

*I**Acts whose publication is obligatory***COUNCIL REGULATION (Euratom) No 1908/2006****of 19 December 2006**

**laying down the rules for the participation of undertakings,  
research centres and universities in action under the  
Seventh Framework Programme of the European Atomic  
Energy Community and for the dissemination of  
research results (2007 to 2011)**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament<sup>1</sup>,

Having regard to the Opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the Opinion of the Court of Auditors<sup>3</sup>,

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<sup>1</sup> Opinion of 30 November 2006 (not yet published in the Official Journal).

<sup>2</sup> Opinion of 5 July 2006 (not yet published in the Official Journal). Opinion delivered following non-compulsory consultation.

<sup>3</sup> OJ C 203, 25.8.2006, p. 1. Opinion delivered on its own initiative.

Whereas:

- (1) The Seventh Framework Programme of the European Atomic Energy Community was adopted by Decision No 2006/970/Euratom of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2007 to 2011)<sup>1</sup>. It is the responsibility of the Commission to ensure the implementation of the framework programme and its specific programmes, including the related financial aspects.
- (2) The Seventh Framework Programme is implemented in accordance with Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>2</sup>, hereinafter "the Financial Regulation", and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation<sup>3</sup>, hereinafter "the Implementing Rules".
- (3) The Seventh Framework Programme is also implemented in accordance with the state aid rules, in particular the rules on state aid for research and development, currently the Community Framework for State Aid for Research and Development<sup>4</sup>.
- (4) Treatment of confidential data is governed by all the relevant Community legislation, including the Institutions' internal rules such as Commission Decision 2001/844/EC, ECSC, EURATOM of 29 November 2001 amending its internal Rules of Procedure<sup>5</sup> regarding provisions of security.

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<sup>1</sup> OJ L 400, 30.12.2006.

<sup>2</sup> OJ L 248, 16.9.2002, p. 1.

<sup>3</sup> OJ L 357, 31.12.2002, p. 1. Regulation as last amended by Regulation (EC, EURATOM) No 1248/2006 (OJ L 227, 19.8.2006, p. 3).

<sup>4</sup> OJ C 45, 17.2.1996, p. 5.

<sup>5</sup> OJ 317, 3.12.2001, p. 1. Decision as last amended by Decision 2006/548/EC, Euratom (OJ L 215, 5.8.2006, p. 38).

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- (5) The rules for the participation of undertakings, research centres and universities should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access for all participants through simplified procedures, in accordance with the principle of proportionality.
  - (6) The rules should also facilitate the exploitation of intellectual property developed by a participant, taking also into account the way in which the participant may be organised internationally, whilst protecting the other participants' and the Community's legitimate interests.
  - (7) The Seventh Framework Programme should promote participation from the outermost regions of the Community, as well as from a wide range of undertakings, research centres and universities.
  - (8) The definition of micro, small and medium-sized enterprises (SMEs) provided in Commission Recommendation 2003/361/EC<sup>1</sup> should apply, for reasons of coherence and transparency.
  - (9) It is necessary to establish the minimum conditions for participation, both as a general rule and with regard to the specificities of indirect actions under the Seventh Framework Programme. In particular, rules should be laid down regarding the number of participants and their place of establishment.
  - (10) It is appropriate that any legal entity should be free to participate once the minimum conditions have been satisfied. Participation over and above the minimum should ensure the efficient implementation of the indirect action concerned.

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<sup>1</sup> OJ L 124, 20.5.2003, p. 36.

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- (11) International organisations dedicated to developing cooperation in the field of nuclear research and training in Europe and largely made up of Member States or associated countries should be encouraged to participate in the Seventh Framework Programme.
  - (12) The participation of legal entities established in third countries and the participation of international organisations should also be envisaged, as enshrined in Article 101 of the Treaty. However, it is appropriate to require that such participation be justified in terms of the enhanced contribution thereby made to the objectives sought under the Seventh Framework Programme.
  - (13) Pursuant to Article 198 of the Treaty, legal entities of Member States' non-European territories under their jurisdiction are eligible for the Seventh Framework Programme.
  - (14) In line with the objectives mentioned above, it is necessary to establish the terms and conditions for providing Community funding to participants in indirect actions.
  - (15) There should be an effective and smooth transition from the cost calculation regime used in the Sixth Framework programme. For the benefit of participants the monitoring process of the Seventh Framework programme should, therefore, address the budgetary impact of this change in particular as regards its effect on the administrative burden for participants.
  - (16) It is necessary for the Commission to establish further rules and procedures, in addition to those provided for in the Financial Regulation and its Implementing Rules and this Regulation, to govern the submission, evaluation and selection of proposals and award of grants, as well as redress procedures for participants. In particular the rules governing the use of independent experts should be established.

- (17) It is appropriate for the Commission to establish further rules and procedures, in addition to those provided for in the Financial Regulation and its Implementing Rules, to govern the assessment of the legal and financial viability of participants in indirect actions under the Seventh Framework Programme. Such rules should strike the right balance between protecting the Community's financial interests and simplifying and facilitating the participation of legal entities in the Framework Programme.
- (18) In this context, the Financial Regulation and the Implementing Rules and Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>1</sup>, govern inter alia the protection of the Community's financial interests, the fight against fraud and irregularity, the procedures for the recovery of sums owed to the Commission, exclusion from contract and grant procedures and related penalties, and audits, checks, and inspections by the Commission and the Court of Auditors, pursuant to Article 160c of the Treaty.
- (19) It is necessary that the Community financial contribution reaches the participants without undue delay.
- (20) The agreements concluded for each action should provide for supervision and financial control by the Commission, or any representative authorised by the Commission, as well as audits by the Court of Auditors and on-the-spot checks carried out by the European Anti-Fraud Office (OLAF), in accordance with the procedures laid down in Council Regulation 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<sup>2</sup>.

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<sup>1</sup> OJ L 312, 23.12.1995, p. 1.

<sup>2</sup> OJ L 292, 15.11.1996, p. 2.

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- (21) The Commission should monitor both the indirect actions carried out under the Seventh Framework Programme and the Seventh Framework Programme and its Specific Programmes. With a view to ensuring the efficient and coherent monitoring and evaluation of the implementation of indirect actions, the Commission should set-up and maintain an appropriate information system.
- (22) The Seventh Framework Programme should reflect and promote the general principles laid down in the Charter for Researchers and Code of Conduct for the Recruitment of Researchers<sup>1</sup>, while respecting their voluntary character.
- (23) The rules governing the dissemination of research results should ensure that, where appropriate, the participants protect the intellectual property generated in actions, and use and disseminate those results.
- (24) While respecting the rights of the owners of intellectual property, those rules should be designed to ensure that participants and, where appropriate, their affiliated entities established in a Member State or associated country have access to information they bring to the project and to knowledge arising from research work carried out in the project to the extent necessary to conduct the research work or to use the resulting knowledge.
- (25) The obligation established in the sixth Framework Programme for certain participants to take financial responsibility for their partners in the same consortium will be waived. In this context, a "Participants guarantee fund", managed by the Commission, should be established to cover amounts due and not reimbursed by defaulting partners. Such an approach will promote simplification and facilitate the participation, whilst safeguarding the Community's financial interests in a manner appropriate for the Framework Programme.

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<sup>1</sup> OJ L 75, 22.3.2005, p. 67.

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- (26) Community contributions to a joint undertaking set up pursuant to Articles 45 to 51 of the Treaty do not fall within the scope of this Regulation.
- (27) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (28) The Community may provide financial support, as established in the Financial Regulation, *inter alia* by means of:
- (a) public procurements, in the form of a price for goods or services established by contract and selected on the basis of calls for tender;
  - (b) grants;
  - (c) subscriptions to an organisation in the form of a membership fee;
  - (d) honoraria for independent experts identified in Article 16 of this Regulation.

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# CHAPTER I

## INTRODUCTORY PROVISIONS

### *Article 1*

#### *Subject matter*

This Regulation lays down the rules for the participation of undertakings, research centres and universities and other legal entities in actions undertaken by one or more participants by means of funding schemes identified in part (a) of Annex II to Decision No 2006/970/Euratom establishing the Seventh Framework Programme, hereinafter "indirect actions".

It also lays down rules, in accordance with those laid down in the Financial Regulation and the Implementing Rules, concerning the Community financial contribution to participants in indirect actions under the Seventh Framework Programme.

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

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

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

*Article 2*  
*Definitions*

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

- 1) "legal entity" means any natural person, or any legal person created under the national law of its place of establishment, or under Community law or international law, which has legal personality and which may, acting under its own name, exercise rights and be subject to obligations. In the case of natural persons, references to establishment are deemed to refer to habitual residence;
- 2) "affiliated entity" means any legal entity that is under the direct or indirect control of a participant, or under the same direct or indirect control as the participant, control taking any of the forms set out in Article 7, paragraph 2;
- 3) "fair and reasonable conditions" means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged;

- 4) "foreground" means the results, including information, whether or not they can be protected, which are generated by the indirect action concerned. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;
- 5) "background" means information which is held by participants prior to their accession to the grant agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to the grant agreement, and which is needed for carrying out the indirect action or for using the results of the indirect action;
- 6) "participant" means a legal entity contributing to an indirect action and having rights and obligations with regard to the Community under the terms of this Regulation;
- 7) "research organisation " means a legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives;
- 8) "third country" means a State that is not a Member State;
- 9) "associated country" means a third country which is party to an international agreement with the Community, under the terms or on the basis of which it makes a financial contribution to all or part of the Seventh Framework Programme;
- 10) "international organisation" means an intergovernmental organisation, other than the European Community, which has legal personality under international public law, as well as any specialised agency set up by such an international organisation;

- 11) "international European interest organisation" means an international organisation, the majority of whose members are Member States or associated countries, and whose principal objective is to promote scientific and technological cooperation in Europe;
- 12) "public body" means any legal entity established as such by national law, and international organisations;
- 13) "SMEs" mean micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6 May 2003;
- 14) "work programme" means a plan adopted by the Commission for the implementation of a specific programme as identified in Article 2 of Decision No 2006/970/Euratom;
- 15) "funding schemes" mean the mechanisms for the Community funding of indirect actions as established in part (a) of Annex B to Decision No 2006/970/Euratom.

### *Article 3*

#### *Confidentiality*

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

## **CHAPTER II**

### **PARTICIPATION**

#### *Article 4*

#### *Specific rules for fusion energy research*

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

#### **SECTION 1**

#### **MINIMUM CONDITIONS**

#### *Article 5*

#### *General principles*

1. Any undertaking, university or research centre or other legal entity, whether established in a Member State or associated country, or in a third country, may participate in an indirect action provided that the minimum conditions laid down in this Chapter have been met, including any conditions specified pursuant to Article 11.

However, in the case of an indirect action as referred to in Articles 6 or 8, under which it is possible for the minimum conditions to be met without the participation of a legal entity established in a Member State, the attainment of the objectives laid down in Articles 1 and 2 of the Treaty must thereby be enhanced.

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

#### *Article 6*

##### *Minimum conditions*

1. The minimum conditions for indirect actions shall be the following:
  - (a) at least three legal entities must participate, each of which is established in a Member State or associated country, and no two of which are established in the same Member State or associated country;
  - (b) all three legal entities must be independent of each other in accordance with Article 7.
2. For the purposes of point (a) of paragraph 1, where one of the participants is the JRC, or an international European interest organisation or an entity created under Community law, it shall be deemed to be established in a Member State or associated country other than any Member State or associated country in which another participant in the same action is established.

*Article 7**Independence*

1. Two legal entities shall be regarded as independent of each other where neither is under the direct or indirect control of the other or under the same direct or indirect control as the other.
2. For the purposes of paragraph 1, control may in particular take either of the following forms:
  - (a) the direct or indirect holding of more than 50 % of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
  - (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.
3. However, the following relationships between legal entities shall not in themselves be deemed to constitute controlling relationships:
  - (a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50 % of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
  - (b) the legal entities concerned are owned or supervised by the same public body.

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

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

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

*Article 9**Sole participants*

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

*Article 10**International organisations and legal entities  
established in third countries*

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

*Article 11**Additional conditions*

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

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

**SECTION 2****PROCEDURES****SUBSECTION 1****CALLS FOR PROPOSALS***Article 12**Calls for proposals*

1. The Commission shall issue calls for proposals for indirect actions in accordance with the requirements laid down in the relevant specific programmes and work programmes.

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

2. Where appropriate, the Commission shall specify in the call for proposals that the participants need not establish a consortium agreement.
3. Calls for proposals shall have clear objectives so as to ensure that applicants do not respond needlessly.

### *Article 13*

#### *Exceptions*

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

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

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## SUBSECTION 2

### EVALUATION AND SELECTION OF PROPOSALS AND AWARD OF GRANTS

#### *Article 14*

#### *Evaluation, selection and award*

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

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

2. A proposal which contravenes fundamental ethical principles or which does not fulfil the conditions set out in the specific programme, the work programme or in the call for proposals shall not be selected. Such a proposal may be excluded from the evaluation, selection and award procedures at any time.
3. Proposals shall be ranked according to the evaluation results. Funding decisions shall be made on the basis of this ranking.

*Article 15**Submission, evaluation, selection and  
award procedures*

1. Where a call for proposals specifies a two-step evaluation procedure, only those proposals that pass the first step, based on the evaluation against a limited set of criteria, shall go forward for further evaluation.
2. Where a call for proposals specifies a two-stage submission procedure, only those applicants whose proposals pass the evaluation for the first stage shall be requested to submit a complete proposal in the second stage.

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

3. The Commission shall adopt and publish rules governing the procedure for the submission of proposals, as well as the related evaluation, selection and award procedures and publish guides for applicants including guidelines for evaluators. In particular, it shall lay down detailed rules for the two-stage procedure for submission (including as regards the scope and nature of the first stage proposal as well as those of the complete second stage proposal), and rules for the two-step evaluation procedure.

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

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

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

### *Article 16*

#### *Appointment of independent experts*

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

For coordination and support actions, referred to in Article 13, independent experts shall be appointed only if the Commission deems it appropriate.

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

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

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

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

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

### **SUBSECTION 3**

## **IMPLEMENTATION AND GRANT AGREEMENTS**

### *Article 17*

#### *General*

1. The participants shall implement the indirect action and shall take all necessary and reasonable measures to that end. Participants in the same indirect action shall implement the work jointly and severally towards the Community.

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2. The Commission shall draw up, on the basis of the model provided for in Article 18(8) and taking into account the characteristics of the funding scheme concerned, a grant agreement between the Community and the participants.
  3. Participants shall make no commitments incompatible with the grant agreement.
  4. Where a participant fails to comply with its obligations regarding the technical implementation of the indirect action, the other participants shall comply with the grant agreement without any complementary Community contribution unless the Commission expressly relieves them of that obligation.
  5. If the implementation of an action becomes impossible or if the participants fail to implement it, the Commission shall ensure the termination of the action.
  6. Participants shall ensure that the Commission is informed of any event which might affect the implementation of the indirect action or the interests of the Community.
  7. Where provided for in the grant agreement, the participants in the indirect action may subcontract certain elements of the work to be carried out to third parties.
  8. The Commission shall set out redress procedures for participants.

*Article 18**General provisions for inclusion in grant agreements*

1. The grant agreement shall establish the rights and obligations of the participants with regard to the Community, in accordance with Decision No 2006/970/Euratom, this Regulation, the Financial Regulation, and the Implementing Rules, and in accordance with the general principles of Community law.

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

2. Where appropriate, the grant agreement shall specify which part of the Community financial contribution will be based on the reimbursement of eligible costs, and which part will be based on flat rates (including scale of unit costs) or lump-sums.
3. The grant agreement shall specify which changes in the composition of the consortium are to require the prior publication of a competitive call.
4. The grant agreement shall require the submission to the Commission of periodic progress reports concerning the implementation of the indirect action concerned.
5. Where appropriate, the grant agreement may provide that the Commission is to be notified in advance of any intended transfer of ownership of foreground to a third party.

6. Where the grant agreement requires participants to carry out activities that benefit third parties, the participants shall advertise this widely and identify, evaluate and select third parties transparently, fairly and impartially. If provided for in the work-programme, the grant agreement shall establish criteria for the selection of such third parties. The Commission reserves the right to object to the selection of the third parties.
7. The Commission shall, in close cooperation with Member States, establish a model grant agreement in accordance with this Regulation. If a significant modification of the model grant agreement proves necessary, the Commission shall, in close cooperation with Member States, revise it as appropriate.
8. The model grant agreement shall reflect the general principles laid down in the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers. It shall address, as appropriate, synergies with education at all levels; readiness and capacity to foster dialogue and debate on scientific issues and research results with a broad public beyond the research community; activities to increase the participation and role of women in research; and activities addressing socio-economic aspects of the research.
9. The model grant agreement shall provide for supervision and financial control by the Commission or any representative authorised by it, and the Court of Auditors.
10. The grant agreement may lay down time limits for participants to give the various notifications referred to in this Regulation.

*Article 19**Provisions concerning access rights  
use and dissemination*

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

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

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

*Article 20**Provisions concerning termination*

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

*Article 21**Specific provisions*

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

*Article 22**Signature and accession*

The grant agreement shall enter into force upon signature by the coordinator and the Commission.

It shall apply to each participant that has formally acceded thereto.

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## SUBSECTION 4

### CONSORTIA

#### *Article 23*

#### *Consortium agreements*

1. Save where otherwise provided in the call for proposals, all participants in an indirect action shall conclude an agreement, hereinafter "the consortium agreement", to govern inter alia the following:
  - (a) the internal organisation of the consortium;
  - (b) the distribution of the Community financial contribution;
  - (c) rules additional to those in Chapter III Dissemination and use, and access rights as well as to related provisions in the grant agreement;
  - (d) the settlement of internal disputes including the cases of abuses of power;
  - (e) liability, indemnification and confidentiality arrangements between the participants.
2. The Commission shall establish and publish guidelines on the main issues that may be addressed by participants in their consortium agreements.

*Article 24**Coordinator*

1. The legal entities wishing to participate in an indirect action shall appoint one of their number to act as coordinator to carry out the following tasks in accordance with this Regulation, the Financial Regulation, the Implementing Rules, and the grant agreement:
  - (a) to monitor the point compliance by participants in the indirect action with their obligations;
  - (b) to verify whether the legal entities identified in the grant agreement complete the necessary formalities for accession to the grant agreement;
  - (c) to receive the Community financial contribution and to distribute it in accordance with the consortium and grant agreement;
  - (d) to keep the records and financial accounts relevant for the Community financial contribution and to inform the Commission of its distribution in accordance with Articles 23(1) b) and 35;
  - (e) to be intermediary for efficient and correct communication between the participants and to report regularly to the participants and to the Commission on the progress of the project.
2. The coordinator shall be identified in the grant agreement.

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

*Article 25**Changes in the consortium*

1. The participants in an indirect action may agree to add a new participant or to remove an existing participant in accordance with the respective provisions established in the consortium agreement.
2. Any legal entity which joins an ongoing action shall accede to the grant agreement.
3. In specific cases, where provided for in the grant agreement, the consortium shall publish a competitive call and advertise it widely using specific information support, particularly Internet sites on the seventh framework programme, the specialist press and brochures, and the national contact points set up by the Member States and associated countries for information and support.

The consortium shall evaluate offers in the light of the criteria which governed the initial action and with the assistance of independent experts appointed by the consortium, in accordance with the principles laid down in Articles 14, and Article 16, respectively.

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

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

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

*Article 26*

*Monitoring and evaluation*

1. The Commission shall monitor the implementation of indirect actions on the basis of the periodic progress reports submitted pursuant to Article 18(4).

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

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

2. The Commission shall set up and maintain an information system allowing for this monitoring to take place in an efficient and coherent manner across the Framework Programme.

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

3. The monitoring and evaluation referred to in Article 6 of the Decision No 2006/970/Euratom shall include aspects relating to the application of this Regulation and shall address the budgetary impact of the changes in the cost calculation regime as compared to the sixth Framework Programme and its effects on the administrative burden for participants.
4. The Commission shall appoint, in accordance with Article 16, independent experts to assist with evaluations required under the Seventh Framework Programme and its specific programme, and, as deemed necessary, for the evaluation of previous Framework Programmes.
5. In addition, the Commission may set up groups of independent experts appointed in accordance with Article 16, to advise on the design and implementation of Community research policy.

#### *Article 27*

##### *Information to be made available*

1. Having due regard to Article 3, the Commission shall, upon request, make available to any Member State or associated country any useful information in its possession on foreground arising from work carried out in the context of an indirect action, provided that the following conditions are met:
  - (a) the information concerned is relevant to public policy;
  - (b) the participants have not provided sound and sufficient reasons for withholding the information concerned.

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

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

### **SECTION 3**

## **COMMUNITY FINANCIAL CONTRIBUTION**

### **SUBSECTION 1**

## **ELIGIBILITY FOR FUNDING AND FORMS OF GRANTS**

#### *Article 28*

#### *Eligibility for funding*

1. The following legal entities participating in an indirect action may receive a Community financial contribution:
  - (a) any legal entity established in a Member State or an associated country, or created under Community law;
  - (b) any international European interest organisation.

2. In the case of a participating international organisation, other than an international European interest organisation, or a legal entity established in a third country other than an associated country, a Community financial contribution may be granted provided that at least one of the following conditions is satisfied:
- (a) provision is made to that effect in the specific programmes or in the relevant work programme;
  - (b) it is essential for carrying out the indirect action;
  - (c) such funding is provided for in a bilateral scientific and technological agreement or any other arrangement between the Community and the country in which the legal entity is established.

*Article 29*

*Forms of grants*

The Community financial contribution for grants identified in part a) of Annex B to the Decision No 2006/970/Euratom shall be based on the reimbursement, in whole or in part, of eligible costs.

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

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

*Article 30*

*Reimbursement of eligible costs*

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

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

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

3. In order to be considered eligible, costs incurred for the implementation of an indirect action shall meet the following conditions:

- (a) they must be actual;
- (b) they must have been incurred during the duration of the action, with the exception of final reports when provided for in the grant agreement;
- (c) they must have been determined in accordance with the usual accounting and management principles and practices of the participant and used for the sole purpose of achieving the objectives of the indirect action and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;

- (d) they must be recorded in the accounts of the participant and, in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;
- (e) they must be exclusive of non-eligible costs, in particular identifiable indirect taxes including value added tax, duties, interest owed, provisions for possible future losses or charges, exchange losses, cost related to return on capital, costs declared or incurred, or reimbursed in respect of another Community project, debt and debt service charges, excessive or reckless expenditure, and any other cost that does not meet the conditions referred to in points (a) to (d).

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

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

### *Article 31*

#### *Direct eligible costs and indirect eligible costs*

1. Eligible costs shall be composed of costs attributable directly to the action, hereinafter "direct eligible costs" and, where applicable, of costs which are not attributable directly to the action, but which have been incurred in direct relationship with the direct eligible costs attributed to the action, hereinafter "indirect eligible costs".

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

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

3. The grant agreement may provide that the reimbursement of indirect eligible costs is to be limited to a maximum percentage of the direct eligible costs, excluding the direct eligible costs for subcontracting, in particular in the case of coordination and support actions, and, where appropriate, actions for training and career development of researchers.
4. By derogation from paragraph 2, for the coverage of indirect eligible costs a participant may opt for a flat-rate of its total direct eligible costs, excluding its direct eligible costs for subcontracting or reimbursement of third parties' costs.

The Commission shall establish appropriate flat rates based on a close approximation of the real indirect costs concerned, in accordance with the Financial Regulation and its Implementing Rules.

5. Non-profit public bodies, secondary and higher education establishments, research organisations and SMEs which are unable to identify with certainty their real indirect costs for the action concerned, when participating in funding schemes which include research and technological development and demonstration activities, as referred to in Article 32, may opt for a flat-rate equal to 60 % of the total direct eligible costs for grants awarded under calls for proposals closing before 1 January 2010.

With a view to facilitating a transition to full application of the general principle referred to in paragraph 2, the Commission shall establish, for grants awarded under calls closing after 31 December 2009, an appropriate level of flat rate which should be an approximation of the real indirect costs concerned but not lower than 40 %. This will be based on an evaluation of participation by non-profit public bodies, secondary and higher education establishments, research organisations and SMEs which are unable to identify with certainty their real indirect costs for the action concerned.

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

### *Article 32*

#### *Upper funding limits*

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

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

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

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

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

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

### *Article 33*

#### *Reporting and audit of eligible costs*

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

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

2. Notwithstanding the Financial Regulation and the Implementing rules, a certificate on the financial statements shall be compulsory only whenever the cumulative amount of interim payments and balance payments made to a participant is equal to EUR 375 000 or more for an indirect action.

However, for indirect actions of duration of 2 years or less, not more than one certificate on the financial statements shall be requested from the participant, at the end of the project.

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

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

#### *Article 34*

##### *Networks of Excellence*

1. The work programme shall provide for the forms of grants to be used for Networks of Excellence.
2. Where the Community financial contribution to Networks of Excellence takes the form of a lump sum, it shall be calculated according to the number of researchers to be integrated in the Network of Excellence and the duration of the action. The unit value for lump sums paid shall be EUR 23 500 per year and per researcher.

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

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

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

## **SUBSECTION 2**

### **PAYMENT, DISTRIBUTION, RECOVERY AND GUARANTEES**

#### *Article 35*

#### *Payment and distribution*

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

2. The coordinator shall keep records making it possible to determine at any time what portion of the Community funds has been distributed to each participant.

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

*Article 36*

*Recovery*

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

*Article 37*

*Risk avoidance mechanism*

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

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

3. The contribution to the Fund by a participant to an indirect action taking the form of a grant shall not exceed 5 % of the Community financial contribution due to the participant. At the end of the action the amount contributed to the Fund shall be returned to the participant, via the coordinator, subject to paragraph 4.
4. If the interests generated by the Fund are insufficient to cover sums due to the Community, the Commission may deduct from the amount to be returned to a participant a maximum of one per cent of the Community financial contribution to it.
5. The deduction referred to in paragraph 4 shall not apply to public bodies, legal entities whose participation in the indirect action is guaranteed by a Member State or an associated country, and higher and secondary education establishments;
6. The Commission shall only verify *ex-ante* the financial capacity of coordinators, and of participants other than those referred to in paragraph 5 applying for a Community financial contribution in an indirect action in excess of EUR 500 000, unless there are exceptional circumstances when, on the basis of information already available, there are justified grounds to doubt the financial capacity of these participants.
7. The Fund shall be considered as a sufficient guarantee under the Financial Regulation. No additional guarantee or security may be requested from participants or imposed on them.

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## **CHAPTER III**

### **DISSEMINATION AND USE, AND ACCESS RIGHTS**

#### **SECTION 1**

#### **FOREGROUND**

##### *Article 38*

##### *Specific rules for fusion energy research*

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

#### **SUBSECTION 1**

#### **OWNERSHIP**

##### *Article 39*

##### *Ownership of foreground*

1. Foreground arising from work carried out under indirect actions other than those referred to in paragraph 3 shall be the property of the participant carrying out the work generating that foreground.

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2. If employees or other personnel working for a participant are entitled to claim rights to foreground, the participant shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under the grant agreement.
  3. Foreground shall be the property of the Community in the following cases:
    - (a) coordination and support actions consisting in a purchase of goods or services subject to the rules on public procurement set out in the Financial Regulation;
    - (b) coordination and support actions relating to independent experts.

*Article 40*

*Joint ownership of foreground*

1. Where several participants have jointly carried out work generating foreground and where their respective share of the work cannot be ascertained, they shall have joint ownership of such foreground.

They shall establish an agreement regarding the allocation and terms of exercising that joint ownership in accordance with the terms of the grant agreement.

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2. Where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to grant non-exclusive licenses to third parties, without any right to sub-licence, subject to the following conditions:
    - (a) prior notice must be given to the other joint owners;
    - (b) fair and reasonable compensation must be provided to the other joint owners.
  3. Upon request, the Commission shall give guidance on possible aspects to be included in the joint ownership agreement.

*Article 41*

*Transfer of foreground*

1. The owner of the foreground may transfer it to any legal entity, subject to paragraphs 2 to 5 and Article 42.
2. Where a participant transfers ownership of foreground, it shall pass on its obligations regarding that foreground to the assignee, including the obligation to pass them on to any subsequent assignee, in accordance with the grant agreement.

3. Subject to its obligations concerning confidentiality, where the participant is required to pass on access rights, it shall give prior notice to the other participants in the same action, together with sufficient information concerning the new owner of the foreground to permit them to exercise their access rights under the grant agreement.

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

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

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

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

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

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

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

**SUBSECTION 2**  
**PROTECTION, PUBLICATION,**  
**DISSEMINATION AND USE**

*Article 43**Protection of foreground*

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

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

Where the foreground is capable of industrial or commercial application and its owner does not protect it, and does not transfer it to another participant, an affiliated entity established in a Member State or associated country or any other third party established in a Member State or associated country along with the associated obligations in accordance with Article 41, no dissemination activities may take place before the Commission has been informed.

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

#### *Article 44*

##### *Statement relating to Community financial support*

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

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

*Article 45**Use and dissemination*

1. The participants shall use the foreground which they own, or ensure that it is used.
2. Each participant shall ensure that the foreground of which it has ownership is disseminated as swiftly as possible. If it fails to do so the Commission may disseminate that foreground pursuant to Article 12 of the Treaty.

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

3. Dissemination activities shall be compatible with the protection of intellectual property rights, confidentiality obligations, and the legitimate interests of the owner of the foreground and the defence interests of the Member States within the meaning of Article 24 of the Treaty.
4. Prior notice of any dissemination activity shall be given to the other participants concerned.

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

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## SECTION 2

### ACCESS RIGHTS TO BACKGROUND AND FOREGROUND

#### *Article 46*

#### *Background covered*

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

#### *Article 47*

#### *Principles*

1. All requests for access rights shall be made in writing.
2. Unless otherwise agreed by the owner of the foreground or background, access rights shall confer no entitlement to grant sub-licences.
3. Exclusive licences for foreground or background may be granted, subject to written confirmation by all the other participants that they waive their access rights thereto.
4. Without prejudice to paragraph 3, any agreement providing access rights to foreground or background to participants or third parties shall be such as to ensure that potential access rights for other participants are maintained.

5. Without prejudice to Articles 48 and 49 and the grant agreement, participants in the same action shall inform each other as soon as possible of any limitation to the granting of access rights to background, or of any other restriction which might substantially affect the granting of access rights.
6. The termination of its participation in an indirect action shall in no way affect the obligation of that participant to grant access rights to the remaining participants in the same action under the terms and conditions established by the grant agreement.

*Article 48*

*Access rights for implementation of indirect actions*

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

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

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

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

*Article 49**Access rights for use*

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

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

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

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

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

4. A request for access rights under paragraphs 1, 2 and 3 may be made up to one year after either of the following events:
- (a) the end of the indirect action;
  - (b) termination of participation by the owner of the background or foreground concerned.

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

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

*Article 50*

*Scope*

The rules set out in this Chapter apply to activities under the thematic area "Fusion energy research" as set out in the specific programme. In the event of any conflict between the rules set out in this Chapter and those set out in Chapters II and III, the rules set out in this Chapter shall apply.

*Article 51**Implementation of Fusion Energy Research*

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

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

*Article 52**Community financial contribution*

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

The annual base rate for the Community financial contribution shall not exceed 20 % over the duration of the Seventh Framework Programme.

2. After consultation of the consultative committee for the fusion programme referred to in Article 7(2) of the Specific Programme implementing the seventh Framework Programme (2007-11) of the European Atomic Energy Community (Euratom) for nuclear research and training activities<sup>1</sup>, the Commission may finance:
  - (a) within the framework of the Contracts of Association at a rate not exceeding 40 %: expenditure of specific cooperative projects between the Associates which have been recommended for priority support by the consultative committee and approved by the Commission; priority support will concentrate on actions of relevance to the ITER/DEMO, except in the case of projects which have already been awarded priority status during earlier framework programmes;

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

## CHAPTER V

### FINAL PROVISIONS

#### *Article 53*

This Regulation shall enter into force on the third 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 Brussels,

*For the Council*

*The President*

## ANNEX

### Participant guarantee fund

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

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

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

- (b) recover effectively the said amount from the Fund should the indirect action be terminated or already completed.

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

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

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

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