*For the Council
The President*

ANNEX

Participant guarantee fund

1. The Fund is managed by the Community represented by the Commission acting as executive agent on behalf of the participants, under conditions established by the model grant agreement.

The Commission entrusts the financial management of the Fund either to the European Investment Bank or, in accordance with Article 13(b), to an appropriate financial institution (hereinafter the "depository bank"). The depository bank shall manage the Fund pursuant to a brief by the Commission.

2. The Commission may offset, from the initial pre-financing it will pay to the consortium, the participants' contribution to the Fund, and pay it on their behalf to the Fund.
3. Where amounts are due to the Community by a participant, the Commission may, without prejudice to penalties which may be imposed on the defaulting participant in accordance with the Financial Regulation either:
 - (a) order the depository bank to directly transfer the amount due from the Fund to the coordinator of the indirect action if it is still on-going and the remaining participants agree to implement it to the identical regarding its objectives, in accordance with Article 17(4). Amounts transferred from the Fund will be regarded as Community financial contribution; or
 - (b) recover effectively the said amount from the Fund should the indirect action be terminated or already completed.

The Commission will emit to the benefit of the Fund a recovery order against that participant. The Commission may adopt to that end a recovery decision in accordance with the Financial Regulation.

4. The amounts recovered from the Fund during the Framework Programme (2012-2013) will constitute revenue assigned to it within the meaning of Article 18(2) of the Financial Regulation.

Once the implementation of all grants under the Framework Programme (2012-2013) is complete, any sums outstanding from the Fund will be recovered by the Commission and entered into the budget of the Community, subject to decisions on the Eighth Framework Programme.