

COUNCIL REGULATION (EC) No 72/2008
of 20 December 2007
setting up the ENIAC Joint Undertaking

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 171 and 172 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

- (1) Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) ⁽³⁾ (hereinafter referred to as the Seventh Framework Programme), provides for a Community contribution for the establishment of long term public-private partnerships in the form of Joint Technology Initiatives (hereinafter referred to as JTIs) which could be implemented through Joint Undertakings within the meaning of Article 171 of the Treaty. These JTIs stem from the work of European Technology Platforms, already set up under the Sixth Framework Programme, and cover selected aspects of research in their field. They should combine private-sector investment and European public funding, including funding from the Seventh Framework Programme.
- (2) Council Decision 2006/971/EC of 19 December 2006 concerning the specific programme 'Cooperation' implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ⁽⁴⁾ underlines the need for ambitious pan-European public-private partnerships to speed up the development of major technologies by large research actions at Community level including, in particular, JTIs.
- (3) The Lisbon Growth and Jobs Agenda underscores the need to develop favourable conditions for investment in knowledge and innovation in the Community to boost competitiveness, growth and jobs.

- (4) In its conclusions of 25 and 26 November 2004, the Council encouraged the Commission to further elaborate the concepts of Technology Platforms and JTIs. It underlined that such initiatives could contribute to coordinating overall Community research efforts with a view to achieving synergies with the activities of existing schemes such as Eureka taking into account their important contribution to Research and Development (hereinafter referred to as R & D).

- (5) European companies and other R & D organisations active in the field of nanoelectronics took the lead in establishing the European Technology Platform on Nanoelectronics (hereinafter referred to as the ENIAC Technology Platform) under the Sixth Framework Programme. The ENIAC Technology Platform developed a Strategic Research Agenda based on an extensive consultation with public and private stakeholders. The Strategic Research Agenda identified the priorities in the nanoelectronics domain and recommended directions for a JTI in this field.

- (6) The JTI on nanoelectronics responds to the Commission Communications of 6 April 2005 on 'Building the ERA of knowledge for growth' and of 20 July 2005 on 'Common Actions for Growth and Employment: The Community Lisbon Programme', which call for a new and more ambitious approach to large-scale public-private partnerships in fields of major interest for European competitiveness identified through dialogue with industry.

- (7) The JTI on nanoelectronics responds to the need for support for pervasive Information and Communication Technologies as identified in the report 'Creating an Innovative Europe' of January 2006. This report also commends the ENIAC Joint Technology model for combining national and Community funding within a clear legal structure and in a harmonised and synchronous manner.

- (8) The JTI on nanoelectronics should create a sustainable public-private partnership and increase and leverage private and public investment in the sector of nanoelectronics in Europe, which for the purpose of this Regulation includes the Member States of the European Union (hereinafter referred to as Member States) and countries associated with the Seventh Framework Programme (hereinafter referred to as the associated countries). The JTI on nanoelectronics should also achieve effective coordination and synergy of resources and funding from the Framework Programme,

⁽¹⁾ Opinion of 12 December 2007 (not yet published in the Official Journal).

⁽²⁾ Opinion of 25 October 2007 (not yet published in the Official Journal).

⁽³⁾ OJ L 412, 30.12.2006, p. 1.

⁽⁴⁾ OJ L 400, 30.12.2006, p. 86, corrected by OJ L 54, 22.2.2007, p. 30.

- industry, national R & D programmes and intergovernmental R & D schemes, thus contributing to strengthening Europe's future growth, competitiveness and sustainable development. Finally, its objective should be to foster collaboration between all stakeholders such as industry, including small and medium-sized enterprises (SMEs), national authorities, academic and research centres pulling together and focusing the research effort.
- (9) The JTI on nanoelectronics should define a commonly agreed research agenda (hereinafter referred to as the Research Agenda), closely following the recommendations of the Strategic Research Agenda developed by the ENIAC Technology Platform. This Research Agenda should identify and regularly review research priorities for the development and adoption of key competences for nanoelectronics across different application areas in order to strengthen European competitiveness and allow the emergence of new markets and societal applications.
- (10) The JTI on nanoelectronics should address two objectives which are a substantial part of the Strategic Research Agenda of the ENIAC Technology Platform: enhancing the further integration and miniaturisation of devices, and increasing their functionalities. It should deliver new materials, equipment and processes, new architectures, innovative manufacturing processes, disruptive design methodologies and new packaging and 'systemising' methods. It should drive and be driven by innovative high-tech applications in the area of communication and computing, transport, health care and wellness, energy and environmental management, security and safety, and entertainment.
- (11) The ambition and scope of the stated objectives of the JTI on nanoelectronics, the scale of the financial and technical resources that need to be mobilised, and the need to achieve effective coordination and synergy of resources and funding, call for action to be taken by the Community. Therefore, it is necessary to set up a Joint Undertaking (hereinafter referred to as the ENIAC Joint Undertaking) under Article 171 of the Treaty as a legal entity responsible for the implementation of the JTI on nanoelectronics. To ensure the appropriate management of R & D activities initiated under the Seventh Framework Programme, the ENIAC Joint Undertaking should be set up for a period up to 31 December 2017.
- (12) The ENIAC Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament, on the recommendation of the Council. However, account should be taken of the specificities resulting from the nature of JTIs as public-private partnerships and in particular from the private sector contribution to the budget.
- (13) The objectives of the ENIAC Joint Undertaking should be pursued by pooling resources from the public and private sectors to support R & D activities in the form of projects. To that end, the ENIAC Joint Undertaking should be able to organise competitive calls for proposals for projects to implement parts of the Research Agenda. The R & D activities should respect fundamental ethical principles applicable in the Seventh Framework Programme.
- (14) The ENIAC Joint Undertaking will ensure and promote a safe, integrated, and responsible approach to nanoelectronics in keeping with the high safety standards already established in the nanoelectronics industry and in accordance with public health, safety, environmental and consumer Community policies and the European Action 'Nanosciences and nanotechnologies: An action plan for Europe 2005-2009'.
- (15) The founding members of the ENIAC Joint Undertaking should be the Community, Belgium, Germany, Estonia, Ireland, Greece, Spain, France, Italy, the Netherlands, Poland, Portugal, Sweden, the United Kingdom, and AENEAS, an association representing companies and other R & D organisations active in the field of nanoelectronics in Europe. The ENIAC Joint Undertaking should be open to new members.
- (16) The rules for the organisation and operation of the ENIAC Joint Undertaking should be laid down in the statutes of the ENIAC Joint Undertaking as part of this Regulation.
- (17) A letter of commitment to contribute to the establishment and implementation of the ENIAC Joint Undertaking has been signed by AENEAS.
- (18) The projects should be supported both by the Community's and ENIAC Member States' financial contribution as well as by contributions in kind from the R & D organisations participating in the projects of the ENIAC Joint Undertaking. Further financing options may be available, inter alia, from the European Investment Bank (EIB), in particular through the Risk-Sharing Finance Facility developed jointly with the EIB and the Commission pursuant to Annex III of Decision 2006/971/EC.
- (19) Public funding for the R & D activities following open and competitive calls for proposals published by the ENIAC Joint Undertaking should consist of national financial contributions from the ENIAC Member States and a financial contribution from the ENIAC Joint Undertaking. The financial contribution of the ENIAC Joint Undertaking should be provided at a percentage of the R & D costs

incurred by participants in projects. This percentage should be equal for all participants in projects in any given call for proposals.

- (20) Over the duration of the ENIAC Joint Undertaking, the R & D organisations participating in projects should provide resources that equal or exceed the total public funding for the R & D activities.
- (21) Since there is a need to ensure stable employment conditions and equal treatment of staff, and in order to attract specialised scientific and technical staff of the highest calibre, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68⁽¹⁾ should be applied to all staff recruited by the ENIAC Joint Undertaking.
- (22) As a body endowed with legal personality, the ENIAC Joint Undertaking should be accountable for its actions. Where relevant, the Court of Justice should be competent to resolve any disputes arising from the activities of the Joint Undertaking.
- (23) The Commission should regularly report on the progress by the ENIAC Joint Undertaking to the European Parliament and the Council.
- (24) The ENIAC Joint Undertaking should adopt, 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⁾ (hereinafter referred to as the Financial Regulation) and subject to prior consent from the Commission, specific financial rules which take into account its specific operating needs arising, in particular, from the need to combine Community and national funding to support R & D activities in an efficient and timely manner. In order to ensure a harmonised treatment between the participants of the ENIAC Joint Undertaking research activities and those of the indirect actions of the Seventh Framework Programme, it is appropriate that value added tax should not be an eligible cost for Community funding, in line with 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)⁽³⁾.
- (25) Appropriate measures should be taken to prevent irregularities and fraud, and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests⁽⁴⁾, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁽⁵⁾, and Regulation (EC) No 1073/1999 of 25 May 1999 of the European Parliament and of the Council concerning investigations concluded by the European Anti-Fraud Office (OLAF)⁽⁶⁾.
- (26) The Intellectual Property Rights Policy of the ENIAC Joint Undertaking should promote knowledge creation and exploitation.
- (27) In order to facilitate the setting up of the ENIAC Joint Undertaking, the Commission should be responsible for the establishment and initial operation of the ENIAC Joint Undertaking until it has the operational capacity to implement its own budget.
- (28) Since the objective of this Regulation, namely the establishment of the ENIAC Joint Undertaking, cannot be sufficiently achieved by the Member States due to the trans-national nature of the great research challenges identified, which requires the pooling of complementary knowledge and financial resources across the sectors and borders and can therefore 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,

HAS ADOPTED THIS REGULATION:

Article 1

Establishment of a Joint Undertaking

1. For the implementation of the Joint Technology Initiative (hereinafter JTI) on nanoelectronics, a Joint Undertaking within the meaning of Article 171 of the Treaty (hereinafter the ENIAC Joint Undertaking) is hereby set up for a period up to 31 December 2017.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1. Regulation as amended by Regulation (EC, Euratom) No 337/2007 (OJ L 90, 30.3.2007, p. 1).

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

⁽³⁾ OJ L 391, 30.12.2006, p. 1.

⁽⁴⁾ OJ L 312, 23.12.1995, p. 1.

⁽⁵⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁶⁾ OJ L 136, 31.5.1999, p. 1.

2. The seat of the ENIAC Joint Undertaking shall be located in Brussels, Belgium.

Article 2

Objectives

The ENIAC Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and the theme 'Information and Communication Technologies' of the Specific Programme 'Cooperation'. It shall, in particular:

- (a) define and implement a Research Agenda for the development of key competences for nanoelectronics across different application areas in order to strengthen European competitiveness and sustainability and allow for the emergence of new markets and societal applications;
- (b) support the activities required for the implementation of the Research Agenda (hereinafter R & D activities), notably by awarding funding to participants in selected projects following competitive calls for proposals;
- (c) promote a public-private partnership aiming at mobilising and pooling Community, national and private efforts, increasing overall R & D investments in the field of nanoelectronics, and fostering collaboration between the public and private sectors;
- (d) achieve synergy and coordination of European R & D efforts in the field of nanoelectronics including, when added value can be created, the progressive integration into the ENIAC Joint Undertaking of the related activities in this field currently implemented through intergovernmental R & D schemes (Eureka);
- (e) promote the involvement of SMEs in its activities in line with the objectives of the Seventh Framework Programme.

Article 3

Legal status

The ENIAC Joint Undertaking shall be a Community body and shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

Article 4

Statutes

The statutes of the ENIAC Joint Undertaking, as set out in the Annex hereto, constitute an integral part of this Regulation and are hereby adopted.

Article 5

Community contribution

1. The maximum Community contribution to the ENIAC Joint Undertaking covering running costs and R & D activities shall be EUR 450 million paid from the appropriations in the general budget of the European Union allocated to the theme 'Information and Communication Technologies' of the Specific Programme 'Cooperation'.
2. The arrangements for the Community financial contribution shall be established by means of a general agreement and annual financial agreements to be concluded between the Commission, on behalf of the Community, and the ENIAC Joint Undertaking.
3. The Community contribution to the ENIAC Joint Undertaking used to fund projects shall be allocated following open and competitive calls for proposals.

Article 6

Financial rules

1. The ENIAC Joint Undertaking shall adopt specific financial rules in accordance with Article 185(1) of the Financial Regulation. They may depart from the rules laid down in Commission Regulation (EC, Euratom) No 2343/2002 ⁽¹⁾ on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation where the specific operating needs of the ENIAC Joint Undertaking so require and subject to prior consent from the Commission.
2. The ENIAC Joint Undertaking shall have its own internal audit capability.

Article 7

Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the ENIAC Joint Undertaking and its executive director.
2. Without prejudice to paragraph 3 of this Article and Article 7(2) of the statutes, the ENIAC Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority empowered to conclude contracts by the Conditions of Employment of Other Servants of the European Communities in respect of its staff.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

3. The governing board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations of Officials of the European Communities, and the Conditions of Employment of Other Servants of the European Communities.

4. The staff resources shall be determined in the establishment plan of the ENIAC Joint Undertaking that shall be set out in its annual budget.

5. The staff of the ENIAC Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed no more than once for a fixed period. The total period of engagement shall not exceed seven years and shall not in any case exceed the lifetime of the Joint Undertaking.

6. All cost related to the staff shall be borne by the ENIAC Joint Undertaking.

7. The ENIAC Joint Undertaking may adopt provisions to allow experts to be seconded to it.

Article 8

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the ENIAC Joint Undertaking and its staff.

Article 9

Liability

1. The contractual liability of the ENIAC Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement or contract in question.

2. In the case of non-contractual liability, the ENIAC Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.

3. Any payment by the ENIAC Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the ENIAC Joint Undertaking and shall be covered by the resources of the ENIAC Joint Undertaking.

4. The ENIAC Joint Undertaking shall be solely responsible for meeting its obligations.

Article 10

Jurisdiction of the Court of Justice and applicable law

1. The Court of Justice shall have jurisdiction:

- (a) any dispute between the members which relates to the subject matter of this Regulation and/or the statutes referred to in Article 4;
- (b) pursuant to any arbitration clause contained in agreements and contracts concluded by the ENIAC Joint Undertaking;
- (c) in actions brought against the ENIAC Joint Undertaking, including decisions of its bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;
- (d) in disputes related to compensation for damage caused by the staff of the ENIAC Joint Undertaking in the performance of their duties.

2. For any matter not covered by this Regulation or by other acts of Community law, the law of the State where the seat of the ENIAC Joint Undertaking is located shall apply.

Article 11

Report, evaluations and discharge

1. The Commission shall present to the European Parliament and the Council an annual report on the progress achieved by the ENIAC Joint Undertaking. This report shall contain details of implementation of the JTI on nanoelectronics, including number of proposals submitted, number of proposals selected for funding, type of participants, including SMEs, and country statistics.

2. By 31 December 2010, as well as by 31 December 2013, the Commission shall carry out an interim evaluation of the ENIAC Joint Undertaking with the assistance of independent experts, on the basis of terms of reference established after consultation of the ENIAC Joint Undertaking. These evaluations shall cover the quality and efficiency of the ENIAC Joint Undertaking and progress towards the objectives set. The Commission shall communicate the conclusions thereof, accompanied by its observations and, where appropriate, proposals to amend this Regulation, including the possible early termination of the ENIAC Joint Undertaking, to the European Parliament and the Council.

3. No later than six months after the winding-up of the ENIAC Joint Undertaking, the Commission shall conduct a final evaluation of the ENIAC Joint Undertaking with the assistance of independent experts. The results of the final evaluation shall be presented to the European Parliament and the Council.

4. Discharge for the implementation of the budget of the ENIAC Joint Undertaking shall be given by the European Parliament, upon recommendation of the Council, in accordance with the procedure provided for in the financial rules of the ENIAC Joint Undertaking referred to in Article 6.

Article 12

Protection of the financial interests of the members and anti-fraud measures

1. The ENIAC Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls.

2. In case of irregularities, the members of the ENIAC Joint Undertaking shall reserve the right to recover amounts unduly spent, including by a reduction or a suspension of subsequent contributions to the ENIAC Joint Undertaking.

3. For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 shall apply.

4. The ENIAC Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the ENIAC Joint Undertaking's public funding. These checks and audits shall be performed either directly by the ENIAC Joint Undertaking or by ENIAC member States on its behalf. ENIAC member States may carry out any other checks and audits among the recipients of their national funding as they deem necessary and shall communicate the results to the ENIAC Joint Undertaking.

5. The Commission and/or the Court of Auditors may, if necessary, carry out on-the-spot checks among the recipients of the ENIAC Joint Undertaking's funding and the agents responsible for its allocation. To that end, the ENIAC Joint Undertaking shall ensure that grant agreements and contracts provide for the right of the Commission and/or of the Court of Auditors to carry out the appropriate controls and, in the event of the detection of irregularities, to impose dissuasive and proportionate penalties.

6. The European Anti-Fraud Office (OLAF) established by Commission Decision 1999/352/EC, ECSC, Euratom ⁽¹⁾ shall enjoy the same powers in respect of the ENIAC Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the ENIAC Joint Undertaking is established, it shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF ⁽²⁾. The ENIAC Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

Article 13

Confidentiality

Without prejudice to Article 14, the ENIAC Joint Undertaking shall ensure the protection of sensitive information, whose

disclosure could damage the interests of its members or of participants in projects.

Article 14

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents ⁽³⁾ shall apply to documents held by the ENIAC Joint Undertaking.

2. The ENIAC Joint Undertaking shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 by 7 August 2008.

3. Decisions taken by the ENIAC Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

Article 15

Intellectual property

The rules governing the protection, use and the dissemination of research results, based on Regulation (EC) No 1906/2006, are set out in Article 23 of the statutes.

Article 16

Preparatory actions

1. The Commission shall be responsible for the establishment and initial operation of the ENIAC Joint Undertaking until the Joint Undertaking has the operational capacity to implement its own budget. The Commission shall carry out, in accordance with Community law, all necessary actions in collaboration with other founding members and with the involvement of the competent bodies.

2. For that purpose, until such time as the executive director takes up his/her duties following his/her appointment by the governing board in accordance with Article 7(2) of the statutes, the Commission may assign a limited number of its officials, including one to fulfil the functions of the executive director, on an interim basis.

3. The interim executive director may authorise all payments covered by the credits provided in the budget of the ENIAC Joint Undertaking once approved by the governing board and may conclude contracts, including staff contracts following the adoption of the ENIAC Joint Undertaking establishment plan.

⁽¹⁾ OJ L 136, 31.5.1999, p. 20.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

⁽³⁾ OJ L 145, 31.5.2001, p. 43.

The Commission authorising officer may authorise all payments covered by the credits provided in the budget of the ENIAC Joint Undertaking.

Article 17

Support from the host State

A host agreement shall be concluded between the ENIAC Joint Undertaking and Belgium concerning office accommodation,

privileges and immunities and other support to be provided by Belgium to the ENIAC Joint Undertaking.

Article 18

Entry into force

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, 20 December 2007.

For the Council

The President

F. NUNES CORREIA

ANNEX

STATUTES OF THE ENIAC JOINT UNDERTAKING

Article 1

Definitions

For the purposes of these statutes, the following definitions shall apply:

- (a) 'project' means a research and/or development project that is selected by the ENIAC Joint Undertaking following open and competitive calls for proposals and thereafter partly funded by the ENIAC Joint Undertaking;
- (b) 'total costs' means eligible costs of the projects as defined by the respective funding authorities issuing the grant agreements;
- (c) 'running costs' means the costs necessary for the functioning of the ENIAC Joint Undertaking excluding the funding of R & D activities;
- (d) 'affiliated entity' means an affiliated entity as defined in Article 2 of the Regulation (EC) No 1906/2006.

Article 2

Tasks and activities

The main tasks and activities of the ENIAC Joint Undertaking shall be the following:

- (a) to ensure the establishment and sustainable management of the JTI on nanoelectronics;
- (b) to define and make any necessary adjustment to the multiannual strategic plan including the Research Agenda as referred to in Article 19;
- (c) to define and carry out annual implementation plans for executing the multiannual strategic plan as referred to in Article 19;
- (d) to initiate calls for proposals, to evaluate proposals, and award funding to projects selected through open, transparent and effective procedures, within the limits of available funds;
- (e) to develop close cooperation and ensure coordination with European national and trans-national activities, bodies and stakeholders, in particular the Framework Programme, aiming at fostering a fertile innovation environment in Europe and better synergies and exploitation of R & D results in the area of nanoelectronics;
- (f) to monitor progress towards the objectives of the ENIAC Joint Undertaking;
- (g) to undertake communication and dissemination activities;
- (h) to publish information on the projects, including the name of the participants and the amount of the financial contribution of the ENIAC Joint Undertaking per participant;
- (i) to carry out any other activity needed to achieve the objectives referred to in Article 2 of this Regulation.

Article 3

Members

1. The founding members of the ENIAC Joint Undertaking (hereinafter founding members) shall be:

- (a) the Community, represented by the Commission;
- (b) Belgium, Germany, Estonia, Ireland, Greece, Spain, France, Italy, the Netherlands, Poland, Portugal, Sweden, the United Kingdom; and
- (c) upon acceptance of the statutes of the ENIAC Joint Undertaking, the AENEAS association (hereinafter referred to as 'AENEAS'), an association registered under French law (registration No 20070039) with its registered office in Paris (France), acting as a representative of companies and other R & D actors operating in the field of nanoelectronics in Europe.

2. Provided that they subscribe to the objectives as described in Article 2 of this Regulation and are willing to assume all obligations of membership, including the acceptance of the statutes of the ENIAC Joint Undertaking, the following entities may become members of the ENIAC Joint Undertaking:

- (a) other Member States and associated countries;
- (b) any other country (hereinafter referred to as third country) pursuing R & D policies or programmes in the area of nanoelectronics;
- (c) any other legal entity capable of making a substantial financial contribution to the achievement of the objectives of the ENIAC Joint Undertaking.

3. The founding members and new members as referred to in paragraph 2 shall hereinafter be referred to as 'members'.

4. Member States and associated countries members of the ENIAC Joint Undertaking shall hereinafter be referred to as 'ENIAC member States'. Each ENIAC member State shall appoint its representative in the bodies of the ENIAC Joint Undertaking and designate the national entity or entities responsible for fulfilling its obligations with respect to implementation of the activities of the ENIAC Joint Undertaking.

5. The ENIAC member States and the Commission shall hereinafter be referred to as the 'public authorities' of the ENIAC Joint Undertaking.

Article 4

Accession and changes to membership

1. Any new membership application to the ENIAC Joint Undertaking shall be addressed to the governing board in accordance with Article 6(2)(a).

2. Member States or associated countries that are not founding members of the ENIAC Joint Undertaking shall become members upon notification to the governing board of their written acceptance of these statutes and of any other provisions governing the functioning of the ENIAC Joint Undertaking.

3. Any application for membership of the ENIAC Joint Undertaking by third countries shall be considered by the governing board, which shall make a recommendation to the Commission. The Commission may make a proposal to amend this Regulation on the accession of the third country, subject to the successful completion of negotiations with the ENIAC Joint Undertaking.

4. Decisions of the governing board on accession of any other legal entity or recommendations of the governing board on the accession of third countries shall be made taking into account the relevance and potential added value of the applicant for the achievement of the objectives of the ENIAC Joint Undertaking. For any application for new membership, the Commission shall provide timely information to the Council on the assessment and, where applicable, on the decision of the governing board.

5. Membership of the ENIAC Joint Undertaking may not be transferred to a third party unless the prior agreement of the governing board is given.

6. Any member may withdraw from the ENIAC Joint Undertaking. Withdrawal shall become effective and irrevocable six months after notification to the other members following which the former member shall be discharged from any obligations other than those already undertaken through decisions of the ENIAC Joint Undertaking in accordance with these statutes, prior to the member's withdrawal.

Article 5

Bodies of the ENIAC Joint Undertaking

1. The bodies of the ENIAC Joint Undertaking shall be:

- (a) the governing board;
- (b) the executive director;
- (c) the public authorities board;
- (d) the industry and research committee.

2. In case a specific task is not assigned to one of the bodies, the governing board shall be the competent one.

Article 6

Governing board

1. *Composition, voting rights and decision-taking*

- (a) The governing board shall consist of representatives of the members of the ENIAC Joint Undertaking and the chairperson of the industry and research committee;
- (b) each member of the ENIAC Joint Undertaking shall appoint its representatives and a lead delegate who shall hold the voting rights of the member in the governing board. The chairperson of the industry and research committee shall have no voting rights;
- (c) voting rights for AENEAS and the public authorities shall be equal and shall amount in total to at least 90 % of the total votes. The initial distribution of the voting rights shall be 50 % for AENEAS and 50 % for public authorities;
- (d) the distribution of the votes for the public authorities shall be established annually in proportion to the funds they have committed to projects in the past two financial years. The Commission shall hold a minimum of 10 % of the votes;

(e) for the first financial year, and any subsequent financial years in which one or two ENIAC member States have committed public funds to projects in the previous financial years, the Commission shall hold one third of the votes corresponding to public authorities. The remaining two thirds shall be distributed equally amongst the ENIAC member States;

(f) voting rights for any new member that is not a Member State or an associated country shall be determined by the governing board before accession of this member to the ENIAC Joint Undertaking;

(g) decisions shall be adopted by a majority of at least 75 % of votes unless otherwise explicitly stated in these statutes;

(h) the representatives shall not be personally liable for actions undertaken in their capacity as representatives to the governing board.

2. *Role and tasks*

The governing board shall have overall responsibility for the operations of the ENIAC Joint Undertaking and shall oversee the implementation of its activities.

The governing board shall in particular:

- (a) assess applications and decide or recommend changes in membership in accordance with Article 4;
- (b) decide on the termination of the membership of any member that is in default of its obligations and has not remedied within a reasonable period set by the executive director, without prejudice to the provisions of the Treaty ensuring compliance with Community law;
- (c) adopt the financial rules of the ENIAC Joint Undertaking in accordance with Article 6 of this Regulation;
- (d) approve the initiatives to amend the statutes in accordance with Article 24;
- (e) approve the multiannual strategic plan including the Research Agenda referred to in Article 19(1);
- (f) supervise the overall activities of the ENIAC Joint Undertaking;
- (g) supervise progress in implementing the multiannual strategic plan referred to in Article 19(1);
- (h) approve, in accordance with Article 18(4) the annual implementation plan and the annual budget plan referred to in Article 19(3), including the staff establishment plan;
- (i) approve the annual activity report referred to in Article 19(4) and the annual accounts and balance sheet;
- (j) appoint, dismiss or replace the executive director, provide guidance to the executive director, and monitor the executive director's performance;
- (k) establish committees or working groups to carry out specific tasks as necessary;
- (l) adopt its rules of procedure in accordance with paragraph 3;

- (m) assign any task not specifically allocated to one of the other bodies of the ENIAC Joint Undertaking;
- (n) adopt practical arrangements for implementing Regulation (EC) No 1049/2001 as referred to in Article 14 of this Regulation.

The Community shall hold a veto right for all decisions related to the use of its financial contributions, decisions concerning the winding-up of the ENIAC Joint Undertaking and decisions related to points (a), (b), (c), (j) and (n).

3. Rules of procedure

- (a) the governing board shall meet at least twice a year, normally at the seat of the ENIAC Joint Undertaking;
- (b) the meetings of the governing board shall be chaired by the chairperson of the industry and research committee;
- (c) unless otherwise decided by the governing board, the executive director shall participate in the meetings;
- (d) until the governing board has adopted its own rules of procedure the meetings shall be convened by the Commission;
- (e) the quorum of the governing board shall be constituted by the Commission, AENEAS and at least three ENIAC member States representatives.

Article 7

Executive Director

1. The Executive Director shall be the chief executive responsible for the day-to-day management of the ENIAC Joint Undertaking in accordance with the decisions of the governing board and its legal representative. He/she shall perform his/her tasks with complete independence and shall be accountable to the governing board. The executive director shall exercise, in respect of the staff, the powers laid down in Article 7(2) of this Regulation.

2. The Executive Director shall be appointed by the governing board for a period of three years, following a call for expression of interest published in the *Official Journal of the European Union* and in other publicly accessible periodicals or Internet sites. After an evaluation of the executive director's performance, the governing board may extend the term of office once for a further period of not more than four years.

3. The role and tasks of the Executive Director shall be:

- (a) to prepare the annual implementation plan referred to in Article 19(3) and the annual budget plan, in collaboration with the industry and research committee, and submit them to the governing board for approval, in accordance with Article 18;
- (b) to oversee the organisation and execution of all activities needed to carry out the annual implementation plan within the framework and the rules laid down by these statutes and subsequent decisions adopted by the governing board and the public authorities board;
- (c) to prepare the annual activity report and the annual accounts referred to in Article 19(4) and balance sheets as referred to in Article 18(5) and submit them to the governing board for approval;

- (d) to present proposals on the internal functioning of the ENIAC Joint Undertaking to the governing board for approval;
- (e) to present proposals on the rules of procedure for calls for proposals launched by the ENIAC Joint Undertaking, including the associated project proposal evaluation and selection process to the public authorities board for approval;
- (f) to manage the launch of calls for proposals, the process of evaluating and selecting project proposals and negotiating grant agreements for selected proposals, and the subsequent periodic monitoring and follow-up of projects within the mandate given by the public authorities board;
- (g) to conclude grant agreements for the implementation of the R & D activities as referred to in Articles 12 and 13, and service and supply contracts necessary for the operations of the ENIAC Joint Undertaking as referred to in Article 20;
- (h) to authorise all payments due by the ENIAC Joint Undertaking;
- (i) to establish and implement the necessary measures and actions for assessing the progress of the ENIAC Joint Undertaking towards achieving its objectives, including independent monitoring and auditing to assess the effectiveness and performance of the ENIAC Joint Undertaking;
- (j) to organise project reviews and technical audits for the assessment of research and development results, and to report to the governing board on the overall results;
- (k) to carry out financial audits, directly or through the national public authorities, on project participants as necessary, in compliance with the financial rules of the ENIAC Joint Undertaking;
- (l) to negotiate the conditions for accession of new members of the ENIAC Joint Undertaking, on behalf of and within the mandate of the governing board;
- (m) to carry out any other necessary action for the successful achievement of the ENIAC Joint Undertaking's objectives not provided for in the annual implementation plan referred to in Article 19(3), within any limits and conditions established by the governing board;
- (n) to convene and/or organise meetings of the governing board and of the public authorities board and to attend where appropriate these meetings as an observer;
- (o) to provide the governing board with any information requested by it;
- (p) to submit to the governing board his proposal(s) concerning the organisation structure of the Secretariat;
- (q) to perform risk assessment and risk management analysis and to propose to the governing board any insurance that it may be necessary for the ENIAC Joint Undertaking to take out in order to meet its obligations.

4. A secretariat under the responsibility of the executive director shall be established to provide support to all his/her tasks, including:

- (a) secretarial support for the bodies of the ENIAC Joint Undertaking;
- (b) operational support for evaluating proposals and monitoring projects, including support in organising calls for proposals and arranging for project reviews and technical audits;
- (c) establishment and management of an appropriate internal audit and accounting system;
- (d) financial tasks, including payments of financial contributions from the ENIAC Joint Undertaking to participants in projects;
- (e) support for communication activities such as public relations, publication and dissemination activities and organisation of events;
- (f) managing invitations to tender for ENIAC Joint Undertaking goods/services requirements according to the financial rules of the ENIAC Joint Undertaking.

5. Non-financial tasks of the secretariat may be contracted by the ENIAC Joint Undertaking to external service providers. Such contracts shall be established in accordance with the provisions of the financial rules of the ENIAC Joint Undertaking.

Article 8

Public authorities board

1. Composition, voting rights and decision-taking

- (a) The public authorities board shall consist of the public authorities of the ENIAC Joint Undertaking;
- (b) each public authority shall appoint its representatives and a lead delegate who shall hold the voting rights in the public authorities board;
- (c) one third of the voting rights in the public authorities board shall be assigned to the Community; the remaining two thirds shall be allocated to the other members of the public authorities board on an annual basis in proportion to their financial contribution to the activities of the ENIAC Joint Undertaking for that year in accordance with Article 11(6)(b) and with an upper limit for any given member of 50 % of the total voting rights in the public authorities board;
- (d) if less than three ENIAC Member States have communicated to the executive director their financial contribution according to Article 11(6)(b), the Community shall hold one third of the votes and the remaining two thirds shall be distributed equally amongst the ENIAC Member States;
- (e) decisions shall be taken by at least 60 % of total votes;

(f) the representative of the Community shall have a veto right on all issues concerning the use of its own contribution to the ENIAC Joint Undertaking;

(g) any Member State or associated country to the Framework Programme that is not a member of the ENIAC Joint Undertaking shall be able to participate in the public authorities board as an observer. These States shall receive all relevant public authorities board documents and shall be able to provide advice on any decision taken by the public authorities board.

2. Role and tasks

The public authorities board shall:

- (a) ensure that the principles of fairness and transparency are properly applied in the allocation of public funding to participants in projects;
- (b) discuss and approve the annual work programme referred to in Article 19(2) upon proposals from the industry and research committee, including the budgets available for calls for proposals;
- (c) approve the rules of procedure for calls for proposals, for the evaluation and selection of proposals and for monitoring of projects;
- (d) upon proposal of the representative of the Community, decide on the ENIAC Joint Undertaking financial contribution to the budget of the calls for proposals;
- (e) approve the scope and the launch of calls for proposals;
- (f) approve the selection of project proposals to receive public funding following calls for proposals;

(g) upon proposal of the representative of the Community, decide on the percentage of the ENIAC Joint Undertaking's financial contribution referred to in Article 13(6)(a) to participants in projects arising from calls for proposals in any given year;

(h) adopt its rules of procedure in accordance with paragraph 3.

3. Rules of procedure

- (a) the public authorities board shall meet at least twice a year, normally at the seat of the ENIAC Joint Undertaking;
- (b) the public authorities board shall elect its chairperson;
- (c) until the public authorities board has adopted its rules of procedure, the meetings shall be convened by the Commission;
- (d) the quorum of the public authorities board shall be constituted by the Commission and at least three ENIAC member States representatives.

Article 9

Industry and research committee1. *Composition*

- (a) AENEAS shall appoint the members of the industry and research committee;
- (b) the industry and research committee shall consist of no more than 25 members.

2. *Role and tasks*

The industry and research committee shall:

- (a) elaborate the draft multiannual strategic plan referred to in Article 19(1), including the content and update of the Research Agenda, and submit it to the governing board for approval;
- (b) prepare the draft annual work programme referred to in Article 19(2), including proposals for the content of calls for proposals to be launched by the ENIAC Joint Undertaking;
- (c) elaborate proposals regarding the technological, research and innovation strategy of the ENIAC Joint Undertaking;
- (d) elaborate proposals for activities regarding the creation of open innovation environments, promoting the participation of SMEs, developing standards transparently and with openness to participation, international cooperation, dissemination and public relations;
- (e) advise the other bodies on any issue related to planning and operating research and development programmes, fostering partnerships and leveraging resources in Europe in order to achieve the objectives of the ENIAC Joint Undertaking;
- (f) appoint working groups where necessary under the overall coordination of one or more members of the industry and research committee in order to achieve the above tasks;
- (g) adopt its rules of procedure in accordance with paragraph 3.

3. *Rules of procedure*

- (a) the industry and research committee shall meet at least twice a year;
- (b) the industry and research committee shall elect its chairperson;
- (c) until the industry and research committee has adopted its own rules of procedure, the meetings shall be convened by AENEAS.

Article 10

Internal auditing function

The functions entrusted by Article 185(3) of the financial Regulation to the Commission's internal auditor shall be carried out under the responsibility of the governing board, which shall make appropriate provision, taking into account the size and the scope of the ENIAC Joint Undertaking.

Article 11

Sources of financing

1. The activities of the ENIAC Joint Undertaking shall be jointly funded through financial contributions paid in partial instalments and in-kind contributions from its members to support the running costs and the R & D Activities.

2. All resources of the ENIAC Joint Undertaking shall be devoted to achieving the objectives laid down in Article 2 of this Regulation.

3. The resources of the ENIAC Joint Undertaking entered to its budget shall be composed of:

- (a) members' contributions to the running costs, except for those referred to in paragraph 5(c);
- (b) a Community contribution to fund the R & D activities;
- (c) any revenue generated by the ENIAC Joint Undertaking;
- (d) any other financial contributions and revenues.

Any interest yielded by the contributions paid by its members shall be considered to be revenue of the ENIAC Joint Undertaking.

4. Any legal entity that is not a member may make in-kind or cash contributions to the resources of the ENIAC Joint Undertaking under the terms and conditions negotiated by the executive director on behalf of and within the mandate granted by the governing board.

5. The running costs of the ENIAC Joint Undertaking shall be borne by its members:

- (a) AENEAS shall make a contribution of up to EUR 20 million or up to 1 % of the sum of the total cost of all projects, whichever figure is higher, but not exceeding EUR 30 million;
- (b) the Community shall make a contribution of up to EUR 10 million. If part of this contribution is not used it may be available for R & D Activities referred to in paragraph 6;
- (c) ENIAC Member States shall make in-kind contributions to the running costs by facilitating the implementation of projects and the granting of public funds as referred to in Articles 12 and 13;

(d) the contributions of the Community and AENEAS shall be made available in accordance with the provisions of the relevant annual budget plan referred to in Article 18. Partial instalments shall be provided on the basis of the Joint Undertaking's financial needs.

6. The R & D activities of the ENIAC Joint Undertaking shall be supported through:

(a) a financial contribution from the Community of up to EUR 440 million to finance projects which may be increased by any unspent part of the Community contribution referred to in paragraph 5(b);

(b) financial contributions from ENIAC Member States that shall amount in total to at least 1,8 times the Community's financial contribution. These financial contributions shall be paid to project participants according to the provisions of Articles 12 and 13. Every year, ENIAC member States shall communicate to the executive director by a date determined by the governing board their national financial commitments reserved for calls for proposals to be launched by the ENIAC Joint Undertaking taking into account the scope of the supported R & D activities addressed in the calls for proposals;

(c) in-kind contributions by R & D organisations participating in projects which shall be equal to their share of the necessary eligible cost of carrying out the projects as defined on the basis of the rules of the funding authorities issuing the grant agreements. Their overall contribution over the duration of the ENIAC Joint Undertaking shall be equal to or greater than the contribution of public authorities.

7. The financial contributions of the members to the ENIAC Joint Undertaking shall be paid through partial instalments in accordance with the provisions of the annual budget plan referred to in Article 18.

8. Any new member of the ENIAC Joint Undertaking other than Member States or associated countries shall make a financial contribution to the ENIAC Joint Undertaking.

9. Should any member of the ENIAC Joint Undertaking be in default of its commitments concerning its agreed financial contribution to the ENIAC Joint Undertaking, the executive director shall notify the member thereof in writing and shall set a reasonable period by which the default may be remedied. If the default is not remedied within the given period, the executive director shall convene a meeting of the governing board to decide whether the defaulting member's membership should be revoked or if any other measures should be taken until its obligations have been met.

10. The ENIAC Joint Undertaking shall own all assets generated by or transferred to it for the fulfilment of its objectives as described in Article 2 of this Regulation, unless otherwise specified.

Article 12

Implementation of R & D activities

1. The ENIAC Joint Undertaking shall support R & D activities through open and competitive calls for proposals, independent evaluation and selection of proposals, allocation of public funding to selected proposals, and the funding of projects.

2. The ENIAC Joint Undertaking shall conclude grant agreements with project participants for the implementation of the projects. The terms and conditions of these grant agreements shall be in accordance with the financial rules of the ENIAC Joint Undertaking and shall refer to and, where appropriate, rely on corresponding national grant agreements as referred to in Article 13(6)(b).

3. In order to enable the implementation of projects and the granting of public funds, the ENIAC Joint Undertaking shall establish administrative arrangements with the national entities designated by the ENIAC member States for that purpose, in line with the financial rules of the ENIAC Joint Undertaking.

4. Member States or associated countries that are not members of the ENIAC Joint Undertaking may conclude similar arrangements with the ENIAC Joint Undertaking.

5. The ENIAC Joint Undertaking shall set up the procedures for the supervision and control of the R & D activities, including provisions for monitoring and technical auditing of projects. The ENIAC Member States shall not require additional monitoring and technical audit reports other than those required by the ENIAC Joint Undertaking.

Article 13

Funding of projects

1. Public funding for projects selected following calls for proposals published by the ENIAC Joint Undertaking consist of the national financial contributions of the ENIAC Member States, and/or of the financial contribution of the ENIAC Joint Undertaking. Any public support under this initiative is without prejudice to the procedural and material State aid rules when applicable.

2. The following legal entities shall be eligible for receiving funding from the Community contribution to the R & D Activities of the ENIAC Joint Undertaking:

(a) legal entities established in the ENIAC Member States having concluded a grant agreement for such project with the corresponding national authority following the award procedures of the ENIAC Joint Undertaking;

(b) other legal entities established in Member States or associated countries that are not members of the ENIAC Joint Undertaking. In this case, such States or countries may establish administrative arrangements with the ENIAC Joint Undertaking to enable the participation of the companies and R & D organisations located within their territory.

In order to be considered eligible for Community funding, costs incurred in the implementation of R & D Activities shall be exclusive of value added tax.

3. The calls for proposals launched and published by the ENIAC Joint Undertaking shall specify the overall budget available for each call. This budget shall indicate the amounts committed at national level by each ENIAC Member State and the estimated amount of the ENIAC Joint Undertaking's financial contribution. The calls shall state the evaluation criteria in relation to the objectives of the call and any national or Joint Undertaking eligibility criteria.

4. The ENIAC Joint Undertaking's financial contribution to the budget for each call shall be equivalent to 55 % of the total amount committed by the ENIAC Member States, unless the public authorities board decides otherwise on a proposal from the representative of the Community.

5. Calls, evaluation and selection of proposals shall respect the following rules:

- (a) calls for proposals launched by the ENIAC Joint Undertaking shall be open to participants established in ENIAC Member States and in any other Member State or associated country. They shall be made public;
- (b) consortia of participants in project proposals submitted in response to these calls shall include at least three non-affiliated entities established in at least three ENIAC Member States. The prospective participants and their contribution to the project proposals shall be verified by the Joint Undertaking, on the basis of verifications provided by the respective public authorities, against the pre-defined national and Joint Undertaking eligibility criteria for funding. They shall be informed on their compliance, where possible before they submit a full project proposal. These checks shall not result in significant delays in the proposal evaluation and the selection process;
- (c) the evaluation and selection process carried out with the assistance of independent experts shall ensure that allocation of the ENIAC Joint Undertaking's public funding follows the principles of equal treatment, excellence and competition;
- (d) following the evaluation of proposals, the public authorities board shall establish a ranked list of proposals on the basis of clear evaluation criteria and their collective contribution towards achieving the objectives of the call;
- (e) the public authorities board shall decide on the selection of proposals and the allocation of public funding to selected proposals up to the limit of the budgets available, taking into account any national eligibility criteria and the verifications carried out in accordance with point (b). This decision shall also be binding for ENIAC Member States without any further evaluation or selection processes.

6. Funding of projects

- (a) the financial contribution of the ENIAC Joint Undertaking to participants in projects shall be provided at a percentage of the total costs, defined when appropriate by the respective funding authorities issuing the grant agreements, incurred for implementing the project. This percentage shall be determined on a yearly basis by the ENIAC Joint Undertaking and be up to 16,7 %. This percentage shall be equal for all participants in projects arising from any given call for proposals;
- (b) ENIAC Member States shall establish grant agreements with participants in projects in accordance with their national rules, in particular as regards eligibility criteria and other necessary financial and legal requirements. When applicable, national financial contributions from ENIAC Member States shall be disbursed directly to participants in projects according to the national grant agreements. ENIAC Member States shall undertake best efforts to synchronise the terms and conditions and the establishment of grant agreements and to disburse their financial contributions in a timely manner.

Article 14

Financial commitments

The financial commitments of the ENIAC Joint Undertaking shall not exceed the amount of financial resources available or committed to its budget by its members.

Article 15

Financial revenues

Except when the ENIAC Joint Undertaking is wound up pursuant to Article 25, any excess revenue over expenditure shall not be paid to the members of the ENIAC Joint Undertaking.

Article 16

Financial year

The financial year shall correspond to the calendar year.

Article 17

Financial implementation

The Executive Director shall implement the budget of the ENIAC Joint Undertaking.

Article 18

Financial reporting

1. Every year, the Executive Director shall present to the governing board a preliminary draft annual budget plan containing a forecast of annual expenditure for the following two years and including the staff establishment plan. Within this forecast, the estimates of revenue and expenditure for the first of those two years shall be drawn up in such detail as is necessary for the internal budgetary procedure of each member regarding its financial contributions to the ENIAC Joint Undertaking. The executive director shall supply the governing board with all supplementary information needed for this purpose.

2. The members of the governing board shall communicate to the executive director their comments on the preliminary draft annual budget plan and in particular on the estimates of resources and expenditure for the following year.

3. Taking into account the comments received from the members of the governing board, the Executive Director shall prepare the draft annual budget plan for the following year in collaboration with the industry and research committee and submit it to the governing board for approval.

4. The annual budget plan and the annual implementation plan, referred to in Article 19(3), for a particular year shall be adopted by the governing board of the ENIAC Joint Undertaking by the end of the previous year.

5. Within two months of the closure of each financial year, the annual accounts and balance sheets for the preceding year shall be submitted by the executive director to the governing board for approval. The annual accounts and balance sheets for the preceding year shall be submitted to the Court of Auditors and the Commission.

Article 19

Planning and reporting

1. The multiannual strategic plan shall specify the strategy and plans for achieving the objectives of the ENIAC Joint Undertaking, including the Research Agenda.

2. The annual work programme shall describe the scope and budget of calls for proposals needed to implement the Research Agenda for a particular year.

3. The annual implementation plan shall specify the plan for the execution of all the activities of the ENIAC Joint Undertaking for a particular year, including planned calls for proposals and actions needing to be implemented through calls for proposals. The annual implementation plan shall be presented by the executive director to the governing board together with the annual budget plan referred to in Article 18.

4. The annual activity report shall present progress made by the ENIAC Joint Undertaking in each calendar year, in particular in relation to the multiannual strategic plan and the annual implementation plan for that year. It shall also include information on the participation of SMEs in Joint Undertaking's R & D Activities.

The annual activity report shall be presented by the executive director together with the annual accounts and balance sheets.

5. Once approved by the governing board, a publishable version of the multiannual strategic plan, the annual implementation plan and the annual activity report shall be made available.

Article 20

Service and supply contracts

The ENIAC Joint Undertaking shall set up all the appropriate procedures and mechanisms for the implementation, supervision and control of service and supply contracts concluded where necessary for the operations of the ENIAC Joint Undertaking, according to the provisions of its financial rules.

Article 21

Liability of members, insurance

1. The ENIAC Joint Undertaking shall not be responsible for meeting the financial obligations of its members. It shall not be liable for any ENIAC member State failing to meet its obligations resulting from calls for proposals launched by the ENIAC Joint Undertaking.

2. The members are not liable for any of the ENIAC Joint Undertaking's obligations. The financial liability of the members is an internal liability towards the ENIAC Joint Undertaking only, and is limited to their commitment to contribute to the resources as set out in Article 11(3).

3. Notwithstanding the financial contribution due to project participants pursuant to Article 13(6)(a), the financial liability of the ENIAC Joint Undertaking for its debts is limited to the contributions that the members have made to the running costs as set out in Article 11(3)(a).

4. The ENIAC Joint Undertaking shall take out and maintain appropriate insurance.

Article 22

Conflict of interests

The ENIAC Joint Undertaking shall avoid any conflict of interest in the implementation of its activities.

Article 23

Intellectual property policy

1. The following rules governing the protection, use and the dissemination of research results are based on Regulation (EC) No 1906/2006 and shall ensure that, where appropriate, intellectual property generated in R & D Activities under this Regulation is protected, and that research results are used and disseminated.

The objective of the intellectual property policy as laid down in this Article is to promote the creation of knowledge and its exploitation, to achieve fair allocation of rights, to reward innovation, and to achieve broad participation of private and public entities in projects.

2. For the purposes of this Article:

- (a) 'information' means any drawings, specifications, photographs, samples, models, processes, procedures, instructions, software, reports, papers, or any other technical and/or commercial information, know-how, data or documents of any kind, including oral information, other than 'Intellectual Property Rights';
- (b) 'Intellectual Property Rights' (IPR) means any intellectual property rights, including patents, utility models and utility certificates, industrial design rights, copyrights, trade secrets, database rights, topographies of semiconductor products' rights, as well as any registrations, applications, divisions, continuations, re-examinations, renewals or reissues of any of the foregoing, excluding trademarks and trade names;
- (c) 'background information' means any information which is owned or controlled by a project participant on the effective date of the corresponding project agreement, or in respect of which ownership or control is acquired by a project participant as a result of activities outside the framework of the project;
- (d) 'background IPR' means any IPRs which are owned or controlled by a project participant on the effective date of the corresponding project agreement, or in respect of which ownership or control is acquired during the term of the corresponding project agreement as a result of activities outside the framework of the project;
- (e) 'background' means background information and background IPR;
- (f) 'foreground information' means any information that is generated as a result of the activities conducted within the framework of a project concerned, as specified in the corresponding project agreement;
- (g) 'foreground IPR' means any IPRs that are generated as a result of the activities conducted within the framework of the project concerned as specified in the corresponding project agreement;

- (h) 'foreground' means foreground information and foreground IPR; background needed for the purposes of the project and, where appropriate, may agree to exclude specific background.
- (i) 'access right' means non-exclusive licenses and user rights to foreground or background, which rights shall not include the right to sublicense unless otherwise agreed upon in the project agreement;
- (j) 'needed' means 'technically essential' for the implementation of the project and/or in respect of use of foreground and, where IPRs are concerned, shall mean that those IPRs would be infringed if the access rights were not granted;
- (k) 'use' means the developing, creating and marketing of a product or process for creating and providing a service as may be further defined in the applicable project agreement;
- (l) 'dissemination' means 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;
- (m) 'project agreement' means an agreement between project participants setting forth all or part of the terms and conditions that apply between them regarding a specific project, such as a project consortium agreement, which agreement shall include without limitation access rights in accordance with this Article;
- (n) 'transfer conditions' means financial conditions that have a value lower than fair and reasonable conditions, normally the cost of making the access rights available.
3. Without prejudice of Community competition rules, the intellectual property arrangements in projects shall be governed by the following principles:
- 3.1. *Ownership*
- 3.1.1. The ENIAC Joint Undertaking shall own any tangible and intangible assets created with its own resources or transferred to it for the implementation of the ENIAC Joint Undertaking, unless otherwise specified.
- 3.1.2. Notwithstanding the provisions above, the ENIAC Joint Undertaking shall not retain any information or IPR created in projects.
- 3.1.3. Each participant in a project remains the owner of its background. Participants may define the background needed for the purposes of the ENIAC Joint Undertaking project in a written project agreement and, where appropriate, may exclude specific background.
- 3.1.4. Foreground arising from work carried out under projects shall be the property of the participant(s) carrying out the work generating that foreground according to the arrangements described in the grant and project agreements and the principles laid down in this Article.
- 3.2. *Access rights*
- 3.2.1. Project participants may decide to grant broader access rights than required by this Article. Project participants may define the
- 3.2.2. Access rights to background shall be granted to other participants in the same project if such background is needed by those other participants to carry out their own work in the project, provided that the owner is entitled to grant such rights. Access rights shall be granted on transfer conditions to be agreed by the project participants concerned, unless otherwise agreed by all participants in the project agreement.
- 3.2.3. Access rights to foreground shall be granted to other participants in the same project if such foreground is needed by those other participants to carry out their own work in the project. Such access rights shall be granted on a royalty-free non-exclusive and non-transferable basis.
- 3.2.4. Participants in the same project shall enjoy access rights to background if this is needed for the use of their own foreground of that project, provided that the owner of the background is entitled to grant them. Such access rights shall be granted on a non-exclusive, non-transferable basis on fair, reasonable and non-discriminatory conditions.
- 3.2.5. Participants in the same project shall enjoy access rights to foreground if this is needed for their own use. Such access rights shall be granted on a non-transferable non-exclusive basis either royalty-free or on fair, reasonable and non-discriminatory conditions.
- 3.2.6. Subject to the agreement of all the owners concerned, access rights to foreground for the purposes of pursuing further research activities shall be granted to a third party on fair and reasonable conditions to be agreed.
- 3.3. *Protection, use and dissemination*
- 3.3.1. Where foreground is capable of being profitably exploited, its owner (i) shall provide for its appropriate and effective protection, having due regard to its own and other participants' legitimate interests in the project concerned, particularly commercial interests, and (ii) shall use it or ensure that it is used.
- 3.3.2. Each participant shall ensure that the foreground of which it has ownership is disseminated without undue delay.
- 3.3.3. All dissemination activities shall be compatible with the protection of IPR, confidentiality obligations, and the legitimate interest of the owners of the foreground.
- 3.3.4. Prior notice of any dissemination activity regarding foreground, background or confidential information owned by other participants in the same project or other data or information that is amalgamated with the other participants' foreground, background or confidential information, shall be given to the other participants. Within 45 days following such notification, any of those participants may object in writing if its legitimate interests in relation to its foreground or background may be harmed by such

dissemination. In such cases, the dissemination activity shall not take place unless appropriate steps are taken to safeguard those legitimate interests.

3.3.5. All publications, patent applications filed by or on behalf of a participant, or any other dissemination relating to foreground shall include a statement that the foreground concerned was generated with financial support from the ENIAC Joint Undertaking. All dissemination activities shall be compatible with the protection of intellectual property rights, confidentiality obligations, and the legitimate interest of the owners of the foreground.

3.4. *Transfer*

3.4.1. Where a participant transfers ownership of foreground, it shall pass on its obligations regarding such foreground to the transferee including the obligation to pass those obligations on to any subsequent transferee. These obligations shall include those relating to the granting of access rights, and dissemination and use.

3.4.2. Subject to its obligations concerning confidentiality, where a project participant is required to pass on its obligations to provide access rights, it shall give at least 45 days' prior notice to the other participants of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the foreground to permit the other participants to exercise their access rights. Following notification, any other participant may object within 30 days or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its access rights. Where any of the other participants demonstrate that their access rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between participants concerned.

3.5. Project participants in the same project shall conclude among themselves a project agreement that shall lay down the intellectual property arrangements in compliance with this Article.

Article 24

Amendments to the statutes

1. Any member of the ENIAC Joint Undertaking may make an initiative for amending the statutes to the governing board.

2. The initiatives referred to in paragraph 1, as approved by the governing board, shall be submitted as draft amendments to the Commission who shall adopt them, as appropriate.

3. However, any amendment affecting the essential elements of these statutes, and in particular amendments to Articles 3, 4, 6, 7, 11, 13, 21, 24 and 25 thereof, shall be adopted in accordance with Article 172 of the Treaty.

Article 25

Winding up

1. At the end of the period provided for in Article 1(1) of this Regulation, or following an amendment pursuant to Article 11(2) of this Regulation, the ENIAC Joint Undertaking shall be wound up.

2. The winding-up procedure shall be automatically triggered if the Commission withdraws from the ENIAC Joint Undertaking.

3. For the purpose of conducting the proceedings involved in liquidating the ENIAC Joint Undertaking, the governing board shall appoint one or more liquidators, who shall comply with the decisions of the governing board.

4. When the ENIAC Joint Undertaking is being wound up, it shall return to the host State any physical support item made available by the host State in accordance with the host agreement referred to in Article 17 of this Regulation.

5. When any physical asset has been dealt with as provided for in paragraph 4, any further assets shall be used to cover the liabilities of the ENIAC Joint Undertaking and the costs relating to its winding-up. Any surplus shall be distributed among the members existing at the time of the winding-up in proportion to their actual contribution to the ENIAC Joint Undertaking. Any surplus distributed to the Community shall be returned to the Commission budget.

6. Remaining assets shall be distributed to the members existing at the time of the winding-up in proportion to their actual contribution to the ENIAC Joint Undertaking.

7. An ad hoc procedure shall be set up to ensure the appropriate management of any grant agreement and service and supply contract concluded by the ENIAC Joint undertaking, with a duration longer than the duration of the ENIAC Joint Undertaking.