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| From: | Presidency |
| To: | Delegations |
| No. prev. doc.: | 5282/18 |
| Subject: | Proposal for a COUNCIL REGULATION on establishing the European High Performance Computing Joint Undertaking - Presidency text |

Delegations will find attached a Presidency text on the Proposal for a Council Regulation establishing the European High Performance Computing Joint Undertaking with a view to the Research working party meeting on 16 April 2018.

Changes in comparison to doc. 5282/18 are marked **bold underline** for addition and ~~strikethrough~~ for deletion.

**PROPOSAL FOR A COUNCIL REGULATION ESTABLISHING THE EUROPEAN HIGH
PERFORMANCE COMPUTING JOINT UNDERTAKING**

Article 1

Establishment

- (1) For the implementation of the Initiative on 'European High Performance Computing' a Joint Undertaking within the meaning of Article 187 of the Treaty (the 'European High performance Computing Joint Undertaking', hereinafter referred to as "Joint Undertaking"), is hereby be established for a period until 31 December 2026.
- (2) In order to take into account the duration of the European Framework Programmes for Research and Innovation (Horizon 2020), established by Regulation (EU) No 1291/2013 and the Connecting Europe Facility (CEF), established by Regulation (EU) No 1316/2013, calls for proposals and calls for tenders under this Joint Undertaking shall be launched at the latest by 31 December 2020. In duly justified cases, calls for proposals or calls for tender may be launched by 31 December 2021.
- (3) The Joint Undertaking shall be a body entrusted with the implementation of a public-private partnership as referred to in Article 209 of Regulation (EU, Euratom) No 966/2012.
- (4) The Joint Undertaking shall have legal personality. In all Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those Member States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

- (5) The seat of the Joint Undertaking shall be located in Luxembourg.
- (6) The Statutes of the Joint Undertaking ('the Statutes') are set out in the Annex.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) "acceptance test" means a test conducted to determine if the requirements of the system specification are met.
- (2) "access time" means the computing time of a supercomputer that is made available to a user or a group of users to execute their programmes.
- (3) "affiliated" entity means an entity as defined in Article 2(1)(2) of Regulation 1290/2013.
- (4) "constituent entities" mean the entities that constitute each private member of the Joint Undertaking, as defined in that private member's statutes.
- (5) "exascale" means a performance level of computing systems capable of executing ten to the power of eighteen operations per second (or 1 Exaflop).
- (6) "hosting agreement" means an agreement, which may take the form of a service contract or other contract, concluded between the Joint Undertaking and a hosting entity ~~to operate the pre-exascale supercomputers acquired by the Joint Undertaking.~~
- (7) "hosting entity" means a legal entity ~~established~~ **which includes facilities to host and operate a supercomputer in and which is established in a Participating Member State participating in the Joint Undertaking which includes facilities to host and operate a pre-exascale supercomputer.**

- (8) "Participating States" means the countries that are members of the Joint Undertaking.
- (9) "petascale" means a performance level of computing systems capable of executing ten to the power of fifteen operations per second (or 1 Petaflop).
- (10) "pre-exascale" means a performance level of computing systems capable of executing more than 100 Petaflops and less than 1 Exaflop).
- (11) 'Private Members' means the private associations that are members of the Joint Undertaking.
- (12) "supercomputer" means any computing system having at least petascale computing performance.
- (12a) "total cost of ownership" of a supercomputer means the acquisition costs plus the operation costs (including maintenance).**
- (13) "user" means any natural or legal person, entity or international organisation that has been granted access time to use a Joint Undertaking supercomputer.

Article 3

Objectives

- (1) The Joint Undertaking shall have the following overall objectives:
- (a) to provide **the research and scientific community as well as the industry including SMEs, and the public sector,** ~~scientists, industry and the public sector~~ from the Union or an Associated Country to Horizon 2020 with latest High Performance Computing and Data Infrastructure and support the development of its technologies and its applications across a wide range of fields.
- (b) to provide a framework for acquisition of an integrated world-class **petascale and** pre-exascale supercomputing and data infrastructure in the Union;

- (c) to provide Union level coordination and adequate financial resources to support the development and acquisition of such infrastructure, which will be accessible to users from the public and private sector primarily for research and innovation purposes;
- (d) to support the development of an integrated High Performance Computing ecosystem in the Union covering all scientific and industrial value chain segments notably hardware, software, applications, services, engineering, interconnections, know-how and skills.
- (e) to support an ambitious R&I agenda to develop and maintain in the Union world-class level HPC technologies, applications and systems including knowhow and skills, for the next generation supercomputing era (exascale and beyond).**

(2) The Joint Undertaking shall have the following specific objectives:

- (a) to contribute to the implementation of Regulation (EU) No 1291/2013 and Decision 2013/743/EU, in particular Part II thereof, and to the implementation of Regulation (EU) No 1316/2013 and (EU) No 283/2014;
- (b) to align strategies between Member States and the Union in a coordinated European High Performance Computing strategy and contribute to the effectiveness of public support by avoiding unnecessary duplication and fragmentation of efforts;
- (c) to pool Union resources, national resources and private investment and bring the investments in High Performance Computing to a level comparable with its global competitors;
- (d) to build and operate a ~~leading~~**world**-class integrated supercomputing and data infrastructure across the Union as an essential component for scientific excellence, and for the digitisation of industry, and the public sector, and for strengthening the innovation capabilities and global competitiveness for creating economic and employment growth in the Union;

- (e) to provide access to High Performance Computing-based infrastructures and services to a wide range of users from the research and scientific community as well as the industry including SMEs, and the public sector, for new and emerging data and compute-intensive applications and services;

(ea) to support the development of world-class exascale and post-exascale High Performance Computing technologies, including low-power micro-processor technologies, and their integration into supercomputing systems through a co-design approach;

- (f) to bridge the gap between research and development and the delivery of exascale High Performance Computing systems reinforcing the digital technology supply chain in the Union and enabling the acquisition by the Joint Undertaking of **world-class leadership-class** supercomputers;
- (g) to achieve excellence in High Performance Computing applications for world-class performance through development and optimisation of codes and applications in a co-design approach, supporting Centres of Excellence in High Performance Computing applications and large-scale High Performance Computing-enabled pilot demonstrators and test-beds for big data applications and services in a wide range of scientific and industrial areas;
- (h) to interconnect and federate regional, national and European High Performance Computing supercomputers and other computing systems, data centres and associated software and applications **in cooperation with PRACE and GÉANT;**
- (i) to increase the innovation potential of industry, and in particular of SMEs, using advanced High Performance Computing infrastructures ~~and~~, **applications and services, notably through the creation, networking and coordination of national High-Performance Computing Competence Centers;**

- (j) to improve understanding of High Performance Computing and contribute to reducing skills gaps in the Union related to High Performance Computing;
- (k) to widen the scope of High Performance Computing usage.

Article 4

Union's financial contribution

- (1) The Union financial contribution to the Joint Undertaking including EFTA appropriations shall be up to EUR 486 000 000, distributed as follows:
 - (a) EUR 386 000 000 from the Horizon 2020 Programme, including up to EUR 10 000 000 for administrative costs;
 - (b) EUR 100 000 000 from the CEF Programme;
- (2) The Union's financial contribution referred to in point (a) of paragraph 1 shall be paid from the appropriations in the general budget of the Union allocated to the Specific Programme, implementing Horizon 2020, established by Decision 743/2013/EU.
- (3) The Union's financial contribution referred to in point (b) of paragraph 1 shall be paid from the appropriations in the general budget of the Union allocated to the Connecting Europe Facility Programme established by Regulation (EU) No 1316/2013 and shall be dedicated exclusively to the acquisition of infrastructure.
- (4) The budget implementation as regards the Union's financial contribution shall be entrusted to the Joint Undertaking acting as a body referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 in accordance with point (c)(iv) of Article 58(1), and Articles 60 and 61 of that Regulation.

- (5) The arrangements for the Union's financial contribution shall be set out in a delegation agreement and annual transfer of funds agreements to be concluded between the Commission, on behalf of the Union, and the Joint Undertaking.
- (6) The delegation agreement referred to in paragraph 5 shall address the elements set out in Article 58(3) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 and in Article 40 of Delegated Regulation (EU) No 1268/2012 as well as, inter alia, the following:
- (a) the requirements for the Joint Undertaking's contribution concerning the relevant performance indicators referred to in Annex II to Decision 2013/743/EU;
 - (b) the requirements for the Joint Undertaking's contribution in view of the monitoring referred to in Annex III to Decision 2013/743/EU;
 - (c) the specific performance indicators related to the functioning of the Joint Undertaking;
 - (d) the arrangements regarding the provision of data necessary to ensure that the Commission is able to meet its dissemination and reporting obligations as referred to in Article 28 of Regulation (EU) No 1291/2013 and Article 28 of Regulation **(EU)** No ~~(EU)~~-1316/2013, including on the single portal for participants as well as through other electronic means of dissemination managed by the Commission;
 - (e) the arrangements regarding the provision of data necessary to ensure that the Commission is able to meet its dissemination and reporting obligations as referred to in Article 8 of Regulation (EU) No 283/2014;
 - (f) provisions for the publication of calls for proposals of the Joint Undertaking also on the single portal for participants as well as through other electronic means of dissemination managed by the Commission;

- (g) provisions for the publication of **calls for** tenders ~~for procurement~~ of the Joint Undertaking in the Official Journal as well as through other electronic means of dissemination managed by the Commission;
- (h) the use of and changes to human resources, in particular recruitment by function group, grade and category, the reclassification exercise and any changes to the number of staff members.

Article 5

Contributions of members other than the Union

- (1) The Participating States shall make a contribution to the operational and administrative costs of the Joint Undertaking for at least EUR 486 000 000, including EUR 10 000 000 for administrative costs.
- (2) The Private Members of the Joint Undertaking shall make or arrange for their constituent entities and affiliated entities to make contributions for at least EUR 422 000 000 to the Joint Undertaking , including EUR 2 000 000 for administrative costs.
- (3) The contributions referred to in paragraphs 1 and 2 shall consist of contributions ~~to the Joint Undertaking~~ as set out in Article 15 of the Statutes.
- (4) The members of the Joint Undertaking other than the Union shall report by 31 January each year to the Governing Board on the value of the contributions referred to in paragraphs 1 and 2 made in each of the previous financial years.

- (5) For the purpose of valuing the contributions referred to in points (d), (e) and (f) of Article 15(3) of the Statutes, the costs shall be determined in accordance with the usual cost accounting practices of the entities concerned, to the applicable accounting standards of the country where the entity is established, and to the applicable International Accounting Standards and International Financial Reporting Standards. The costs shall be certified by an independent external auditor appointed by the entity concerned. The valuation method may be verified by the Joint Undertaking, should there be any uncertainty arising from the certification. In case of remaining uncertainties, the valuation method may be audited by the Joint Undertaking.
- (6) The Commission may terminate, proportionally reduce or suspend the Union's financial contribution to the Joint Undertaking or trigger the winding-up procedure referred to in Article ~~25~~ **24** of the Statutes if members other than the Union, including their constituent entities and affiliated entities, do not contribute, contribute only partially or contribute late with regard to the contributions referred to in paragraphs 1 and 2 of this Article.

Article 6

Hosting entity

- (1) The Joint Undertaking shall entrust the operation of each individual pre-exascale supercomputer it **shall** owns to a hosting entity. **The hosting entity may represent one or several Participating States. The hosting entity and the relevant Participating States shall enter into an agreement to this effect.**
- (1a) Hosting entities for pre-exascale supercomputers shall be** selected in accordance with paragraph ~~3-4~~ and the Joint Undertaking's financial rules referred to in Article 11.
- (2) Pre-exascale supercomputers shall be located in a Participating State that is a Member State of the Union. A Member State shall not host more than one pre-exascale supercomputer.

- (3) **Following a call for expression of interest,** ~~The~~ the hosting entity shall be selected by the Governing Board **through a fair and transparent process** based, inter alia, on the following criteria:
- (a) compliance with the general system specifications defined in the **call for expression of interest**~~selection procedure~~;
 - (b) total cost of **ownership of the supercomputer** ~~acquiring, operating and maintaining the pre-exascale supercomputer, splitting capital expenditure (CAPEX) and operational expenditure (OPEX)~~;
 - (c) experience of the hosting entity in installing and operating similar systems;
 - (d) quality of the hosting facility's physical and IT infrastructure, its security and its connectivity with the rest of the Union;
 - (e) quality of service to the users, namely capability to comply with the service-level-agreement provided among the documents accompanying the selection procedure.
 - (f) prior acceptance from the hosting entity of the ~~essential~~ terms and conditions set out in the **model**~~draft~~ hosting agreement including in particular the elements set out in Article 7(1) and those defined in the selection procedure;
 - (g) provision of ~~a supporting document proving the~~ **a letter of** commitment of the Member State **where the hosting entity is established or the relevant Participating States that are represented by** ~~where the hosting entity is established~~ to cover **50% of the total cost of ownership** ~~all the costs related to the operation of the pre-exascale supercomputer until its ownership is transferred by the Joint Undertaking to that hosting entity~~;
- (4) ~~The Joint Undertaking shall conclude a hosting agreement with each selected hosting entity prior to launching the procedure for the acquisition of the pre-exascale supercomputers.~~

(5) Regarding the selection of hosting entities for petascale supercomputers, the provisions in paragraphs (2) to (4) of this Article shall apply, with the following exceptions:

- (a) Petascale supercomputers shall be located in a Participating State that is a Member State of the Union or an associated country to Horizon 2020.**
- (b) A Participating State shall not host more than one pre-exascale or one petascale supercomputer.**
- (c) Paragraph 4(g) should read: the hosting entity should commit to cover all the costs of the total cost of ownership of the petascale supercomputer that are not covered by the Joint Undertaking.**

Article 7

Hosting agreement

(0) The Joint Undertaking shall conclude a hosting agreement with each selected hosting entity prior to launching the procedure for the acquisition of the pre-exascale supercomputers

(1) The hosting agreement shall address in particular the following:

- (a) the responsibilities ~~of the hosting entity~~ during the procedure for acquisition of the pre-exascale supercomputers, including the acceptance test of those supercomputers;
- (b) the liability conditions for operating the pre-exascale supercomputer ~~acquired by the Joint Undertaking~~;
- (c) the quality of service offered to the users when operating the pre-exascale supercomputer, as set out in the service level agreement;

- (d) the access conditions ~~to~~ **of the Union's share of access time to** the pre-exascale supercomputer, as decided by the Governing Board, ~~in accordance with Article 9;~~
 - (e) the accounting modalities of the access times;
 - (f) the **share of the total cost of ownership** acquisition, operation and maintenance costs **that the hosting entity shall arrange** to be covered by the **relevant** Participating State(s);
 - (g) the conditions for the transfer of ownership referred to in Article 8(23);
 - (h) the obligation of the hosting entity to provide access to the pre-exascale supercomputers, while ensuring the security of the pre-exascale supercomputers, the protection of personal data in accordance with Regulation (EU) No 2016/679, of privacy of electronic communications in accordance with Directive 2002/58/EC, of trade secrets in accordance with Directive (EU) 2016/943 and the protection of confidentiality of other data covered by the obligation of professional secrecy;
 - (i) the obligation of the hosting entity to put in place a certified audit procedure covering the ~~operational expenses~~ **costs of operation** of the ~~Joint Undertaking's~~ supercomputer and the access-times of the users;
 - (j) the obligation of the hosting entity to submit an audit report and data on **the Union's share of** access time once a year to the Governing Board.
- (2) The hosting agreement shall be governed by Union law, supplemented if necessary by the national law of the Member State where the hosting entity is seated.
 - (3) The hosting agreement shall contain an arbitration clause giving jurisdiction to the Court of Justice of the European Union.

- (4) After the hosting agreement is concluded the Joint Undertaking, supported by the selected hosting entity, shall launch the procedures for the acquisition of the pre-exascale supercomputer in accordance with the financial rules of the Joint Undertaking referred to in Article 11.
- (5) Regarding the hosting agreements for petascale supercomputers, the provisions of this Article shall apply, with the following exceptions:**
- (a) Paragraph (g) shall not apply;**
- (b) Paragraph (5), the Joint Undertaking or the hosting entity shall launch the procedure for the acquisition of the petascale supercomputers; in case of the Joint Undertaking launching the procedure, it will be in accordance with the financial rules of the Joint Undertaking referred to in Article 11.**

Article 8

Acquisition and ownership of the pre-exascale supercomputers

- (0) The Joint Undertaking shall procure the pre-exascale supercomputers and associated infrastructure and shall be the owner of the procured goods.**
- (1) The Union financial contribution referred to in Article 4(1) shall ~~only cover~~ **up to 50% of the total cost of ownership of** ~~acquisition costs of the supercomputers, not their operational costs.~~ **The remaining total cost of ownership shall be covered by the hosting entity.**
- (2) ~~The Joint Undertaking shall be the owner of the pre-exascale supercomputers and associated infrastructure.~~

- (3) Without prejudice to Article 24(4) of the Statutes, at the earliest four years after the successful acceptance test by the Joint Undertaking of the pre-exascale supercomputers installed in a hosting entity the property of the pre-exascale supercomputer may be transferred to that hosting entity upon decision of the Governing Board. In this case the hosting entity shall reimburse the Joint Undertaking the residual value of the supercomputers that is transferred.

(4) Regarding petascale supercomputers, the following provisions shall apply:

- (a) The Joint Undertaking shall support the acquisition of petascale supercomputers by the Participating States;**
- (b) The Union's contribution shall be used only to support acquisition costs of petascale supercomputers;**
- (c) The Participating States shall be the main owners of the petascale supercomputers. The Joint Undertaking shall own the part that corresponds to the share of the Union's financial contribution to the acquisition cost of the petascale computer.**

Article 9

Access to the Use of supercomputers

- (1) The ~~access to the~~**use of** supercomputers shall be primarily for research and innovation purposes falling under public funding programmes and shall be open to users from the public and private sectors.
- (2) The Governing Board shall define the general access conditions **to use the supercomputers** and may define specific access conditions for different types of users or applications. The quality of service shall be the same for all users.

- (3) Without prejudice to international agreements concluded by the Union, only users residing, established or located in a Member State or in a country associated to Horizon 2020, shall be granted access time, except if decided otherwise by the Governing Board in duly justified cases, taking into account the interests of the Union.

Article 10

Allocation of Access time to the supercomputers

- (1) Users shall be granted access to the supercomputers in accordance with paragraphs 2 and 3 of this Article.
- (2) The share of the Union's access time to each pre-exascale supercomputer shall be directly proportional to the financial contribution of the Union to ~~its~~ **the acquisition total cost of ownership of this supercomputer.** ~~in relation to the total cost of acquisition and operation of the pre-exascale supercomputer.~~ The Governing Board shall define the access rights to the Union's share of access time.
- (3)** Each Participating State shall be allocated a share of access time to each pre-exascale supercomputer that shall be directly proportional to ~~the total value of its financial and in-kind contributions for the acquisition and operation costs~~ **to the total costs of ownership** of the pre-exascale supercomputer. Without prejudice ~~of~~ **to** Article 12(3) the Participating State shall be responsible for defining the **rights to its allocated** access ~~time~~ **rights** for the users, in accordance with the access conditions defined by the Governing Board in accordance with Article 9(2).
- (4) The share of the Union's access time to each petascale supercomputer shall be directly proportional to the financial contribution of the Union to the acquisition cost of this supercomputer. The Governing Board shall define the rights to the Union's share of access time.**

Article 11

Financial rules

The Joint Undertaking shall adopt its specific financial rules in accordance with Article 209 of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 110/2014¹.

Article 12

Commercial services

- (1) Specific conditions shall apply to industrial users applying for the Union's access ~~right~~ time for ~~private research purposes, non-research and innovation purposes or~~ commercial purposes. This commercial service shall be a paying service, based on market prices. The level of the fee shall be established by the Governing Board.
- (2) ~~Revenues~~ The fees generated shall constitute a revenue ~~for~~ to the Joint Undertaking-budget ~~that shall be used exclusively to cover operational costs of the Joint Undertaking.~~
- (3) The total access time allocated to commercial services shall not exceed 10% of the total available access time of each supercomputer. The Governing Board shall decide on the allocation of the access time for the users of commercial services.
- (4) The quality of commercial services shall be the same for all users.

¹ Commission Delegated Regulation (EU) No 110/2014 of 30 September 2013 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ([OJ L 38, 7.2.2014, p. 2](#)).

Article 13

Staff

- (1) The Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68² ('Staff Regulations' and 'Conditions of Employment') and the rules adopted jointly by the institutions of the Union for the purpose of applying the Staff Regulations and Conditions of Employment shall apply to the staff of the Joint Undertaking.
- (2) The Governing Board shall exercise, with respect to the staff of the Joint Undertaking, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment on the Authority empowered to conclude contracts ('the appointing authority powers').

The Governing Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which that delegation may be suspended. The Executive Director shall be authorised to sub-delegate those powers.

² Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission ([OJ L 56, 4.3.1968, p. 1](#)).

Where exceptional circumstances so require, the Governing Board may by decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and any subsequent sub-delegation of those powers by the latter. In such cases the Governing Board shall exercise the appointing authority powers itself or shall delegate them to one of its members or to a staff member of the Joint Undertaking other than the Executive Director.

- (3) The Governing Board shall adopt appropriate implementing rules giving effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations.
- (4) The staff resources shall be set out in the staff establishment plan of the Joint Undertaking, indicating the number of temporary posts by function group and by grade, as well as by the number of contract staff expressed in full-time equivalents, in accordance with its annual budget.
- (5) The staff of the Joint Undertaking shall consist of temporary staff and contract staff.
- (6) All costs related to staff shall be borne by the Joint Undertaking.

Article 14

Seconded national experts and trainees

- (1) The Joint Undertaking may make use of seconded national experts and trainees not employed by the Joint Undertaking. The number of seconded national experts expressed in full-time equivalents shall be added to the information on staff resources as referred to in Article 13(4) in accordance with the annual budget.
- (2) The Governing Board shall adopt a decision laying down rules on the secondment of national experts to the Joint Undertaking and on the use of trainees.

Article 15

Privileges and Immunities

The Protocol No 7 on the privileges and immunities of the European Union, annexed to the Treaty on European Union and Treaty on the Functioning of the European Union, shall apply to the Joint Undertaking and its staff.

Article 16

Liability of the Joint Undertaking

- (1) The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement, decision or contract in question.
- (2) In the event of non-contractual liability, the Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.
- (3) Any payment by the Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in that connection shall be considered as expenditure of the Joint Undertaking and shall be covered by its resources.
- (4) The Joint Undertaking shall be solely responsible for meeting its obligations.
- (5) The Joint Undertaking shall not be liable for the operation of the supercomputers it owns by the hosting entity.

Article 17

Evaluation

- (1) By 30 June 2022 the Commission shall carry out, with the assistance of independent experts, an interim evaluation of the Joint Undertaking, which shall assess in particular the level of participation in, and contribution to, the actions by the Participating States, the Private Members and their constituent entities and affiliated entities, and also by other legal entities. The Commission shall prepare a report on that evaluation which includes conclusions of the evaluation and observations by the Commission. The Commission shall send that report to the European Parliament and to the Council by 31 December 2022.
- (2) On the basis of the conclusions of the interim evaluation referred to in paragraph 1 of this Article, the Commission may act in accordance with Article 5(6) or take any other appropriate action.
- (3) Within six months after the winding-up of the Joint Undertaking, but no later than two years after the triggering of the winding-up procedure referred to in Article 24 of the Statutes, the Commission shall conduct a final evaluation of the Joint Undertaking. The results of that final evaluation shall be presented to the European Parliament and to the Council.

Article 18

Jurisdiction of the Court of Justice of the European Union and applicable law

- (1) The Court of Justice of the European Union shall have jurisdiction:
 - (a) pursuant to any arbitration clause contained in agreements or contracts concluded by the Joint Undertaking, or in its decisions;
 - (b) in disputes relating to compensation for damage caused by the staff of the Joint Undertaking in the performance of their duties;

- (c) in any dispute between the Joint Undertaking and its staff within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment.
- (2) Regarding any matter not covered by this Regulation or by other Union legal acts, the law of the State where the seat of the Joint Undertaking is located shall apply.

Article 19

Ex-post audits

- (1) Ex-post audits of expenditure on actions funded by the Horizon 2020 budget shall be carried out by the Joint Undertaking in accordance with Article 29 of Regulation (EU) No 1291/2013.
- (2) Ex-post audits of expenditure on activities funded by the CEF budget shall be carried out by the Joint Undertaking in accordance with Article 24 of Regulation (EU) No 1316/2013 as part of CEF actions.
- (3) The Commission may decide to carry out itself the audits referred to in paragraph 1 and 2. In such cases, it shall do so in accordance with the applicable rules, in particular Regulations (EU, Euratom) No 966/2012, (EU) No 1290/2013, (EU) No 1291/2013 and (EU) No 1316/2013.

Article 20

Protection of the Union's financial interests

- (1) The Commission shall take appropriate measures to ensure that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative sanctions.

- (2) The Joint Undertaking shall grant Commission staff and other persons authorised by the Commission, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format that is needed in order to conduct their audits.
- (3) The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Council Regulation (Euratom, EC) No 2185/96³ and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁴ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or a contract funded, directly or indirectly, in accordance with this Regulation.
- (4) Without prejudice to paragraphs 1, 2 and 3, contracts and grant agreements, resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Joint Undertaking, the Court of Auditors and OLAF to conduct such audits and investigations in accordance with their respective competences. Where the implementation of an action is outsourced or sub-delegated, in whole or in part, or where it requires the award of a procurement contract or financial support to a third party, the contract, **or** grant agreement shall include the contractor's or beneficiary's obligation to impose on any third party involved explicit acceptance of those powers of the Commission, the Joint Undertaking, the Court of Auditors and OLAF.

³ 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 irregularities ([OJ L 292, 15.11.1996, p. 2](#)).

⁴ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 ([OJ L 248, 18.9.2013, p. 1](#)).

- (5) The Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls..
- (6) The Joint Undertaking shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by the European Anti-Fraud Office (OLAF)⁵. The Joint Undertaking shall adopt the necessary measures to facilitate internal investigations conducted by OLAF.

Article 21

Confidentiality

Without prejudice to Article 22, the Joint Undertaking shall ensure the protection of sensitive information the disclosure of which could damage the interests of its members or of participants in the activities of the Joint Undertaking.

Article 22

Transparency

- (1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁶ shall apply to documents held by the Joint Undertaking.
- (2) The Joint Undertaking's Governing Board may adopt the practical arrangements for implementing Regulation (EC) No 1049/2001.

⁵ OJ L 136, 31.5.1999, p. 15.

⁶ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ([OJ L 145, 31.5.2001, p. 43](#))

- (3) Without prejudice to Article 18 of this Regulation, decisions taken by the Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman under the conditions laid down in Article 228 of the Treaty.

Article 23

Rules for participation and dissemination applicable to indirect actions funded under the Horizon 2020 programme

Regulation (EU) No 1290/2013 shall apply to the indirect actions funded by the Joint Undertaking from the Horizon 2020 funding programme. In accordance with that Regulation, the Joint Undertaking shall be considered as a funding body and shall provide financial support to indirect actions as set out in Article 1 of the Statutes.

Article 24

Rules applicable to the activities funded under CEF programme

Regulation (EU) No 1316/2013 shall apply to the activities funded by the Joint Undertaking from the CEF funding programme.

Article 25

Support from the host Member State

An administrative agreement may be concluded between the Joint Undertaking and the State where its seat is located concerning privileges and immunities and other support to be provided by that State to the Joint Undertaking.

Article 26

Initial Actions

- (1) The Commission shall be responsible for the establishment and initial operation of the Joint Undertaking until it has the operational capacity to implement its own budget. The Commission shall carry out, in accordance with Union law, all necessary actions in collaboration with the other members and with the involvement of the competent bodies of the Joint Undertaking.
- (2) For the purpose of paragraph 1:
 - (a) until the Executive Director takes up his duties following his/her appointment by the Governing Board in accordance with Article 7 of the Statutes, the Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director who may be assisted by a limited number of Commission officials;
 - (b) by derogation from Article 13(2) of this Regulation, the interim Director shall exercise the appointing authority powers;
 - (c) the Commission may assign a limited number of its officials on an interim basis.
- (3) The interim Executive Director may authorise all payments covered by the appropriations provided in the annual budget of the Joint Undertaking once approved by the Governing Board and may conclude agreements, decisions and contracts, including staff contracts following the adoption of the Joint Undertaking's staff establishment plan.

- (4) The interim Executive Director shall determine, in common accord with the Executive Director of the Joint Undertaking and subject to the approval of the Governing Board, the date on which the Joint Undertaking shall have the capacity to implement its own budget. From that date onwards, the Commission shall abstain from making commitments and executing payments for the activities of the Joint Undertaking.

Article 27

Entry into force

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

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

Done at Brussels,

For the Council

The President
