

COMMON POSITION (EC) No 2/2008**adopted by the Council on 21 January 2008****with a view to adopting Regulation (EC) No .../2008 of the European Parliament and of the Council of ... establishing the European Institute of Innovation and Technology**

(2008/C 52 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The Lisbon Growth and Jobs Agenda underscores the need to develop conditions which are attractive to investment in knowledge and innovation in Europe in order to boost competitiveness, growth and jobs in the European Union.
- (2) Member States are primarily responsible for sustaining a strong European industrial, competitive and innovative base. However, the nature and scale of the innovation challenge in the European Union also require action to be taken at Community level.
- (3) The Community should provide support to foster innovation, in particular through the Seventh Framework Programme for Research, Technological Development and Demonstration Activities, the Competitiveness and Innovation Framework Programme, the Lifelong Learning Programme and the Structural Funds.
- (4) A new initiative at Community level, the European Institute of Innovation and Technology (hereinafter referred to as 'the EIT') should be established to complement existing Community and national policies and initiatives by fostering the integration of the knowledge triangle — higher education, research and innovation — across the European Union.
- (5) The European Council of 15 and 16 June 2006 invited the Commission to prepare a formal proposal for the establishment of the EIT to be presented in autumn 2006.

- (6) The EIT should primarily have the objective of contributing to the development of the Community's and the Member States' innovation capacity, by involving higher education, research and innovation activities at the highest standards. In so doing, the EIT should facilitate and enhance networking and cooperation and create synergies between innovation communities in Europe.
- (7) The activities of the EIT should address strategic long-term challenges for innovation in Europe, particularly in trans- and/or inter-disciplinary areas including those already identified at European level. In so doing, the EIT should promote periodic dialogue with civil society.
- (8) The EIT should give priority to the transfer of its higher education, research and innovation activities to the business context and their commercial application, as well as to supporting the creation of start-ups, spin-offs and small and medium-sized enterprises (SMEs).
- (9) The EIT should primarily operate through excellence-driven, autonomous partnerships of higher education institutions, research organisations, companies and other stakeholders in the form of sustainable and long-term self-supporting strategic networks in the innovation process. These partnerships should be selected by the Governing Board of the EIT on the basis of a transparent and excellence-based process and designated as Knowledge and Innovation Communities (hereinafter referred to as 'KICs'). The Governing Board should also steer the activities of the EIT and evaluate the activities of the KICs. Membership of the Governing Board should balance experience from the business and the higher education and/or research worlds as well as from the innovation sector.
- (10) In order to contribute to the competitiveness and to reinforce the international attractiveness of the European economy and its innovation capacity, the EIT and the KICs should be able to attract partner organisations, researchers and students from all over the world, including by encouraging their mobility, as well as to cooperate with third country organisations.
- (11) Relations between the EIT and the KICs should be based on contractual agreements, which will set out the KICs' rights and obligations, ensure an adequate level of coordination and outline the mechanism for monitoring and evaluating KICs' activities and outcomes.

⁽¹⁾ OJ C 161, 13.7.2007, p. 28.

⁽²⁾ OJ C 146, 30.6.2007, p. 27.

⁽³⁾ Opinion of the European Parliament of 26 September 2007 (not yet published in the Official Journal), Council Common Position of 21 January 2008.

- (12) There is a need to support higher education as an integral, but often missing, component of a comprehensive innovation strategy. The agreement between the EIT and KICs should provide that the degrees and diplomas awarded through the KICs should be awarded by participating higher education institutions, which should be encouraged to label them also as EIT degrees and diplomas. Through its activities and work, the EIT should help promote mobility within the European Research Area and the Higher Education Area as well as encourage the transferability of grants awarded to researchers and students in the context of the KICs. All these activities should be carried out without prejudice to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ⁽¹⁾.
- (13) The EIT should establish clear and transparent guidelines for the management of intellectual property, which should foster the use of intellectual property under appropriate conditions. These guidelines should provide that due account is taken of the contributions to be made by the various partner organisations of the KICs, irrespective of their size. In the event of the activities being funded under the Community Framework Programmes for Research and Technological Development, the rules of those programmes should apply.
- (14) Appropriate provisions should be made to guarantee the liability and transparency of the EIT. Appropriate rules governing its functioning should be laid down in the Statutes of the EIT.
- (15) The EIT should possess legal personality and, in order to guarantee its functional autonomy and independence, it should administer its own budget whose revenue should include a contribution from the Community.
- (16) The EIT should seek to raise an increasing financial contribution from the private sector and from income generated by its own activities. Therefore, it is expected that industry, the finance and service sectors will contribute significantly to the budget of the EIT and, in particular, to the budget of the KICs. The KICs should aim at maximising the share of contributions from the private sector. The KICs and their partner organisations should publicize the fact that their activities are undertaken in the context of the EIT and that they receive a financial contribution from the general budget of the European Union.
- (17) The Community contribution to the EIT should finance the costs arising from the establishment, administrative and coordination activities of the EIT and the KICs. In order to avoid double funding, these activities should not benefit simultaneously from a contribution from other Community programmes, such as the Framework Programme for Research, Technological Development and Demonstration Activities, the Competitiveness and Innovation Framework Programme, the Lifelong Learning Programme, or from the Structural Funds. Furthermore, in the event that a KIC or its partner organisations apply directly for Community assistance from these programmes or funds, their applications should be treated without any preference over other applications.
- (18) The Community budgetary procedure should be applicable as far as the Community subsidy and any other grants chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors 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 Communities ⁽²⁾.
- (19) This Regulation establishes a financial envelope for the period 2008 to 2013 which is to be the prime reference for the budgetary authority, within the meaning of point 37 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽³⁾.
- (20) The EIT is a body set up by the Communities within the meaning of Article 185(1) of Regulation (EC, Euratom) No 1605/2002 and should adopt its financial rules accordingly. Consequently Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 ⁽⁴⁾ should apply to the EIT.
- (21) The EIT should produce an annual report, outlining the activities conducted in the preceding calendar year and a rolling triennial work programme outlining its planned initiatives and allowing the EIT to respond to internal and external developments in the fields of science, technology, higher education, innovation and other relevant areas. These documents should be transmitted to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions for information. The European Parliament, the Council and the Commission should be entitled to present an opinion on the draft of the EIT's first triennial work programme.
- (22) The strategic, long-term priority fields and financial needs for the EIT for a period of seven years should be laid down in a Strategic Innovation Agenda (hereinafter referred to as 'SIA'). Given the importance of the SIA for the Community innovation policy and the resulting political significance of its socio-economic impact for the Community the SIA should be adopted by the European Parliament and the Council on the basis of a Commission proposal prepared on the basis of a draft provided by the EIT.

⁽¹⁾ OJ L 255, 30.9.2005, p. 22. Directive as amended by Council Directive 2006/100/EC (OJ L 363, 20.12.2006, p. 141).

⁽²⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽³⁾ OJ C 139, 14.6.2006, p. 1.

⁽⁴⁾ OJ L 357, 31.12.2002, p. 72.

- (23) It is appropriate that the Commission initiate an independent, external evaluation of the operation of the EIT, in particular with a view to preparing the SIA. Where appropriate, the Commission should make proposals to amend this Regulation.
- (24) It is appropriate to pursue a gradual, phased implementation of the EIT in view of its long-term development. An initial phase with a limited number of KICs is needed in order to evaluate properly the functioning of the EIT and the KICs and, where necessary, to introduce improvements. Within a period of eighteen months from its creation, the Governing Board should select two or three KICs in areas that help the European Union to face current and future challenges, which could include such fields as climate change, renewable energy and the next generation of information and communication technologies. The selection and designation of further KICs should be enabled after the adoption of the first SIA, which, in order to address the long-term perspective, should also include detailed modalities on the operation of the EIT.
- (25) Since the objective of the action to be taken, namely to establish the EIT, cannot be sufficiently achieved by the Member States and can therefore, for reasons of scale and transnationality, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,
- and generate new products, services or business and organisational models that are successfully introduced into an existing market or that are able to create new markets;
2. 'Knowledge and Innovation Community' (KIC) means an autonomous partnership of higher education institutions, research organisations, companies and other stakeholders in the innovation process in the form of a strategic network based on joint mid- to long-term innovation planning to achieve the EIT challenges, regardless of its precise legal form;
 3. 'participating State' means either a Member State of the European Union or another country having an agreement with the Community on the EIT;
 4. 'third country' means any State which is not a participating State;
 5. 'partner organisation' means any organisation which is a member of a KIC and may include in particular: higher education institutions, research organisations, public or private companies, financial institutions, regional and local authorities, foundations;
 6. 'research organisation' means any public or private legal entity which undertakes research or technological development as one of its main objectives;
 7. 'higher education institution' means a university or any type of higher education institution which, in accordance with national legislation or practice, offers degrees and diplomas at masters or doctoral level, irrespective of its denomination in the national context;

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

A European Institute of Innovation and Technology (hereinafter referred to as 'the EIT') is hereby established.

Article 2

Definitions

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

1. 'innovation' means the process, including its outcome, by which new ideas respond to societal or economic demand

8. 'degrees and diplomas' means qualifications resulting in masters or doctorates awarded by participating higher education institutions in the context of higher education activities undertaken in a KIC;
9. 'Strategic Innovation Agenda' (SIA) means a policy document outlining the priority fields of the EIT for future initiatives, including an overview of the planned higher education, research and innovation activities, for a period of seven years.

Article 3

Objective

The EIT's objective is to contribute to sustainable European economic growth and competitiveness by reinforcing the innovation capacity of the Member States and the Community. It shall do this by promoting and integrating higher education, research and innovation of the highest standards.

*Article 4***EIT bodies**

1. The bodies of the EIT shall be:
 - (a) a Governing Board composed of high-level members experienced in higher education, research, innovation and business. It shall be responsible for steering the activities of the EIT, for the selection, designation and evaluation of the KICs, and for all other strategic decisions;
 - (b) an Executive Committee which shall oversee the running of the EIT and take such decisions as are necessary between meetings of the Governing Board;
 - (c) a Director who shall be responsible to the Governing Board for the administrative and financial management of the EIT and shall be the legal representative of the EIT;
 - (d) an Internal Auditing Function which shall advise the Governing Board and the Director on financial and administrative management and control structures within the EIT, on the organisation of financial links with KICs and on any other subject requested by the Governing Board.
2. The Commission may appoint observers to take part in the meetings of the Governing Board.
3. The detailed provisions regarding the EIT bodies are set out in the Statutes of the EIT, annexed to this Regulation.

*Article 5***Tasks**

1. In order to achieve its objective, the EIT shall:
 - (a) identify its priority fields;
 - (b) raise awareness among potential partner organisations and encourage their participation in its activities;
 - (c) select and designate KICs in the priority fields in accordance with Article 7 and define their rights and obligations by agreement; provide them with appropriate support; apply appropriate quality control measures; continuously monitor and periodically evaluate their activities; and ensure an appropriate level of coordination between them;
 - (d) mobilise funds from public and private sources and use its resources in accordance with this Regulation. It shall in particular seek to raise a significant and increasing proportion of its budget from private sources and from income generated by its own activities;

- (e) encourage the recognition in the Member States of degrees and diplomas which are awarded by higher education institutions that are partner organisations and which may be labelled EIT-degrees and diplomas;
 - (f) promote the dissemination of good practices for the integration of the knowledge triangle in order to develop a common innovation and knowledge transfer culture;
 - (g) seek to become a world class body for excellence in higher education, research and innovation;
 - (h) ensure complementarity and synergy between EIT activities and other Community programmes.
2. The EIT shall have power to establish a Foundation (hereinafter referred to as 'the EIT Foundation') with the specific objective of promoting and supporting the activities of the EIT.

*Article 6***KICs**

1. KICs shall undertake in particular:
 - (a) innovation activities and investments with European added value, fully integrating the higher education and research dimensions to attain a critical mass and stimulating the dissemination and exploitation of results;
 - (b) cutting-edge and innovation-driven research in areas of key economic and societal interest and drawing on the results of European and national research, with the potential to strengthen Europe's competitiveness at international level;
 - (c) education and training activities at masters and doctoral level, in disciplines with the potential to meet future European socio-economic needs and which promote the development of innovation-related skills, the improvement of managerial and entrepreneurial skills and the mobility of researchers and students;
 - (d) the dissemination of best practices in the innovation sector with a focus on the development of cooperation between higher education, research and business, including the service and financial sectors.
2. KICs shall have substantial overall autonomy to define their internal organisation and composition, as well as their precise agenda and working methods. In particular, KICs shall aim to be open to new members whenever these members add value to the partnership.
3. The relationship between the EIT and each KIC shall be based on a contractual agreement.

Article 7

Selection of KICs

1. A partnership shall be selected and designated by the EIT to become a KIC on the basis of a competitive, open and transparent procedure. Detailed criteria for the selection of the KICs, based on the principles of excellence and innovation relevance, shall be adopted and published by the EIT; external and independent experts shall be involved in the selection process.

2. In accordance with the principles enshrined in paragraph 1, the selection of a KIC shall take particular account of:

- (a) the current and potential innovation capacity within the partnership as well as its excellence in higher education, research and innovation;
- (b) the partnership's capacity to achieve the goals of the SIA;
- (c) the partnership's capacity to ensure sustainable and long-term self-supporting financing including a substantial and increasing contribution from the private sector, industry and services;
- (d) the participation in the partnership of organisations active in the knowledge triangle of higher education, research and innovation;
- (e) the demonstration of a plan for the management of intellectual property appropriate to the sector concerned and consistent with the EIT principles and guidelines for the management of intellectual property, including the way in which contributions from the various partner organisations have been taken into account;
- (f) measures to support the involvement of and cooperation with the private sector, including the financial sector and in particular SMEs, as well as the creation of start-ups, spin-offs and SMEs, in view of the commercial exploitation of the results of the activities of KICs;
- (g) readiness to interact with other organisations and networks outside the KIC with the aim of sharing good practices and excellence.

3. The minimum condition to form a KIC is the participation of at least three partner organisations, established in at least two different Member States. All these partner organisations must be independent of each other, within the meaning of Article 6 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) ⁽¹⁾.

4. A KIC may include partner organisations from third countries, subject to the approval of the Governing Board. The

⁽¹⁾ OJ L 391, 30.12.2006, p. 1.

majority of the partner organisations forming a KIC shall be established in the Member States. At least one higher education institution and one private company shall be part of each KIC.

Article 8

Degrees and diplomas

1. Degrees and diplomas relating to the higher education activities referred to in Article 6(1)(c) shall be awarded by participating higher education institutions in accordance with national rules and accreditation procedures. The agreement between the EIT and the KICs shall provide that these degrees and diplomas may also be labelled EIT-degrees and diplomas.

2. The EIT shall encourage participating higher education institutions to:

- (a) award joint or multiple degrees and diplomas, reflecting the integrated nature of the KICs. However, these may also be awarded by a single higher education institution;
- (b) take into account:
 - (i) Community action undertaken in accordance with Articles 149 and 150 of the Treaty;
 - (ii) action undertaken in the context of the European Higher Education Area.

Article 9

Independence of the EIT and consistency with Community, Member State or intergovernmental action

1. The EIT shall carry out its activities independently of national authorities and external pressures.

2. The activity of the EIT shall be consistent with other action and instruments to be implemented at Community level, in particular in the fields of higher education, research and innovation.

3. The EIT shall also take appropriate account of policies and initiatives at regional, national and intergovernmental levels in order to make use of best practices, well established concepts and existing resources.

Article 10

Management of intellectual property

1. The EIT shall adopt guidelines for the management of intellectual property based on, *inter alia*, Regulation (EC) No 1906/2006.

2. On the basis of these guidelines, the partner organisations of each KIC shall conclude among themselves an agreement on the management and use of intellectual property which shall define, in particular, how the contributions of the various partner organisations, including SMEs, will be taken into account.

Article 11

Legal Status

1. The EIT shall be a Community body and shall have legal personality. In each of the Member States, it shall enjoy the widest possible legal capacity accorded to legal persons under national legislation. In particular, it may acquire or dispose of movable and immovable property and be a party to legal proceedings.

2. The Protocol on the Privileges and Immunities of the European Communities shall apply to the EIT.

Article 12

Liability

1. The EIT shall be solely responsible for meeting its obligations.

2. The contractual liability of the EIT shall be governed by the relevant contractual provisions and the law applicable to the contract in question. The Court of Justice shall have jurisdiction pursuant to any arbitration clause contained in a contract concluded by the EIT.

3. In the case of non-contractual liability, the EIT shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or its servants in the performance of their duties.

The Court of Justice shall have jurisdiction in any dispute relating to compensation for such damage.

4. Any payment by the EIT for covering the liability referred to in paragraphs 2 and 3 and the costs and expenses incurred in connection therewith shall be considered expenditure of the EIT and shall be covered by the resources of the EIT.

5. The Court of Justice shall have jurisdiction in actions brought against the EIT under the conditions provided for in Articles 230 and 232 of the Treaty.

Article 13

Transparency and access to documents

1. The EIT shall ensure that its activities are conducted with a high level of transparency. In particular, the EIT shall set up an

accessible, free website providing information about the activities of the EIT and individual KICs.

2. The EIT shall make public its rules of procedure, its specific financial rules referred to in Article 21(1) and the detailed criteria for the selection of the KICs referred to in Article 7 before the first call of proposals for the selection of the first KICs.

3. The EIT shall make public without delay its rolling triennial work programme and annual activity report referred to in Article 15.

4. Without prejudice to paragraphs 5 and 6, the EIT shall not divulge to third parties confidential information it has received for which confidential treatment has been requested and is justified.

5. The members of the EIT bodies shall be subject to the confidentiality requirement referred to in Article 287 of the Treaty.

The information gathered by the EIT in accordance with this Regulation shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.

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 ⁽²⁾ shall apply to the documents held by the EIT. The Governing Board shall adopt practical arrangements for applying that Regulation no later than six months after the EIT has been set up.

7. Official documents and publications of the EIT shall be translated in accordance with the Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community ⁽³⁾. The required translation services shall be provided by the Translation Centre for the bodies of the European Union, set up by Council Regulation (EC) No 2965/1994 ⁽⁴⁾.

Article 14

Financial resources

1. The EIT shall be financed through a contribution from the general budget of the European Union within the financial envelope as set out in Article 19 and other private and public sources.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

⁽³⁾ OJ 17, 6.10.1958, p. 385. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽⁴⁾ OJ L 314, 7.12.1994, p. 1. Regulation as last amended by Regulation (EC) No 1645/2003 (OJ L 245, 29.9.2003, p. 13).

2. The KICs shall be financed, in particular, from the following sources:

- (a) contributions from companies or private organisations, forming a substantial source of funding;
- (b) contributions from the general budget of the European Union;
- (c) statutory or voluntary contributions from participating States, third countries or public authorities within them;
- (d) bequests, donations and contributions from individuals, institutions, foundations or any other national bodies;
- (e) revenue generated by the KICs' own activities and royalties from intellectual property rights;
- (f) revenue generated by the EIT's activities outcomes or capital endowments, including those managed by the EIT Foundation;
- (g) contributions from international bodies or institutions;
- (h) loans and contributions from the European Investment Bank, including the possibility to use the Risk Sharing Finance Facility, pursuant to the eligibility criteria and the selection procedure.

Contributions may include contributions in kind.

3. The modalities for accessing funding from the EIT shall be defined in the financial rules of the EIT referred to in Article 21(1).

4. The contribution from the general budget of the European Union to the establishment, administrative and coordination costs of the KICs shall be provided from the financial envelope as set out in Article 19.

5. The KICs or their partner organisations may apply for Community assistance, in particular in the framework of Community programmes and funds, in accordance with their respective rules and on an equal footing with other applications. In that case, such assistance shall not be attributed for activities already funded through the general budget of the European Union.

Article 15

Programming and reporting

The EIT shall adopt:

- (a) a rolling triennial work programme, based on the SIA, once it is adopted, containing a statement of its major priorities and planned initiatives, including an estimate of financing needs and sources. The work programme shall be transmitted by the EIT to the European Parliament, the Council, the Commission, the European Economic and Social

Committee and the Committee for the Regions for information;

- (b) an annual report by 30 June each year. The report shall outline the activities conducted by the EIT during the preceding calendar year and assess the results with respect to the objectives and timetable set, the risks associated with the activities carried out, the use of resources and the general operation of the EIT.

Article 16

Monitoring and evaluation of the EIT

1. The EIT shall ensure that its activities, including those managed through KICs, shall be subject to continuous and systematic monitoring and periodic independent evaluation, to ensure both the highest quality of outcome, scientific excellence and the most efficient use of resources. The outcomes of the evaluations shall be made public.

2. By June 2011 and every five years after the entry into force of a new financial framework, the Commission shall provide for an evaluation of the EIT. This shall be based on an independent external evaluation and shall examine how the EIT fulfils its mission. It shall cover all activities of the EIT and the KICs and shall assess the added value of the EIT, the impact, effectiveness, sustainability, efficiency and relevance of the activities pursued and their relationship and/or complementarity with existing national and Community policies, to support higher education, research and innovation. It shall take into account the views of stakeholders, at both European and national level.

3. The Commission shall forward the results of the evaluation, together with its own opinion and, where appropriate, any proposals to amend this Regulation, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The Governing Board shall take due account of the findings of evaluations in the programmes and operations of the EIT.

Article 17

SIA

1. By 30 June 2011 at the latest and every seven years thereafter, the EIT shall prepare a seven-year draft SIA and submit it to the Commission.

2. The SIA shall define long-term priority fields for the EIT and shall include an assessment of its socio-economic impact and its capacity to generate the best innovation added-value. The SIA shall take into account the results of the monitoring and evaluation of the EIT as referred to in Article 16.

3. The SIA shall include an estimate of financial needs and sources in view of the future operation, long-term development and funding of the EIT. It shall also contain an indicative financial plan covering the period of the financial framework.

4. Acting on a proposal from the Commission, the SIA shall be adopted by the European Parliament and the Council in accordance with Article 157(3) of the Treaty.

Article 18

Initial phase

1. Within twelve months after its creation, the Governing Board shall submit the draft of the first rolling triennial work programme, referred to in Article 15(a), to the European Parliament, the Council and the Commission. The European Parliament, the Council and the Commission may each address an opinion to the Governing Board on any subject covered in draft within three months of the day on which they received it. Where such opinions are addressed to it, the Governing Board shall reply within a period of three months, indicating any adjustments in the priorities and planned activities.

2. Within a period of eighteen months from the date of creation of the Governing Board, the EIT shall select and designate two or three KICs in accordance with the criteria and procedures set out in Article 7.

3. The Commission shall submit the proposal for the first SIA, on the basis of the draft provided by the EIT, to the European Parliament and the Council before the end of 2011.

In addition to the content of a SIA in accordance with Article 17, the first SIA shall include:

- (a) detailed specifications and terms of reference concerning the operation of the EIT;
- (b) the modalities for cooperation between the Governing Board and the KICs;
- (c) modalities of the funding of the KICs.

4. After the adoption of the first SIA in accordance with Article 17(4), the Governing Board may select and designate additional KICs pursuant to the provisions of Articles 6 and 7.

Article 19

Budgetary commitments

The financial envelope for the implementation of this Regulation during the period from 1 January 2008 to 31 December 2013 is set at EUR 308,7 million. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

Article 20

Preparation and adoption of the annual budget

1. The expenditure of the EIT shall include the staff, administrative, infrastructure and operational expenses. Administrative expenditure shall be kept to a minimum.

2. The financial year shall correspond to the calendar year.

3. The Director shall draw up an estimate of the revenue and expenditure of the EIT for the following financial year and shall forward it to the Governing Board.

4. Revenue and expenditure shall be in balance.

5. The Governing Board shall adopt the draft estimate, accompanied by a draft establishment plan, and the preliminary rolling triennial work programme and forward them by 31 March to the Commission.

6. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the amount of the subsidy to be charged to the general budget.

7. The budgetary authority shall authorise the appropriations for the subsidy to the EIT.

8. The Governing Board shall adopt the EIT budget, which shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

9. The Governing Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the EIT budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

10. Any substantial modification of the budget shall follow the same procedure.

Article 21

Implementation and control of the budget

1. The EIT shall adopt its financial rules in accordance with Article 185(1) of Regulation (EC, Euratom) No 1605/2002. These may not depart from Regulation (EC, Euratom) No 2343/2002 except where the EIT's specific operating needs so require and with the Commission's prior consent. Due account shall be given to the need for adequate operational flexibility in order to enable the EIT to achieve its objectives and attract and retain private sector partners.

2. The Director shall implement the budget of the EIT.

3. The accounts of the EIT shall be consolidated with the Commission's accounts.

4. Upon a recommendation from the Council, the European Parliament shall, before 30 April of the year $n + 2$, give a discharge for the year n to the Director in respect of the implementation of the EIT budget and to the Governing Board in respect to the EIT Foundation.

Article 22

Protection of the financial interests of the Community

1. With a view to combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽¹⁾ shall apply to the EIT in its entirety.

2. The EIT shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) ⁽²⁾. The Governing Board shall formalise this accession and adopt the necessary measures to help OLAF carry out internal investigations.

3. All decisions adopted and contracts concluded by the EIT shall provide explicitly that OLAF and the Court of Auditors may carry out on-the-spot inspections of the documents of all contractors and sub-contractors which have received Community funds, including at the premises of the final beneficiaries.

4. The provisions set out in paragraphs (1), (2) and (3) shall apply, *mutatis mutandis*, to the EIT Foundation.

Article 23

Statutes

The Statutes of the EIT, as set out in the Annex, are hereby adopted.

Article 24

Entry into force

This Regulation shall enter into force on the twentieth day following 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 ...

For the European Parliament
The President

For the Council
The President

⁽¹⁾ OJL 136, 31.5.1999, p. 1.
⁽²⁾ OJL 136, 31.5.1999, p. 15.

ANNEX

STATUTES OF THE EUROPEAN INSTITUTE OF INNOVATION AND TECHNOLOGY

Article 1

Composition of the Governing Board

1. The Governing Board shall consist both of appointed members providing a balance between those with experience in business, higher education and research (hereinafter referred to as 'appointed members') and members elected by and from among the higher education, research and innovation, technical and administrative staff, students and doctoral candidates of the European Institute of Innovation and Technology (EIT) and the Knowledge and Innovation Communities (KICs) (hereinafter referred to as 'representative members').

As a transitional provision, the initial Governing Board shall consist exclusively of appointed members until elections for representative members can be held, after the first KIC has been established.

2. There shall be eighteen appointed members. They shall have a six-year non-renewable term of office. They shall be appointed by the Commission, in accordance with a transparent procedure. The Commission shall inform the European Parliament and the Council about the selection process and the final appointment of those members of the Governing Board.

The appointed members of the initial Governing Board shall be appointed on the basis of a list of potential candidates proposed by an *ad hoc* Identification Committee, which shall be composed of four independent high level experts appointed by the Commission. The subsequent appointed members shall be appointed on the basis of a list of potential candidates proposed by the Governing Board.

3. The Commission shall have regard to the balance between higher education, research, innovation and business experience as well as to gender balance and an appreciation of the higher education, research and innovation environments across the Union.

4. One third of the appointed members shall be replaced every two years. An appointed member who has served for a period of less than four years shall be eligible for reappointment, subject to an overall limit of six years in office.

During a transitional period, twelve appointed members of the initial Governing Board shall be chosen by lot to serve for a four-year term of office. At the end of the initial four-year period, six of the twelve newly appointed members shall be chosen by lot to serve for a four-year term of office. The Chairperson of the Governing Board is not part of this transitional process.

5. There shall be four representative members. They shall have a three-year term of office, renewable once. Their term of office shall cease if they leave the EIT or a KIC. They shall be replaced through the same election process for the remainder of the term of office.

6. The conditions and modalities for election and replacement of the representative members shall be approved by the Governing Board on the basis of a proposal from the Director before the first KIC is in operation. This mechanism shall ensure an appropriate representation of the diversity and shall take into account the evolution of the EIT and the KICs.

7. In the event that a member of the Governing Board is unable to complete his term of office, a substitute member shall be appointed or elected by the same procedure as the incapacitated member in order to complete the latter's term of office.

Article 2

Responsibilities of the Governing Board

1. The Governing Board members shall act in the interests of the EIT, safeguarding its goals and mission, identity and coherence, in an independent way.

2. The Governing Board shall, in particular:

- (a) define the EIT strategy as enshrined in the Strategic Innovation Agenda (SIA), the triennial rolling work programme, its budget, its annual accounts and balance-sheet and its annual activity report on the basis of a proposal from the Director;
- (b) specify the priority fields in which to establish the KICs;
- (c) provide a contribution in view of the preparation of the SIA;
- (d) draw up detailed specifications and terms of references on the operation of the EIT in the framework of the SIA, including criteria and procedures for the financing, monitoring and evaluating of the activities of the KICs;

- (e) select and designate a partnership as a KIC or withdraw the designation if necessary;
 - (f) ensure continuing evaluation of the activities of KICs;
 - (g) adopt its rules of procedure, including those for the selection of the KICs, those for the Executive Committee, as well as the specific financial rules of the EIT;
 - (h) define, with the Commission's agreement, appropriate honoraria for members of the Governing Board and of the Executive Committee; these honoraria shall be benchmarked against similar provision in the Member States;
 - (i) adopt a procedure for choosing the Executive Committee and the Director;
 - (j) appoint and if necessary dismiss the Director, and exercise disciplinary authority over him/her;
 - (k) appoint the Accounting Officer, the members of the Executive Committee and the members of the Internal Auditing Function;
 - (l) establish where appropriate advisory groups which may have a defined duration;
 - (m) promote the EIT globally, so as to raise its attractiveness and make it an world class body for excellence in higher education, research and innovation;
 - (n) adopt a code of good conduct regarding conflicts of interest;
 - (o) define principles and guidelines for the management of intellectual property rights;
 - (p) set up an internal auditing function in accordance with Commission Regulation (EC, Euratom) No 2343/2002;
 - (q) be empowered to establish a Foundation (hereinafter referred to as 'the EIT Foundation') with the specific objective of promoting and supporting the activities of the EIT;
 - (r) ensure complementarity and synergy between EIT activities and other Community programmes;
 - (s) decide on EIT's language regime, taking into account the existing principles on multilingualism and the practical requirements of its operations.
3. The Governing Board may delegate specific tasks to the Executive Committee.
4. The Governing Board shall elect its Chairperson from among the appointed members. The term of office of the Chairperson shall be three years, renewable once.

Article 3

Functioning of the Governing Board

1. Without prejudice to paragraph 2, the Governing Board shall adopt decisions by simple majority of all its members.
- However, decisions under Article 2, paragraph 2(a), (b), (c), (d), (i) and (s), and paragraph 4 shall require a majority of two thirds of all its members.
2. The representative members may not vote on decisions under Article 2, paragraph 2(e), (g), (i), (j), (k), (q) and (s).
3. The Governing Board shall meet in ordinary session at least three times a year and in extraordinary session when convened by its Chairperson or on request of at least one third of its members.

Article 4

The Executive Committee

1. The Executive Committee shall consist of five persons including the Chairperson of the Governing Board who will also chair the Executive Committee.
- The four members other than the Chairperson shall be chosen by the Governing Board from among the Governing Board's appointed members.
2. The Executive Committee shall meet on a regular basis as convened by its Chairperson or on the request of the Director.
3. The Executive Committee shall take its decisions by simple majority of all its members.

4. The Executive Committee shall:
- (a) prepare the meetings of the Governing Board;
 - (b) oversee the implementation of the SIA and rolling triennial work programme;
 - (c) oversee the selection procedure for KICs;
 - (d) take any decisions delegated to it by the Governing Board.

Article 5

The Director

1. The Director shall be a person with expertise and high reputation in the areas where the EIT operates. The Director shall be appointed by the Governing Board for a term of office of four years. The Governing Board may extend that term of office once by four years when it considers that the interests of the EIT are best served by so doing.
2. The Director shall be responsible for the day-to-day management of the EIT and be its legal representative. The Director shall be accountable to the Governing Board and report to it on an ongoing basis on the development of the EIT activities.
3. The Director shall in particular:
 - (a) support the Governing Board and the Executive Committee in their work and provide the secretariat for their meetings;
 - (b) prepare a draft SIA, a draft rolling triennial work programme, the annual report and the annual budget for submission to the Governing Board through the Executive Committee;
 - (c) administer the selection process for KICs and ensure that the various stages of that process are carried out in a transparent and objective manner;
 - (d) organise and manage the activities of the EIT;
 - (e) ensure the implementation of effective monitoring and evaluation procedures relating to the performance of the EIT in accordance with Article 16 of the Regulation;
 - (f) be responsible for administrative and financial matters, including the implementation of the EIT budget. In this the Director shall take due account of advice received from the internal auditing function;
 - (g) be responsible for all staff matters;
 - (h) submit the draft annual accounts and balance sheet to the internal auditing function, and subsequently to the Governing Board, through the Executive Committee;
 - (i) ensure that the obligations of the EIT with regard to the contracts and agreements it concludes are met;
 - (j) provide the Executive Committee and the Governing Board with all information necessary for the performance of their functions.

Article 6

Preparation of establishment of the support structure

For a transitional period, the Commission shall provide the necessary support towards the establishment of the EIT structure. For that purpose, until such time as the first appointed members of the Governing Board are appointed, an official appointed by the Commission shall be the EIT legal representative and be responsible for staff, administrative and financial matters, including the implementation of the EIT budget. Thereafter, the Governing Board shall designate, according to a transparent procedure, a person who shall fulfil these functions or extend the mandate of the official appointed by the Commission, until such time as the Director takes up his/her duties following his/her appointment by the Governing Board, in accordance with Article 5. The Governing Board shall launch the procedure for choosing the Director of the EIT without delay.

Article 7

Staff of the EIT

1. The staff of the EIT shall consist of personnel employed directly by the EIT under fixed term contracts. The conditions of employment of other servants of the European Communities shall apply to the Director and the Staff of the EIT.

2. Experts may be seconded to the EIT for a limited duration by participating States or other employers.

The Governing Board shall adopt provisions enabling seconded experts from participating States or other employers to work at the EIT and defining their rights and responsibilities.

3. The EIT shall exercise, with regards to its staff, the powers which are devolved to the authority authorized to conclude the contracts with the staff members.

4. A member of staff may be required to make good, in whole or in part, any damage suffered by the EIT as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties.

Article 8

Principles for the evaluation and monitoring of KICs

The EIT shall organise continuous monitoring and periodic independent evaluations of the outcomes and results of each KIC. These evaluations shall be based on good administrative practice and result oriented parameters and avoid unnecessary formal and procedural aspects.

Article 9

Duration, continuation and termination of a KIC

1. Subject to the outcomes of periodic evaluations and to the specificities of particular fields, a KIC shall normally have a time-frame of 7 to 15 years.

2. The Governing Board may decide to extend the operation of a KIC beyond the period initially set if this is the most appropriate way to achieve the objective of the EIT.

3. In the event that evaluations of a KIC show inadequate results, the Governing Board shall take appropriate measures including reduction, modification or withdrawal of its financial support or termination of the agreement.

Article 10

Winding up of the EIT

In the event of winding up of the EIT, its liquidation shall intervene under the supervision of the Commission in conformity with the laws applicable. The agreements with the KICs and the act establishing the EIT Foundation shall lay down the appropriate provisions in such situation.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Council reached political agreement on the text of the draft Regulation of the European Parliament and of the Council establishing the European Institute of Innovation and Technology at its meeting on 22 and 23 November 2007 ⁽¹⁾.

Following this political agreement the Council by unanimity adopted its common position on 21 January 2008.

II. ANALYSIS OF THE COMMON POSITION

The Council common position to a very large extent takes over the position of the European Parliament adopted at first reading on 26 September 2006. Most of the amendments adopted by the European Parliament have been incorporated in the common position. This therefore meets the wishes of the European Parliament as expressed by the latter and as accepted by the Council during the informal contacts which took place after the adoption of the European Parliament's position at first reading.

In fact, the only amendment which the Council has not accepted is the one relating to the fields of activities of the first Knowledge Innovation Communities (recital 24). However, following informal negotiations with the European Parliament, the Council opted for the most appropriate compromise, i.e. to keep the reference to renewable energy, instead of referring simply to energy.

The text of the political agreement, as approved by the Council, was also subsequently agreed by the ITRE Committee of the European Parliament, with a view to the approval by the European Parliament of the resulting Common Position.

III. CONCLUSION

The Council considers the text of the common position to be a well balanced text and the best achievable compromise.

⁽¹⁾ Doc. 14699/07 EIT 19 EDUC 196 RECH 329 COMPET 352 CODEC 1291.