

**COMMISSION REGULATION (EC) No 2897/95**  
**of 15 December 1995**

**on the implementation of Article 1 of Council Decision 94/762/EC concerning the rules for the dissemination of the research results from the specific programmes of research, technological development and demonstration of the European Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 94/762/EC of 21 November 1994 concerning the rules for the dissemination of the research results from the specific programmes of research, technological development and demonstration of the European Community<sup>(1)</sup>, and in particular Article 2 thereof,

Whereas, in Decision No 1110/94/EC<sup>(2)</sup> the European Parliament and the Council adopted the fourth framework programme for Community research and technological development for the period 1994 to 1998, which states that the rules governing the dissemination of results are to be determined in a separate Council decision according to Article 130j of the Treaty;

Whereas such rules have been adopted in the form of Decision 94/762/EC; whereas Article 1 of that Decision sets out the rules applicable to the dissemination and exploitation of knowledge gained from specific research, technological development and demonstration (RTD) programmes adopted in accordance with Article 130i (4) of the Treaty and Article 2 (1) of the same Decision;

Whereas, under the terms of the introductory paragraph of Article 1 of Decision 94/762/EC, the rules set out therein are applicable while respecting pre-existing rights;

Whereas the 20th subparagraph of Annex III to Decision No 1110/94/EC states that the dissemination activities must be consistent and coordinated, which implies not only centralized management (as the third activity) but also dissemination arrangements within the specific programmes under the first activity; whereas such activities are to be developed within the legal framework set out by the Council through adoption of the rules governing dissemination of the know-how acquired under the specific programmes and the other arrangements for implementing the framework programme;

Whereas the Treaty states in its Article 130f that the Community shall have the objective of strengthening the

scientific and technological basis of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other chapters of the Treaty;

Whereas shared-cost contracts have become the predominant means of implementing the Community's specific programmes of research and technological development, and account for the greatest portion of the total financing allocated for the entire framework programme;

Whereas under these contracts work is often carried out by several partners from both industry and the scientific world, working in cooperation to implement one or more research and technological development projects and having ownership of the results, since the Community does not generally involve itself directly in the work carried out under contracts of this kind;

Whereas the increasing number of these multi-partner projects and the industrial component in various programmes has necessitated the adoption of harmonized contractual clauses concerning the dissemination and exploitation of knowledge in connection with research and development contracts concluded by the Commission; whereas account must be taken of the results of this contractual practice, particularly in view of the large number of contracts and partners involved and the rights which they have established;

Whereas the arrangements created through this contractual practice were taken up in Council Decision 92/272/EEC<sup>(3)</sup> and Commission Regulation (EC) No 1990/94<sup>(4)</sup> adopting the dissemination and exploitation rules for the third framework programme; whereas the same are basically consistent with the rules set out in Article 1 of Decision 94/762/EC;

Whereas the Council and the Commission adopted on 26 June 1992 a joint declaration on the negotiating approach in respect of intellectual property aspects of scientific and

<sup>(1)</sup> OJ No L 306, 30. 11. 1994, p. 5.

<sup>(2)</sup> OJ No L 126, 18. 5. 1994, p. 1.

<sup>(3)</sup> OJ No L 141, 23. 5. 1992, p. 1.

<sup>(4)</sup> OJ No L 200, 3. 8. 1994, p. 4.

technical agreements between the Community and third countries, which underlines the need to safeguard the interests of the parties to such agreements and to encourage the adoption of international standards;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Decision 94/762/EC,

HAS ADOPTED THIS REGULATION :

#### *Article 1*

1. This Regulation adopts the arrangements for implementing the rules laid down in Article 1 of Decision 94/762/EC. It shall apply to knowledge resulting from the implementation of these programmes through work undertaken direct by or financed wholly by, the Community, or work undertaken under a shared-cost contract. It shall also apply to the information concerning and relevant to such knowledge.

2. For the purposes of this Regulation :

- (1) 'knowledge' means results and inventions, whether patentable or not, obtained either directly by the Community through its own research means, or in the execution of a research and technological development contract concluded between the Community and third parties ;
- (2) 'background information' means information, excluding knowledge, and any rights related to such information, held by any contractor in the same, or related, fields of research under his or her shared-cost contract ;
- (3) 'contractor' means any party which has concluded a shared-cost contract with the Community, and any affiliate of any party as defined in that contract ; it shall also include, where applicable, the Community, where the latter not only funds but actually carries out part of the work under a shared-cost contract, alongside and in a similar manner to the relevant co-contractors ;
- (4) 'co-contractor' means the parties having concluded the same shared-cost contract with the Community ;
- (5) 'project' means one or several shared-cost contracts where the tasks covered are technically interdependent, and which the parties to those contracts agree to consider as such under contractually defined conditions ;

(6) 'programme' means any of the programmes mentioned in paragraph 1 ;

(7) 'commercial conditions' means open market payment and other conditions ;

(8) 'preferential conditions' means conditions that have a value lower than commercial conditions ;

(9) 'transfer conditions' means conditions that have a value lower than preferential conditions, normally the cost of making licences and user rights available.

#### *Article 2*

1. Knowledge resulting from work under a shared-cost contract shall be owned by the contractors who carry out the work.

2. When two or more contractors undertake work under a shared-cost contract, they shall come to an agreement between themselves on the allocation of ownership rights over the knowledge concerned.

3. If, under the applicable rules, the persons employed or engaged by the parties to a shared-cost contract may claim rights over the knowledge, the contractors shall take appropriate steps or reach agreement so as to ensure that such rights may be exercised in a manner compatible with the proper fulfilment of their obligations under such shared-cost contract pursuant to this Regulation.

#### *Article 3*

1. Contractors shall ensure that knowledge belonging to them which could be used in an industrial or commercial application and whose nature justifies such a measure is protected to the extent required in the interests of the Community and of the contractors themselves and in accordance with any applicable legal or contractual obligation.

2. At the request or with the consent of the contractors the Commission may, to the extent required in the interests of the Community and the said contractors, take adequate steps to protect the knowledge in a country of its choice, if the contractors are unable or unwilling to secure such protection on their own behalf of the knowledge belonging to them. In such an event the Commission shall take upon itself such obligations regarding the granting of licences for the use or exploitation of the knowledge in the country concerned as would have been assumed by the contractors had they protected the knowledge on their own behalf, and the contractors concerned shall be granted a non-exclusive licence in that country, under such conditions as may be set out in the shared-cost contract.

*Article 4*

1. Contractors participating in the same project shall, on a royalty-free basis, make available and grant licences and user rights to each other, in respect of knowledge, to the extent necessary for the proper implementation of the work carried out under their respective shared-cost contracts.

2. Subject to Article 16, the knowledge generated by any contractor shall be made available to other contractors participating in the same programme and necessary user rights and licences shall be granted on transfer conditions, to the extent required for the execution of such other contractor's own research and technological development work under their shared-cost contracts, provided that suitable arrangements required by the contractor are concluded to ensure that the knowledge will not be used for any other purpose than that for which it was supplied.

The same conditions shall apply to contractors who are taking part in other programmes in associated fields or with related objectives and who are established in the Community and engaged in research and technological development activities there, provided that their shared-cost contracts place the contractors under an obligation to grant equivalent access to their own knowledge.

3. Any person established in the Community engaged in research and technological development activities there shall be entitled to request, on preferential conditions, any licences or user rights concerning the knowledge which are necessary for the conduct of his or her research and technological development activities in fields identical or related to that covered by the shared-cost contract through which the knowledge is obtained.

There shall be no refusal to grant such licences and user rights other than for reasons stipulated in the shared-cost contracts, namely the major business interests of the contractors or the interests of the Community. The granting of such licences and user rights may, however, be refused if the owner of the knowledge or any of his licensees has taken or is taking adequate steps to exploit or commercialize the knowledge in the Community.

4. The Community shall, at its request and for research and technological development work in pursuance of Community policies conducted by its Joint Research Centre for direct action activities in accordance with Community framework programmes (namely its institutional non-competitive work) and conducted by joint

undertakings or any other structure set up on the basis of Article 130n of the Treaty, be granted a royalty-free non-exclusive licence for the use of the knowledge for research purposes, but shall keep such knowledge confidential and not be entitled to grant sub-licences.

*Article 5*

1. The contractors shall be required to develop, exploit or commercialize the knowledge which they own, or to have it developed, exploited or commercialized within a contractually agreed period, in accordance with the Community's interests and taking account of:

- the objective of strengthening the international competitiveness of Community industry,
- economic and social cohesion in the Community,
- the needs of other Community policies in support of which the RTD activities are carried out, and
- the existence of scientific and technical cooperation agreements between the Community and third countries, or international organizations.

The Commission may, with the consent of the contractors concerned, take steps to encourage the use or exploitation of this knowledge in accordance with the interests of the Community.

2. All contractors taking part in the same project shall be entitled to exploit or commercialize knowledge resulting from that project and to have granted to them any licences and user rights regarding such knowledge which are necessary for the purposes of exploitation or commercialization. Such licences and user rights shall not confer the right to grant sub-licences except with the formal consent of the owner of the knowledge, and no fee shall be payable for them, unless the shared-cost contracts stipulate other appropriate terms and exploitation arrangements based on the nature of the project and on the specific requirements of products generated by it, the commercial or non-commercial role of each contractor and its contribution to the project.

3. Subject to Article 16, each shared-cost contract shall specify the circumstances under which other contractors taking part in the same programme may have granted to them user rights and licences covering the knowledge resulting from that contract which are necessary for the exploitation or commercialization of the knowledge obtained under their project in the same programme on preferential conditions.

The same conditions shall apply to contractors who are taking part in other programmes in associated fields or with related aims and are established in the Community and engaged in research and development activities there, provided that their shared-cost contracts place the contractors under the obligation to provide equivalent access to their own knowledge on favourable conditions.

4. Any person established in the Community who has a legitimate interest in obtaining rights or licences to exploit or commercialize the knowledge shall be entitled to request that such rights or licences be granted to him or her on commercial conditions unless the owner of the knowledge or his or her licensees have taken adequate steps to exploit or commercialize the knowledge, or to have it exploited or commercialized, within the agreed period.

Subject to Article 16, there shall be no refusal to grant the licences or user rights mentioned in paragraph 3 and in this paragraph other than for reasons stipulated in the shared-cost contracts, namely the major business interests of the contractors or the interests of the Community, provided that such business interests do not improperly restrict the exploitation and commercialization of the knowledge in the Community. The granting of such licences and user rights may namely be refused when they relate to products, or the manufacture thereof, or to services, which are or are about to become commercially available.

#### *Article 6*

1. The specific arrangements for giving effect to the rights and obligations pursuant to Articles 4 and 5, particularly regarding its duration, shall be laid down in the shared-cost contracts.

2. When concluding subcontracts or associated contracts as defined in their shared-cost contract, contractors shall ensure, through the inclusion of appropriate clauses, that both the provisions of this Regulation and their contractual obligations towards the Community are respected.

3. Where the rate of Community funding significantly deviates from the general rule (50 %) or where such deviation is required by the particular nature of the project, the shared-cost contracts may provide terms and conditions for making the knowledge available, other than those set out in Articles 4 and 5.

#### *Article 7*

All contractors shall use reasonable care and diligence to determine the extent to which the knowledge is or may

be subject to contractual, regulatory or legal limitations, obligations or restrictions that might limit or affect the dissemination of the knowledge and background information and thus substantially impede the smooth running of the project or the exploitation and commercialization of the knowledge obtained through the project.

They shall inform their co-contractors and other parties to the project, either before signing the shared-cost contract or without delay after work on the project has commenced, to enable the latter to assess the impact of the limitations, obligations and restrictions in question, according to a procedure to be set out in the shared-cost contracts.

#### *Article 8*

1. Knowledge resulting from work undertaken direct by, or financed wholly by, the Community shall be owned by the Community unless if otherwise provided in the relevant programme decision or contractual agreement.

2. The Commission shall ensure that knowledge belonging to the Community which could be used for an industrial or commercial application and whose nature justifies such a measure is protected to the extent required by the interests of the Community and in accordance with any applicable legal or contractual obligation.

3. Knowledge belonging to the Community shall be made available to the contractors and to interested third parties established in the Community who need the knowledge for their research and technological development work or who undertake to exploit it in conformity with the Community's interests. Such provision of knowledge may be subject to appropriate conditions, particularly concerning the payment of fees.

#### *Article 9*

1. Every shared-cost contract shall specify conditions under which, at the request of the parties concerned and on payment of an appropriate fee, the background information held by a contractor may be made available to other contractors participating in the same project.

Within the same project, background information shall be made available and related user rights granted where and to the extent that such are necessary for the performance of the requesting party's research and technological development work under that project and the contractor holding the background information is free to disclose it and to grant the related user rights.

2. The shared-cost contracts shall also specify the conditions for making available, on payment and at the request of other contractors participating in the same programme or in programmes in associated fields or with related aims, background information which is necessary for the use of the knowledge made available in accordance with Article 4 (2) and (3). Such conditions shall in particular take into account any restrictions on the diffusion or the availability of background information, as well as the legitimate interests of its holder.

#### *Article 10*

1. The Commission shall publish general information on the aims, total estimated cost and financial contribution from the Community, duration of research and technological development work undertaken, together with general information on the progress to date and the results achieved by projects carried out under the programmes. The official designation of the bodies carrying out the work defined in the shared-cost contract shall also be published, together with the names of the laboratories involved, unless the contractors forbid this on justified industrial or commercial grounds when that contract is signed.

When providing for such publication, the Commission shall respect the confidentiality of commercially sensitive information.

2. The contractors shall agree with the Commission on the specific procedures for the publication of knowledge or any information of a quality and interest which warrant wide dissemination, provided that there are no objections to publication on the grounds of legitimate commercial interests, protection of intellectual property rights or the confidential nature of the knowledge and information. They are required to provide the Commission with the information for publication as specified in paragraph 1.

Subject to Article 3, a contractor may, for academic purposes, publish knowledge which it solely owns, provided the Commission and the co-contractors have been provided with a copy of the intended publication and have raised no written objections on justified industrial or commercial grounds within one month of its receipt.

#### *Article 11*

1. The contractors shall inform the Commission of the results of research and technological development work, shall state whether and to what extent they intend to have their intellectual property rights protected, and shall subsequently report on the action taken in this respect.

2. On completion of the research and technological development work undertaken under the shared-cost

contracts, the contractors shall, within a contractually agreed period, provide the Commission with a dissemination plan setting out their intentions regarding dissemination and exploitation of the results, and subsequently report on the action taken in this respect.

3. The Commission and the contractors concerned shall define to the full extent required a policy for the restricted and confidential dissemination of the reports concerning knowledge gained through the execution of the shared-cost contracts to the governments of the Member States, taking account of the major commercial interests of both the said contractors and the interests of the Community.

4. With the explicit agreement of the contractors concerned, the Commission may communicate the reports referred to in paragraphs 1, 2 and 3 confidentially to a non-member country or international organization under a convention or agreement concerning the exchange of information concluded between the Community and the country or organization in question.

#### *Article 12*

1. At the request of persons or bodies established in the Community and having a legitimate interest in accordance with the principles of this Regulation, the contractors shall provide them with all appropriate information on the existence of knowledge and the intellectual property rights relating to such knowledge.

The Commission may inform these persons and bodies of the existence of this knowledge and those rights, to the extent that such knowledge and rights are explicitly mentioned provided pursuant to Article 10 (2).

2. The Commission may communicate confidentially to other Community institutions the reports mentioned in Article 11 (3), to the extent properly required by them.

#### *Article 13*

1. Without prejudice to Article 10 and subject to conditions to be specified in the shared-cost contracts, the Commission and the contractors shall respect the confidential nature of the facts, information, knowledge, documents and other elements communicated to them confidentially, where disclosure could be prejudicial to one or the other of the parties.

2. When disclosing confidential information, pursuant to this Regulation, the Commission and the contractors shall require the recipient to keep the information confidential and to use it only for the purpose for which it was disclosed.

*Article 14*

For the entire duration of their shared-cost contract, and for a further two years following its expiry or termination, contractors shall, subject to Article 13, give reasonable and appropriate notification to standardization bodies of knowledge obtained under that shared-cost contract which may contribute to the development of European or international standards. The Commission shall inform the contractors as far as possible of any standardization work under way or planned.

*Article 15*

All communications or publications concerning progress to date or the results of work carried out under a shared-cost contract, including such communications or publications as are made in connection with seminars or conferences, must make appropriate mention of the programme under which the work was done or the results were obtained, and of the aid provided by the Community.

*Article 16*

1. If persons established in a third country are entitled to take part in work under a programme, the shared-cost contracts will specify the terms of access to knowledge for such persons, on the basis of mutual advantage, taking account of the relevant provisions of any applicable agreements, the nature of project and the scale of their participation in the programme in question.

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

Done at Brussels, 15 December 1995.

2. Specific contractual arrangements shall give effect to the principles applicable to the participation of States having concluded with the Community an agreement associating them with a programme or part of a programme, so as to ensure in particular compliance with the provisions of such agreement concerning dissemination, evaluation and exploitation of knowledge in the framework of the relevant programme or part of a programme.

3. In specific cases involving certain programmes centred on geographically-restricted areas of cooperation or economic development aid, provisions may be included in the programmes and contracts concerned, authorizing the dissemination of appropriate information or the communication of certain knowledge to recipients not covered by agreements with the Community on scientific and technological cooperation. The specific arrangements for such dissemination shall be laid down in agreement with those possessing the knowledge concerned.

*Article 17*

This Regulation shall not affect any provision contained in decisions adopting specific programmes which is intended to set out in more detail, to supplement or to subject to conditions or limitations the rules laid down in Article 1 of Decision 94/762/EC.

*Article 18*

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

*For the Commission*

Édith CRESSON

*Member of the Commission*

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