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(Information)

COURT OF AUDITORS

OPINION No 1/2006

on the proposal for a regulation of the European Parliament and of the Council 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 to 2013)

(pursuant to Article 248(4), second subparagraph, EC)

(2006/C 203/01)

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THE EUROPEAN COURT OF AUDITORS,

Having regard to the Treaty establishing the European Community, and in particular Article 248(4) and Article 279 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 160C(4) and Article 183 thereof,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, and in particular Article 183 thereof,

Having regard to Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 ⁽²⁾ amending Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 ⁽³⁾,

Having regard to the Community Framework for State Aid for Research and Development ⁽⁴⁾ and to Article 8 of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures ⁽⁵⁾,

Having regard to the Commission 'Proposal for a regulation of the European Parliament and of the Council 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 to 2013)' ⁽⁶⁾, hereinafter 'Rules for Participation',

Having regard to the Commission's request for an opinion on this proposal in the citations of the 'Rules for Participation',

Having regard to the European Parliament's request for an opinion on this proposal, which was submitted to the Court of Auditors on 2 March 2006,

Whereas, pursuant to Article 163(1) of the Treaty establishing the European Community, the Community shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of the Treaty;

⁽¹⁾ OJ L 248, 16.9.2002 (as amended by OJ L 25, 30.1.2003).

⁽²⁾ OJ L 201, 2.8.2005, p. 3.

⁽³⁾ OJ L 357, 31.12.2002, p. 1.

⁽⁴⁾ OJ C 45, 17.2.1996, p. 5.

⁽⁵⁾ OJ L 336, 23.12.1994, p. 156.

⁽⁶⁾ COM(2005) 705 final.

Whereas, pursuant to Article 164 of the Treaty establishing the European Community, the Community shall carry out the following activities, complementing the activities carried out in the Member States:

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of Community research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in Community research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the Community;

Whereas, pursuant to Article 167 of the Treaty establishing the European Community, for the implementation of the multiannual framework programme the Council shall determine the rules for the participation of undertakings, research centres and universities and lay down the rules governing the dissemination of research results;

Whereas Article 274 of the Treaty establishing the European Community makes the Commission responsible for the implementation of the budget, having regard to the principles of sound financial management;

Whereas, in the area of the specific programmes referred to in Article 164(a) and Article 166(3) of the Treaty establishing the European Community, the budget can be implemented within a framework of direct and indirect centralised management by the Commission, in accordance with Articles 53(2) of the Financial Regulation applicable to the general budget of the European Communities and Articles 36 and 37 of its Implementing Rules;

Whereas, in its Opinion No 2/2004 ⁽⁷⁾, the Court outlined the principles of an integrated internal control framework, on the basis of which internal controls should be designed to provide reasonable assurance that revenue and expenditure are raised and spent in accordance with the legal provisions in force and managed in accordance with the principles of sound financial management;

Whereas the Court concluded in its Special Report No 1/2004 ⁽⁸⁾ that the rules for setting the Community's financial participation in the RTD framework programmes should be reviewed from first principles, with the aim of eliminating unnecessary complexity in the forthcoming Seventh Framework Programme so as not to compromise effective and adequate control over expenditure,

⁽⁷⁾ OJ C 107, 30.4.2004, p. 1. See also the Commission's action plan towards an Integrated Internal Control Framework, COM(2006) 9 final, 17.1.2006 (in particular Action No 1 in Annex 1).

⁽⁸⁾ OJ C 99, 23.4.2004, p. 1.

HAS ADOPTED THE FOLLOWING OPINION:

INTRODUCTION

Main features of the Commission proposal for 'Rules for Participation'

1. The legal base of the Seventh Framework Programme is:

- a Decision of the European Parliament and of the Council concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities and of the Council concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011) — Building the Europe of knowledge ⁽⁹⁾, hereinafter 'the Decision',
- a number of Council Decisions concerning the Specific Programmes ⁽¹⁰⁾, i.e. 'Cooperation' (collaborative research ⁽¹¹⁾), joint technology initiatives and technology platforms as well as coordination between national programmes), 'Ideas', 'People' and 'Capacities', for the actions of the Joint Research Centre, and for nuclear research and training activities under the European Atomic Energy Community (Euratom) Treaty,
- a Regulation of the European Parliament and of the Council 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, hereinafter the 'Rules for Participation', and a Regulation of the Council for such actions under the Euratom Treaty.

2. The Commission's proposal for the 'Rules for Participation' essentially retains the framework that was established for previous RTD framework programmes, with the exception of:

- certain aspects related to the setting up of a European Research Council (ERC) to allocate Community funding for investigator-driven 'frontier' research actions (see whereas (4a), Article 1(6) and Article 9. See also the Decision, Annex III a) 4. Individual projects),

⁽⁹⁾ See Commission proposal COM(2005) 119 final.

⁽¹⁰⁾ See Commission proposals COM(2005) 439 final, COM(2005) 440 final, COM(2005) 441 final, COM(2005) 442 final, COM(2005) 443 final, COM(2005) 444 final, COM(2005) 445 final, 21.9.2005.

⁽¹¹⁾ The Commission proposal organises collaborative research into nine sub-programmes: 'Health', 'Food, agriculture and biotechnology', 'Information and communication technologies', 'Nanosciences, nanotechnologies, materials and new production technologies', 'Energy', 'Environment (including climate change)', 'Transport (including aeronautics)', 'Socioeconomic sciences and the humanities', and 'Security and Space'.

- the award of a grant to the European Investment Bank (EIB) to fund a 'Risk Sharing Finance Facility', which is to contribute to the provisioning and capital allocation for the EIB's loan and guarantee financing for European RTD actions (see whereas (23) and Article 53. See also the Decision, Annex III b).

3. Besides this, the Commission proposal focuses on achieving greater simplification with regard to the systems for financial management and control, in particular through:

- the use of lump sums, flat rates and scales of unit cost to simplify the reimbursement of eligible costs (see Article 30),
- the establishment of a single cost system together with an increase in upper funding limits (see Article 33),
- the setting up of a 'Guarantee fund' to cover the financial risk of carrying out indirect RTD actions (see Article 38).

4. In the Explanatory Memorandum of the 'Rules for Participation', the Commission proposes a number of additional measures, such as the introduction of remote evaluation, electronic submission of proposals and the establishment of a unique registration system and helpdesks at the Commission and the National Contact Points (NCPs) to ensure a more efficient administration of the Seventh Framework Programme. However, in the Commission proposal these measures are not specified. Unless they are referred to in the legal base, there is no guarantee that they will be implemented (see amendments proposed by the Court to Article 15(1b), Article 16(3a) and Article 17a).

The Court's Opinion

5. In its opinion, the Court pays particular attention to the consequences of the measures proposed by the Commission in terms of achieving sound financial management of the indirect actions funded under the Seventh Framework Programme (2007 to 2013). It also takes into account previous resolutions of the European Parliament and the Council, notably in the discharge procedure concerning the financial year 2003 ⁽¹²⁾ and the 2006 general budget ⁽¹³⁾. The Court's observations in this opinion also

⁽¹²⁾ Commission staff working paper, 'Follow-up on the discharge for implementing the European Union budget for the financial year 2003: Council recommendations No. 5665/05' (COM(2005) 448 final, 19.9.2005) and European Parliament recommendations — Wynn report (COM(2005) 449 final, 19.9.2005).

⁽¹³⁾ In its amendment 740, the European Parliament placed 10 % of the appropriations in budget reference line 02 01 02 11 'other management expenditure' in reserve, which are to be released once the Commission has demonstrated satisfactory effort to simplify and make more effective its procedures in line with the recommendations made in the Court's Special Report No 1/2004.

refer, in some instances, to the Commission proposal for the 'Decision' concerning the Seventh Framework Programme, and in particular its Annex III defining the different funding schemes (see whereas (1)).

6. When the proposal regarding the 'Rules for Participation' was adopted by the Commission in December 2005, the current series of modifications of the Financial Regulation and its Implementing Rules, which will take effect in 2007, had still only been adopted in part by the Council (see whereas (2)). Under these circumstances, and in view of the observations made in its Opinion No 10/2005⁽¹⁴⁾, the Court considers it impossible to determine whether this sectoral regulation will comply with the general principles and detailed provisions of a revised Financial Regulation.

7. By analogy, the Court's observations and conclusion set out in this opinion should also apply to the Commission proposal for a 'Regulation of the Council determining the rules for the participation of undertakings, research centres and universities and laying down the rules for the dissemination of research results for the implementation of the European Atomic Energy Community (Euratom) Seventh Framework Programme (2007 to 2011)'⁽¹⁵⁾.

8. Detailed suggestions on how to amend the Commission proposal in view of this opinion are set out in the **Annex**.

GENERAL OBSERVATIONS

Commission's proposal misses opportunity for a radical change

9. The European Union's RTD framework programmes are the world's largest multinational research programmes in terms of funding and participation. They account for a significant part of public funding for research projects both within Member States and Associated Countries. For many public research entities, such as universities, they are often one of the main sources of third-party funding.

10. Several thousand legal entities participate in each RTD framework programme, using a considerable variety of distinct types of indirect actions. Most of these are multi-partner actions carried out by a consortium of several participants. For each indirect action the Commission concludes contracts or grant agreements with each of the participants, with most agreements granting only a comparatively low financial contribution from the Community budget. As the Court's audits have revealed, the consequence of this large variety of actions and the substantial number of individual grants is a considerable transaction cost per euro spent⁽¹⁶⁾.

11. Moreover, participants have indicated to the Court that they consider Community grants to be excessively cumbersome to administer, in particular in the absence of appropriate guidance by the Commission. Preparing proposals and gathering participants for a consortium is a costly and time-consuming exercise, in particular in view of the low average success rate. Participants also complain that the Commission's procedures for awarding grants take too long and that the use of Community funds is insufficiently flexible to take account of the rapid changes in science. As a result, the most innovative research projects are often not submitted to the European RTD framework programmes.

12. Whilst it is recognised that a certain degree of complexity is inevitable, the Court considers that the Commission proposal misses the opportunity to bring about radical changes to the administrative and financial rules for the Seventh Framework Programme. In the Court's view, the following general principles should guide the legislator when adopting the legal base for the Seventh Framework Programme:

- research is driven by the scientific knowledge and expertise of individual researchers. Like most beneficiaries of public funds, researchers have a preference for funding with the least bureaucratic strings attached. They consider that only such flexible grants allow them to carry out the most promising research, and, in such cases, they are more likely to develop the sense of ownership which is required to succeed. To ensure this essential 'buy-in' by the research community, the Seventh Framework Programme should therefore aim for a more flexible use of the Community grants by the consortia implementing indirect actions,
- with this in mind, the consortia must also be given the means to react speedily to external and internal changes during the lifecycle of a project. This implies that the decision-taking powers of the co-ordinator will have to be strengthened. The co-ordinator should carry the scientific and financial responsibility and must be able to decide not only on the scientific programme, but also on the allocation of financial resources in accordance with a set of rules previously agreed by all participants in a consortium. At the same time, the co-ordinator must guarantee towards the Commission that the scientific scope and the legally required European character of the action are maintained throughout the project duration. In practice, this should imply that a participant can only be replaced by entities of an equivalent research capacity and scientific standing,
- the counterpart of increased flexibility must be enhanced scientific and financial accountability towards the Commission, both for on-going indirect actions and after their completion. This should however not imply excessive reporting to the Commission, but instead should be based on a peer review

⁽¹⁴⁾ OJ C 13, 18.1.2006. See paragraph 12.

⁽¹⁵⁾ COM(2006) 42 final, 7.2.2006.

⁽¹⁶⁾ See Special Report No 1/2004, paragraphs 74, 78 and 79.

mechanism, possibly through hearings. Based on the results of such reviews, the Commission should have the possibility to discontinue non-performing indirect actions so that public money is not wasted.

In the Court's view, the 'Rules for Participation' should reflect the assumption that researchers participating in the European RTD framework programmes can be trusted to put public money to its best use, provided this remains within the limits established by the legal base to ensure effective and adequate control by the Commission. When determining these controls, it should however be acknowledged that the risk of failure is an inherent feature of all research activities.

Key proposals to achieve further flexibility and simplification for participants

13. In line with the above, and following-up recommendations made by the Court on previous occasions, this opinion identifies a number of areas where the Commission proposal may not be sufficient to achieve the required flexibility and simplification for participants in the Seventh Framework Programme. Of these areas the following are considered most relevant:

- organising a centralised and *ex-ante* verification of legal entities (see paragraphs 34 to 36),
- requiring the Commission services to use common databases and to exchange data electronically (see paragraphs 41 to 42),
- applying a more flexible governance structure for indirect actions, with the Commission concluding a grant agreement with the coordinator acting on behalf of the other participants, or with the Commission awarding, by Commission decision, a grant without signing a private law contract (see paragraphs 45 to 55),
- using reviews (or hearings), ideally by peers, as a monitoring tool for indirect actions (see paragraph 56),
- providing for a single cost reimbursement system which allows participants to determine the Community financial contribution in a transparent, robust and simple-to-administer way (see paragraphs 63 to 70), and
- encouraging the use and the dissemination of results of indirect actions and the transfer of ownership (see paragraphs 82 to 84).

SPECIFIC OBSERVATIONS

Compliance with interinstitutional arrangements on legal drafting

14. The readability of this Regulation could be improved if all relevant definitions were grouped in Article 2, 'Definitions' ⁽¹⁷⁾. In order to avoid confusion and proliferation of differing definitions, the wording of definitions should only be changed as compared to previous RTD framework programmes if a change in substance is really intended.

Commission's obligation to monitor compliance with state aid rules for research and development

15. According to Articles 87 and 88 of the Treaty, the Commission is responsible for keeping under constant review all systems of aid existing in the Member States, since, as a matter of principle, State aid is prohibited (see *whereas* (3)). With regard to the ceilings laid down in paragraph 5.12 of the 'Community Framework for State Aid for Research and Development', this specifies: '*Where Community financing and State aid are combined, total official support may not exceed 75 % in the case of industrial research and 50 % in the case of pre-competitive development activities*' (see also paragraphs 72 and 73).

16. The Specific Programme 'Capacities' explicitly provides for the funding of public and private 'research infrastructures' under the Seventh Framework Programme. Furthermore, Annex III of the 'Decision' states that the financing of such infrastructures will combine funding from the RTD framework programme and other EU (notably the Structural Funds) and national instruments ⁽¹⁸⁾. As evidenced by the Court's audits, the Commission's existing mechanisms to monitor overall levels of State aid in respect of research and development are inadequate for ensuring compliance with the thresholds defined in the 'Community Framework for State Aid for Research and Development' for activities co-funded under the Seventh Framework Programme. In addition, as referred to in a previous Court opinion concerning Structural Actions ⁽¹⁹⁾, the Commission no longer has detailed information on the implementation of those activities under

⁽¹⁷⁾ In the Commission's proposal, several definitions are given in other articles of the 'Rules for Participation' (e.g. the definition of dissemination, access rights or use in Article 1 or of legal entity in Article 4), some of which are however not fully consistent with their use in the other parts of the legal base (e.g. the proposed definition of indirect action in Article 1). In other cases, the terms are used in the legal base, but the definition is missing (such as for instance the definition of investigator-driven frontier research projects in Article 9, coordinator in Article 23 and Article 25, receipts in Article 31).

⁽¹⁸⁾ In the case of participation of entities from the candidate countries, Annex III states that an additional contribution from the pre-accession financial instruments could be granted under similar conditions.

⁽¹⁹⁾ See Court opinion No 2/2005, paragraphs 10 and 11.

shared management for which national or regional authorities are responsible, such as the financing of research projects, support for innovation and technology transfer or research infrastructures. As already referred to by the Court in an opinion concerning the Financial Regulation⁽²⁰⁾, the Commission should pay close attention to the potential risks arising from the accumulation of different grants from the Community budget for a single action. Therefore the Court recommends that the Commission develops appropriate monitoring tools to ensure compliance with State aid rules in cases of funding of research activities from multiple sources.

Applicability of the 'Rules for Participation' to activities funded within the framework of the European Research Council (ERC)

17. According to the Commission proposal, the European Research Council (ERC) will act as an advisory body, supplemented by an executive agency to provide an administrative structure, in accordance with Council Regulation No 58/2003 of 19 December 2002⁽²¹⁾. The Court agrees with the Commission that the 'Rules for Participation' should also apply to activities funded within the framework of the ERC⁽²²⁾ to ensure that the same principles apply to all types of Community funding for the different schemes established in Annex III a) of the 'Decision'. The Court also considers that the proposed structure will provide sufficient assurance that the ERC's scientific autonomy will be guaranteed, and that its management structure can be agreed and implemented sufficiently quickly⁽²³⁾. The Court however recommends that the applicability of the 'Rules for participation' should be made explicit in the legal base (see whereas (4a) and Article 1).

Distinction between internal control and external audit

18. The Court's rights as the external auditor of the European Union derive directly from Article 248(2) of the Treaty, and the Court, as the external auditor of the Commission, should not be considered as an element of internal control. Therefore, the different mechanisms of internal control and external audit should be clearly separated in the 'Rules for Participation'⁽²⁴⁾ (see whereas (16)).

⁽²⁰⁾ See Court Opinion No 10/2005, paragraphs 46 to 47.

⁽²¹⁾ OJ L 11, 16.1.2003, p. 1.

⁽²²⁾ See the 'Decision', Annex III a) 4. Individual projects.

⁽²³⁾ When entrusting the ERC's executive agency with the executive powers the Commission enjoys under the Treaties, the provisions of Article 54 of the Financial Regulation are to apply. In particular, the implementing tasks delegated must be clearly defined and fully supervised (see also paragraph 40).

⁽²⁴⁾ For the different roles of external audit and internal control, see also the Court's proposal for an integrated internal control framework as described in the Court's Opinion No 2/2004.

19. Furthermore, the Court recommends the insertion of references to Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests⁽²⁵⁾, to Regulation (EC, Euratom) No 2185/1996⁽²⁶⁾ concerning on-the spot checks and inspections carried out by the Commission, and to Regulation (EC) No 1073/1999⁽²⁷⁾ and Regulation (Euratom) No 1074/1999⁽²⁸⁾ concerning investigations conducted by the European Anti-Fraud Office (OLAF). It should be noted that these Regulations apply to the Commission only (see whereas (15), whereas (16) and Article 19(8a)).

Chapter I: Introductory provisions (Article 1 to Article 3)

Clarification of definition of 'indirect action' required

20. The Implementing Rules of the Financial Regulation require in 'whereas' (38) that the types of direct and indirect actions which may be financed by the Community are to be specified. In the Court's view, however, the definition of 'indirect action' given in Article 1 is not entirely accurate, since not only funding schemes identified in Annex III a) of the 'Decision' are to be covered by this Regulation. With regard to the those funding schemes established in Annex III b), the Commission proposes however that only grants to the EIB are to be covered by this Regulation.

21. In the past the Court identified a risk that normal public procurement procedures might be circumvented by the use of indirect RTD actions. This, in turn, can also make it difficult to verify the Commission's compliance with the ceiling imposed on the administrative expenditure for each programme⁽²⁹⁾. The Court therefore recommends clarification in Article 2 of the definition of 'indirect action', spelling out the different forms that an indirect action may take in accordance with the Financial Regulation, i.e. grants, scholarships and prizes, honoraria, and subscriptions, but also public procurement⁽³⁰⁾ (see Article 1, Article 2(12), Article 13(1), Article 14 and Article 53). Similarly Annex III of the 'Decision' should be amended accordingly⁽³¹⁾ (see also paragraph 27). Otherwise, the legal base could create

⁽²⁵⁾ OJ L 312, 23.12.1995, p. 1.

⁽²⁶⁾ OJ L 292, 15.11.1996, p. 2.

⁽²⁷⁾ OJ L 136, 31.5.1999, p. 1.

⁽²⁸⁾ OJ L 136, 31.5.1999, p. 8.

⁽²⁹⁾ See Special Report No 1/2004, paragraphs 18 and 78.

⁽³⁰⁾ See Article 160 of the Financial Regulation (Article 229(3) of the Implementing Rules).

⁽³¹⁾ The final sentence in section a) 3. 'Coordination and support actions' reads as follows: 'These actions may also be implemented by means other than calls for proposals'. This should be replaced by 'In addition to grants, and in accordance with the applicable provisions of the Financial Regulation and its Implementing Rules, these actions may also be implemented by: public procurement for goods or services established by contract and selected on the basis of calls for tender; study, research or training scholarships and prizes following contests; subscriptions to organisations; or honoraria for independent experts'.

an ambiguous situation as to which provisions apply to the different forms of indirect actions, in particular in respect of public procurement.

Chapter II: Participations (Article 4 to Article 38)

Section 1: Minimum conditions (Article 4 to Article 12)

Minimum conditions for participation to be clarified

22. In the Court's view, a large number of participants in consortia often means unnecessary bureaucracy and an excessive administrative burden. This is particularly the case for the co-ordinators of 'Integrated Projects' and 'Networks of Excellence' ⁽³²⁾. It is therefore recommended that the 'Rules for Participation' clarify that the principle of efficient implementation should be a key consideration, in particular in those cases where the number and types of participants exceed the minimum legal requirements (see whereas (9)).

23. The Commission's proposal for the minimum legal requirements for the number of independent legal entities participating in indirect actions and their place of establishment is, or could be interpreted as, overly restrictive. The Court recommends that these conditions should be more clearly described (see Article 5 and Article 7).

24. Moreover, the Commission should clarify in Article 10 the conditions to be met by sole participants in indirect actions. In particular, it should be clarified whether this provision applies to European Economic Interest Groups (EEIG) and international European interest organisations only, or whether it also covers other types of legal entities.

Absence of provisions to guarantee the portability of ERC funding

25. According to the Commission proposal, grant agreements will in principle be signed with legal entities, not individual researchers. In contrast to other parts of the Seventh Framework Programme, grants for investigator-driven 'frontier' research within the framework of the ERC are awarded to fund the research activities of a specific researcher or research team. This poses the problem of ensuring that a grant for investigator-driven 'frontier' research can be transferred if a specific researcher moves to another research organisation (see Article 9(2)).

⁽³²⁾ See also the Court's proposal for a simplified governance structure of consortia carrying out multi-partner indirect actions (see paragraphs 45 to 52).

26. In the Court's view, this could be dealt with in the grant agreements signed by the Commission and the legal entity employing the researcher(s) or in the Commission decision awarding the grant. These documents could include a clause specifying that the award of the grant is conditional upon a specific researcher working at this legal entity, and that, if this specific researcher moves to another organisation established in a Member State or Associated country, the grant will also be transferred, if so requested by the researcher and subject to successful verification and certification of the new participant's operational and financial capacity by the Commission (see paragraphs 34 to 36).

Section 2: Procedures (Article 13 to Article 28)

Lack of clarity in rules applicable to Community funding by means other than grants awarded on the basis of calls for proposals

27. In the Commission's proposal, Annex III of the 'Decision' provides for exceptions to the use of grants in accordance with Article 160 of the Financial Regulation (Article 229(3) of the Implementing Rules). These exceptions cover all Community funding made by means other than grants, including grants awarded on the basis of calls for proposals, namely:

- public procurement for goods or services established by contract and selected on the basis of calls for tender,
- study, research or training scholarships and prizes following contests ⁽³³⁾,
- subscriptions to organisations,
- honoraria for independent experts.

28. These exceptions, which by default are subject to the rules set out in the Financial Regulation, should be clearly enumerated in the 'Decision', Annex III a) 3. 'Coordination and support actions' (see Footnote 31) and in Article 14 of the 'Rules for Participation' (see also paragraph 21). Furthermore, the Court recommends that the Commission identifies which provisions of the Financial Regulation are applicable for each of the exceptions referred to in Article 14 and also clarifies the extent to which other provisions of this Regulation do not apply.

⁽³³⁾ However, a specific provision for scholarships and prizes is missing in the Commission proposal for Article 14 (see also Article 30(1)).

Horizontal selection and award criteria not specified in 'Rules for Participation'

29. In the Court's view, the selection and award criteria defined in the Commission proposal for the Specific Programmes do not serve as a robust basis for carrying out evaluations (see for instance Article 6(3) of the Specific Programme 'Cooperation' ⁽³⁴⁾). As a consequence, these criteria and their application will have to be specified at a later stage in the (annual) work programmes for each of the Specific Programmes, without a possibility for the European Parliament to contribute to their definition.

30. In the interest of more coherent and transparent rules, the Court would prefer that horizontal selection and award criteria for the evaluation of proposals are spelled out in this Regulation. These horizontal criteria could then be complemented in the Specific Programmes or the work programmes.

31. Moreover, with regard to the evaluation principles and selection and award criteria specified in Article 15, the Court recommends that provision should be made for:

- specific criteria for investigator-driven 'frontier' research funded within the framework of the ERC (see also the Decision, Annex III a) 4. Individual projects),
- remote evaluations (i.e. decentralised at the place of work of evaluators) as a means to attract high-calibre evaluators to participate and to speed up evaluations, as referred to in the Explanatory Memorandum,
- the exclusion of proposals at any time, including during the negotiation phase (taking place after the evaluation procedure), if they contravene fundamental ethical principles.

Implementing rules and procedures to be established and adopted by the Commission

32. The Court agrees with the proposal that the Commission should establish more specific rules and procedures governing the different steps leading to the award of grants and the use of independent experts. To avoid unnecessary bureaucracy, these rules and procedures should adequately take into account the differences between individual funding mechanisms and types of indirect actions. Moreover, in the Court's view, such rules must

⁽³⁴⁾ See Proposal for a Council Decision concerning the Specific Programme 'Cooperation' (COM(2005) 440 final, 21.9.2005, Article 6(3): *The work programme will specify the criteria on which proposals for indirect actions under the funding schemes shall be evaluated and projects selected. The criteria will be those of excellence, impact and implementation and within this framework additional requirements, weightings and thresholds may be further specified or complemented in the work programme.*

be adopted by the Commission, as a body, to make them binding on all Commission services implementing the Seventh Framework Programme and published in the interests of transparency ⁽³⁵⁾ (see whereas (13)).

33. Moreover, in contrast to the Commission proposal, the Court recommends that such rules should cover the negotiation phase, which takes place after selection of proposals on the basis of a comparative assessment by independent experts and prior to the award of a grant ⁽³⁶⁾ (see Article 16 and Article 17(4a)). The rules should ensure that the scientific scope is not changed by the Commission during the negotiation, unless recommended by the evaluation outcome.

Centralised and ex-ante verification and certification of legal entities recommended

34. Similarly, the Court agrees with the proposal that the Commission should establish more specific rules and procedures for the verification of the existence, legal status and operational and financial capacity of participants in the RTD framework programmes (see whereas (14) and Article 16a). When doing this, care should be taken that the request for documents and the related checks to be made are in proportion to the financial risk involved. Similarly, allowance must be made for the capacity of certain legal entities (such as public bodies or SMEs) to produce the requested information. The Court considers that such rules should be adopted by the Commission as a body to establish a common framework and to make them binding on all Commission services (and executive agencies) implementing the Seventh Framework Programme. However, in order to be fully in line with the Financial Regulation, provision must be made for the Commission to ascertain their existence and legal status, but also to verify participants' operational and financial capacity.

35. Almost all legal entities taking part in the RTD framework programmes participate in several indirect actions, often administered by different Commission services. As evidenced by the Court's audits, this often implies that the same information is requested over and over again. Therefore, the Court recommends

⁽³⁵⁾ See also Special Report No 1/2004, paragraphs 88, 92 and 128.

⁽³⁶⁾ Note that the term 'selection' refers to the Commission drawing up, on the basis of the evaluation results, a list of proposals that have passed the minimum thresholds of the evaluation (possibly with a reserve list in the event that some additional funding becomes available during the negotiation period) and the list of the proposals to be rejected (ineligible, those which have not attained the minimum thresholds of the evaluation, those which cannot be funded because of budget limits).

that a centralised *ex-ante* verification system should be set up. Such a system should allow for verification to be carried out independently of the evaluation of proposals⁽³⁷⁾. In the Court's view the following general principles should be applied:

- the verification should be based on appropriate supporting documents provided by the legal entity, allowing its existence and legal status as well as its financial and operational capacity to be verified,
- these documents must be up-dated periodically, or whenever requested by the Commission⁽³⁸⁾, by the legal entity,
- to avoid double verification, the Commission should certify a successful verification, such a certificate then being acknowledged as sufficient by all Commission services (and the executive agencies) implementing the Seventh Framework Programme for all proposals submitted by the same legal entity until further notice.

36. By doing this, the Commission would establish a common framework contributing to a consistent and coherent approach to risk assessment by sub-delegated Authorising Officers, in accordance with Article 118 of the Financial Regulation (Article 182 of the Implementing Rules). In turn, this should have the effect of limiting the need for bank guarantees. In addition, the proposed modification will ensure a coherent approach within the Commission, avoiding unnecessary bureaucracy for participants in the RTD framework programme and speeding up the negotiation of selected proposals. The establishment of a central database as part of such a verification system would also be more effective in protecting the Communities' financial interest (see whereas (20) and Article 16a).

Awarding of grants based on Commission decision

37. Starting in 2002, the Commission has introduced a series of measures to simplify the procedures leading to the award of a grant under the RTD framework programmes⁽³⁹⁾. In particular, by means of empowerment, the Commission, as a body, delegated the necessary decision-making powers to specific Members of the Commission, with further subdelegation to the Directors-General. For the Seventh Framework Programme, the Commission proposes a further simplification of the award procedure for grants, according to which a Commission decision would no longer be required (see Article 16(8)).

⁽³⁷⁾ Special Report No 1/2004, paragraphs 92 and 122.

⁽³⁸⁾ Note that as a starting point, the Commission could establish a first set of supporting documentation using its archive of those documents requested from all legal entities which have participated under previous RTD framework programmes.

⁽³⁹⁾ Special Report No 1/2004, paragraph 66.

38. The Court considers, however, that grants should be awarded on the basis of Commission decisions since, according to the Financial Regulation⁽⁴⁰⁾, the use of the Commission decision procedure is a pre-condition for agreeing on negotiated flat rates for indirect costs, established according to the usual cost accounting practices of the participant, over and above the 7 % established by the Financial Regulation (see paragraphs 69 and 70).

Clarification of the rules governing independent experts

39. Independent experts are used by the Commission to evaluate and monitor proposals for indirect actions, on-going actions, and the design, implementation and results of the framework programmes and their Specific Programmes. Therefore, in the Court's view, a reference to 'monitoring activities' must be added in Article 17 to be consistent with the proposal in Article 27.

40. Given the specificity of ERC funding, the Court recommends inserting a special clause in Article 17 concerning the nomination of experts to evaluate proposals for investigator-driven 'frontier' research. In the Court's view, this should be the responsibility of the ERC's 'Scientific Council', or its competent subcommittees. Such a different approach would not only distinguish ERC funding from those parts of the framework programme managed directly by the Commission, but it would also clarify the responsibility of the 'Scientific Council' in the selection of proposals (see also paragraph 17).

Use of common databases and electronic exchange of data to be specified in the 'Rules for Participation'

41. In the Court's view, the Commission's IT systems should permit computerised transaction processing at every stage of the procedure⁽⁴¹⁾. Despite its longstanding commitment to implementing such a system, the Commission has consistently failed to do so⁽⁴²⁾.

42. Therefore, the Court recommends specifying the obligation to set up integrated databases and a common computerised system in the 'Rules for Participation' (see Article 17a). In this context, the Court welcomes the intention of the Commission to provide for electronic submission and a unique registration facility⁽³⁷⁾, as stated in the Explanatory Memorandum, and recommends that this provision should be included in the 'Rules for Participation' (see Article 16 and Article 17a).

⁽⁴⁰⁾ See Article 117 of the Financial Regulation (Article 181 of the Implementing Rules).

⁽⁴¹⁾ These stages include in particular: electronic proposal submission, identification and selection of experts, proposal evaluation and selection, negotiation of proposals, the award and management of grants, the receipt of project deliverables (such as reports and financial statements) and communication with participants.

⁽⁴²⁾ Special Report No 1/2004, paragraphs 86 and 138; Court's Annual Report concerning the financial year 2004, paragraph 6.10.

Model grant agreements should take account of specificities in funding arrangements

43. In view of the extremely diverse nature of the funding schemes proposed in Annex III of the 'Decision', the Court recommends establishing specific model agreements for the different types of RTD activities and indirect actions (see Article 19).

44. Moreover, in line with Article 17(4), which provides for adoption by the Commission of the model appointment letters for independent experts, the Court considers that the 'Rules for Participation' must provide for a formal adoption of the specific model grant agreements by the Commission to ensure consistency throughout the Commission services ⁽⁴³⁾.

Overly complicated governance structure for indirect actions

45. Since the beginning of the European RTD framework programmes, the Community has used private law contracts (or grant agreements) to establish a legal relationship between participants in an indirect action and the Commission. Initially, the intention behind this approach was to strengthen the coordination between legal entities from different countries and to further multi-national cooperation. This has led, however, to a situation where participants consider themselves to be contractors for the Commission or where the Commission is seen as an active partner in the consortium. This has also created a '*de facto*' veto right for each participant in an indirect action, which in practice often results in the loss of the flexibility required for successful research.

46. In the Court's view, it should not be the Commission's role to be directly involved in managing individual indirect actions. Such an interpretation of the Commission's role significantly contributes to the burdensome 'red tape' deplored by many stakeholders in the RTD framework programmes. It should be the responsibility of each consortium to define its internal decision-making structure according to its specific needs and of the individual participants to agree with each other on all relevant issues concerning the management of the indirect action.

47. The Court therefore suggests a simplified governance structure for consortia carrying out indirect actions, in line with previous proposals ⁽⁴⁴⁾. In the Court's view, the specific rights and obligations of each individual participant towards any other participant in the consortium should be defined in the consortium agreement or, where necessary, any other written agreement. Furthermore, with regard to the grant award, the Court considers that the Commission should conclude a grant agreement with the coordinator, acting on behalf of the other participants (see Article 23).

⁽⁴³⁾ Special Report No 1/2004, paragraph 111.

⁽⁴⁴⁾ Special Report No 1/2004, paragraph 115.

48. The current Commission proposal has as a major drawback in that the information contained in the grant agreement is specific to individual participants, thereby unnecessarily complicating the management of grants and multiplying the need for amendments in case of changes in participation. Furthermore, according to the Commission proposal, all participants are party to the grant agreement concluded with the Commission, thereby giving each participant a '*de facto*' veto right.

49. Therefore the Court recommends modifying Article 19 so that only elements essential for the indirect action as a whole are covered by the grant agreement, such as:

- duration,
- scientific and technical obligations,
- the budget of total estimated costs,
- the maximum Community contribution.

All other aspects, including the financial aspects specific to individual participants, should be defined in the consortium agreement. As a consequence, the consortium agreement would have to be concluded after the negotiation of a selected proposal, but prior to the signature of the grant agreement or the award of a grant by Commission decision (see Article 23 and Article 24(2)).

50. According to the Commission proposal, it is unclear how, legally speaking, the participants accede to the grant agreement. In particular, it is not clear how the grant agreement can enter into force unless all participants have empowered (i.e. mandated) the coordinator prior to the signature of the grant agreement. In the alternative structure proposed by the Court, this agreement between the coordinator and the participants (empowering the coordinator to act as a legal representative for the other participants and to conclude a legally binding grant agreement on their behalf) would be laid down in the consortium agreement.

Rights and obligations between the participants, in accordance with the grant agreement, to be established in the consortium agreement

51. In line with the above, it should be clarified in the 'Rules for Participation' that the grant agreement is not the sole source of rights and obligations in respect of participations, but that the consortium agreement may add rights and obligations concerning relations between the participants themselves (see Article 24). In particular, and in accordance with the model grant agreement, consortium agreements should establish:

- provisions regarding legal representation, internal organisation of the consortium, confidentiality arrangements and the settlement of internal disputes, including the withdrawal, removal or exchange of participants,

- all detailed financial aspects specific to individual participants including the distribution of the budget of estimated costs, the distribution of the maximum Community financial contribution, the forms of grants used and provisions regarding the reporting and calculating of costs for each of the participants,
- additional rules on ownership of foreground generated by the indirect action, transfer of such ownership, access rights and dissemination and use, including intellectual property rights arrangements.

52. The Court recommends that the Commission should establish specific model consortium agreements, thereby providing a common standard. However, consortia should be free to adapt this model to their needs. In contrast to model grant agreements, a formal adoption of the model consortium agreements by the Commission is therefore not considered necessary (see Article 24(3)). However, the Commission should provide information, support and training, possibly during the negotiation phase, on how to set up such consortium agreements.

Coordinators should have the possibility to subcontract their administrative and management activities

53. Given the complexity of administrative arrangements under the RTD framework programmes, some legal entities (including those who are the main participants from a scientific point of view) do not wish to take over the role of coordinator. This is in particular true for public universities and SMEs which often lack the necessary administrative support structures. In the Court's view, the coordinator should therefore have the possibility to subcontract administrative and management tasks to external service providers, subject to the other participants agreeing to such an externalisation in the consortium agreement (see Article 25(3))⁽⁴⁵⁾.

Changes in the composition of a consortium to be made in a fair, transparent and competitive manner

54. In the Court's view, while it is recognised that legal entities which join an on-going action should be selected in a fair, transparent and competitive manner, the requirement to publish 'competitive calls'⁽⁴⁶⁾ will be both overly costly and time-consuming to organise. In practice it would be unmanageable for most consortia to change their composition by applying such a

procedure. The Court therefore recommends deletion of Article 26(3). However, in the Court's view, the obligation to select legal entities which join an on-going action in a fair, transparent and competitive manner should be stated in the model grant agreements (see Article 19(1a)).

55. Only in those cases where the scientific scope and the legally required European character of the action is put at risk by a change in the composition of the consortium, should the Commission have the right to object to such a change. In all other cases this should remain the responsibility of the legal entities participating in the indirect action (see Article 26(4)).

The use of reviews as a monitoring tool for indirect actions to be explicitly provided for in the 'Rules for Participation'

56. The Court recommends clarifying the Commission's legal obligation to monitor indirect actions and programme implementation, also regarding previous RTD framework programmes (see also Article 7 of the Decision)⁽⁴⁷⁾. In the Court's view, the Commission's monitoring activity should explicitly provide for reviews (or hearings) as an alternative monitoring approach (see Articles 19(4) and 27(2)). Moreover, such reviews could be used when the possible termination of an action or of the participation of a specific legal entity has to be assessed (see Article 18(5)). As for the nomination of experts to evaluate proposals (see paragraph 40), the Court considers that the monitoring of investigator-driven 'frontier' research funded within the framework of the ERC should be the responsibility of its 'Scientific Council', or its competent subcommittees (see Article 27(6)).

Results of programme monitoring activities to be presented to a programme committee composed of representatives of Member States

57. As evidenced by the Court's audits, Programme Committees play an important role in monitoring the RTD framework programmes. Therefore the Court considers that the 'Rules for Participation' should state that the results of the Commission's programme monitoring activities, including those regarding previous RTD framework programmes, are to be presented to a programme committee composed of representatives of Member States, in accordance with Article 202 of the Treaty establishing the European Community (see whereas (17) and Article 27).

⁽⁴⁵⁾ These subcontracted services could then be reimbursed by the Commission according to the rates defined for 'management and training' activities, as provided for in Article 33(4).

⁽⁴⁶⁾ The term 'competitive call' has already been used in the Sixth Framework Programme, but was not legally defined. Since then the Commission has provided informal guidelines on how to carry out such a 'competitive call' (generally speaking a procedure similar to a 'call for proposal'). No information has been provided by the Commission on the number of cases in which such a procedure has actually been carried out so far.

⁽⁴⁷⁾ Special Report No 1/2004, paragraph 62.

Section 3: Community financial contribution (Article 29 to Article 38)

Court welcomes proposals to simplify financing systems

58. The Court welcomes proposals to simplify financing systems⁽⁴⁸⁾. The Commission, however, should clarify in the 'Rules for Participation' for which types of actions, forms of grants, specific activities and types of costs (i.e. direct or indirect), flat rate financing, including scale of unit costs, or lump sum financing will be applied. In the Court's view, the legal base must be explicit in this respect, thereby providing legal certainty for participants with regard to the financial rules from the beginning of the Seventh Framework Programme (see Article 30).

Lump sums for whole actions to be used only where appropriate

59. Given the scale of most indirect actions, the Court considers that lump sums are appropriate for clearly defined work packages within each project, possibly linked to the achievement of specific milestones. Such lump sums should also be established on the basis of a thorough negotiation procedure. A practical problem with the use of lump sums arises at the time of payment, when the Commission will have to assess the extent to which these work packages have been completed as agreed. In particular, difficulties in the implementation of such a scheme would arise in those situations where work packages were delayed, only partly completed, or replaced by other activities. With regard to lump sums for whole actions, including those proposed for 'Networks of Excellence' in Article 35, the Court recommends a more cautious approach (see also paragraphs 78 to 79).

60. In the absence of a more detailed proposal from the Commission, the Court suggests that the use of lump sums for whole actions should be limited to the 'coordination and support actions' and 'actions for training and career development of researchers' established in Annex III a) of the 'Decision' (see Article 30(1) of the Rules for Participation). The Court encourages the Commission to continue its reflections on more extensive use of lump sums for whole actions. This could be incorporated in the legal base following an interim evaluation of the 'Rules for Participation' (see Article 54).

⁽⁴⁸⁾ Court's Annual Report concerning the financial year 2004, paragraph 6.47; Special Report No 1/2004, paragraphs 36 to 39 and 139.

61. In addition, the Commission proposal in Article 30(2) on how to calculate the Community financial contribution is inconsistent and should be clarified, using exact terminology (i.e. the maximum Community financial contribution which is to be set on the basis of the budget of estimated costs)⁽⁴⁹⁾.

Compliance with the 'no profit' principle must be ensured

62. Based on the Commission proposal for a revised Financial Regulation, it will be possible to consider the 'indirect action' as a whole as the recipient of a grant, thereby allowing in principle for profits to be made by individual participants in multi-partner actions⁽⁵⁰⁾. Therefore, in Article 31 of the 'Rules for Participation', the applicability of the 'no profit' principle to each participant in an indirect action should be clarified.

Rules governing the reimbursement of cost to be based on participant's accounting principles and cost accounting practices

63. The Court recommends that Article 31(3)(c) should refer to the accounting principles of the country where the legal entity is established and the participant's usual 'cost accounting practices'. Moreover, in the Court's view, the reference 'for the sole purpose of achieving the objectives of the indirect action and its expected results' is sufficient to make sure that only costs necessary for carrying out the action are reimbursed.

64. In the Court's view, only recoverable indirect taxes should be considered as non-eligible costs. In practice, certain types of participating legal entities (such as non-governmental organisations, foundations, associations) and natural persons do not have the possibility to recover indirect taxes such as value added taxes (VAT)⁽⁵¹⁾. These therefore constitute a cost for the participant and in such cases non-recoverable indirect taxes should be reimbursable (see Article 31(3e)).

⁽⁴⁹⁾ It should be noted that this calculation has to be made taking into account the different activities carried out by individual participants (e.g. management and training activities, which have different co-financing rates), the application of either lump sums or flat rates depending on the specific activities, the specific cost structures of the legal entities participating, and the different upper funding limits laid down in Article 33. Of course, this underlying principle also applies to the reimbursement of eligible costs as provided for in Article 31.

⁽⁵⁰⁾ Court Opinion No 10/2005, paragraph 44.

⁽⁵¹⁾ The Commission proposal to make only 'identifiable' indirect taxes ineligible may induce participants to conceal VAT in their cost reporting.

65. The principles of 'Sound financial management' in the Financial Regulation are, however, not necessarily part of a participant's accounting principles and cost accounting practices. Therefore the Court recommends that the last half-sentence of Article 31(3)(c) should be deleted.

Alternative proposal on how to determine the Community financial contribution in a transparent, robust and simple-to-administer way

66. On several occasions, the Court has proposed a simplified system for the reimbursement of eligible costs under the RTD framework programmes⁽⁵²⁾. In the Court's view, the system to calculate and report costs and determine the Community financial contribution should be based on a single cost system (see paragraph 94), should be applicable to all funding schemes and should be sufficiently flexible to be used by all types of legal entities participating in indirect actions. Moreover, for a system to be transparent, robust and simple-to-administer, the participant's usual (cost) accounting practices should be applied as far as possible when reporting the costs incurred.

Three categories of direct costs

67. Such a simplified system should provide for three categories of direct costs (personnel cost, travel and subsistence cost and other specific costs), easily identifiable in and retrievable from the (cost) accounting system of any participant:

- 'personnel cost' is the main category of direct costs incurred when carrying out indirect actions. This cost category is to cover the remuneration and related charges for personnel directly hired by the legal entity participating, within the limits and under the terms laid down in the employment contracts. For a system which is based on the reimbursement of costs actually incurred, it is essential that the working time of personnel contributing to an indirect action must be substantiated, so that the respective personnel costs can be correctly allocated. With regard to the recording of working time, the Commission should define minimum requirements applicable to all participants. In line with the Commission proposal, the Court also recommends that allowance should be made for a simplified calculation method, e.g. use of budgeted costs, average costs or unit scales, category-specific rates — provided that these are established in accordance with the participant's usual cost accounting practices and that they do not deviate significantly from actual costs,
- 'travel and subsistence costs' are proposed as a second category, in particular because such costs may constitute a large part of total costs for some specific actions. Again the Court

recommends a simplified calculation method, using unit scales, provided that these are established in accordance with the participant's usual cost accounting practices and that they do not deviate significantly from actual costs or, alternatively, if such unit scales were established by the Commission,

- the Court recommends introducing a third category, 'Other specific costs', for all other direct costs. This category could be used for exceptional items, such as durable equipment, expensive consumables, subcontracting, but also user fees to be charged, if a budget of estimated eligible costs for such items has been established in the grant agreement. In this sense, the eligibility, necessity and reasonableness of the costs estimated in this category will be assessed during the evaluation and negotiation of proposals and agreed with the Commission in the grant agreement. As a result, the participants have the legal security of being reimbursed when incurring these costs as long as the budget of estimated costs is not exceeded. Alternatively, lump sums could also be used for the funding of items covered by this cost category.

Indirect costs based on negotiated flat rates

68. The Commission proposal is unclear as to what flat rate will be applied for the coverage of indirect eligible costs (i.e. whether this flat rate corresponds to the 20 % rate on the Full Cost Flat Rate (FCF) model under the Sixth Framework Programme or the 7 % rate established by the Financial Regulation as a default regime). It is also unclear about the circumstances under which participants may opt for such a flat-rate system.

69. In contrast to the Commission proposal, the Court considers that participants should be able to charge flat rates established in accordance with their usual cost accounting practices (see paragraph 38). The 'reasonableness' of such rates would have to be demonstrated during the negotiation of a proposal, based on the participants accounting information, and certified by the external auditor when providing the audit certificate (see Article 34a).

70. In the Court's view, the use of such negotiated flat rates would drastically simplify the reporting of costs to the Commission. Only by allowing participants to use their own cost accounting system to calculate and report actual costs incurred will they be able to participate in full compliance with both their internal rules and the 'Rules for Participation'. In practice, this would imply that participants may charge rates for indirect costs which are significantly above the 20 % of direct costs under previous RTD framework programmes⁽⁵³⁾.

⁽⁵²⁾ Court's Annual report concerning the financial year 2001, paragraph 4.47; Special Report No 1/2004, paragraphs 36 to 40 and 115 and Opinion No 3/2005, paragraph 13.

⁽⁵³⁾ Special Report No 1/2004, paragraphs 30 to 33.

Increase in upper funding limits only justified by establishment of single cost system

71. In contrast to previous RTD framework programmes, the Commission proposes in Article 33 to increase upper funding levels (i.e. reimbursement rates) from 50 % to 75 % for public bodies, secondary and higher education establishments, research organisations and SMEs and, at the same time, to establish a single cost reimbursement system for the Seventh Framework Programme. In practice, this means that the Additional Cost (AC) system, mainly used by public bodies and higher education establishments, and the Full Cost (FC) system will be discontinued. The Court has criticised the AC system in the past because it does not allow verification of the participants' share of cofinancing and, in its practical implementation, often discriminated against those legal entities using the FC system ⁽⁵⁴⁾.

72. The Court therefore fully supports the Commission proposal as:

- the upper funding levels remain within the ceilings imposed by the state aid rules (see paragraph 15),
- the overall impact on participants' funding should be neutral or even beneficial for those legal entities who complied with the AC system rules in previous RTD framework programmes.

The effects on participants' funding of the removal of the traditional AC system will be compensated by increasing upper funding levels. In this way, the Commission proposal prevents a situation where the Seventh Framework Programme would simply provide higher funding compared to previous RTD framework programmes for essentially the same research effort.

73. With regard to the Commission proposal of a financing rate of up to 100 % of eligible costs for certain activities within an indirect action, the Court considers that such a rate can be justified for management and training activities only, and that the 'Rules for Participation' should clearly state that such a rate can under no circumstances be generalised (see Article 33(4)).

Provisions regarding cost reporting and audit certificates not sufficiently explicit

74. In the Court's view, all costs should be reported for each period, thereby guaranteeing that the Commission has a means of verifying the effective co-financing of the indirect action (see Article 34).

⁽⁵⁴⁾ Special Report No 1/2004, paragraphs 23 to 26.

75. The Court considers that the 'Rules for Participation' should specify the scope and content of audit certificates (see Article 34a) ⁽⁵⁵⁾. In accordance with the Financial Regulation ⁽⁵⁶⁾ and the 'Rules for Participation', audit certificates must provide assurance that:

- the costs claimed by the participant are eligible,
- the costs, interest on pre-financing, and receipts have been correctly determined and are substantiated by adequate supporting documents.

76. Audit certificates are to be provided by an external auditor or, in the case of public bodies, a competent public officer. The external auditor must comply with the requirements established in line with the 8th Council Directive 84/253/EEC of 10 April 1984 ⁽⁵⁷⁾. The competences of the public officer shall be determined by the national legislation and the relevant authorities. The external auditor or, in the case of public bodies, the competent public officer providing the audit certificate, must be independent of the participant who is responsible for selecting the auditor.

77. Audit certificates are an essential element of the Commission's internal controls. In the Court's view, this requires that the Commission has access to the documentation and working papers of the external auditors. Such an obligation to provide access should be inserted in the model grant agreements and the terms of engagement for the external auditor.

No specific financing rules should apply to 'Networks of Excellence'

78. In the Court's view, there should be no specific rules applying to 'Networks of Excellence' and, therefore, Article 35 should be deleted (see also paragraph 59). It is also unclear how the Commission has fixed a lump sum of 23 500 euro per year per researcher. There is no indication that the setting of such a rate has been carried out by means of an evidence-based assessment of the underlying cost structure of on-going 'Networks of Excellence' under the Sixth Framework Programme. In addition, setting artificially fixed amounts discriminates against those legal entities that are established in Member States or Associated Countries with a higher nominal wage level.

⁽⁵⁵⁾ Opinion No 2/2004; paragraph V.: *Internal control systems should have, at their basis, a chain of control procedures, with each level having specific defined objectives which take into account the work of the others. Claims of expenditure or costs over a certain threshold should be accompanied by an independent audit certificate and report, based on common standards of approach and content.*

⁽⁵⁶⁾ See Article 117 of the Financial Regulation (Article 180(2) of the Implementing Rules).

⁽⁵⁷⁾ OJ L 126, 12.5.1984, p. 20.

79. Moreover, the proposed financing mechanism is inconsistent with the objective of supporting the integration of the entities participating in the network, as stated in the 'Decision', Annex III a) 2. 'Networks of Excellence'. As currently proposed in the 'Rules for Participation', the mechanism implicitly provides for the co-financing of research activities and not of activities contributing to the integration of activities carried out within the framework of a longer term cooperation.

'Guarantee fund' will not solve the difficulties experienced by beneficiaries

80. In the Court's experience, the main administrative problems for participants in their dealings with the Commission are non-standardised requirements by Commission services when verifying the legal and financial viability of participants and excessive, and often repetitive, requests for information (see paragraphs 34 to 36).

81. The establishment of a 'guarantee fund', however, will not solve those difficulties for participants, and, in addition, is unlikely to be cost-effective (see whereas (20) and Article 38) ⁽⁵⁸⁾:

- first, the obligations under Article 118 of the Financial Regulation (Article 182 of the Implementing Rules) regarding bank guarantees cannot be waived by setting up such a mechanism ⁽⁵⁹⁾. These arise primarily because of the pre-financing granted by the Community (in general 80 % of annual instalments),
- second, the guarantee fund being an 'insurance'-type mechanism, financially stable participants would be covering the risk resulting from potentially defaulting participants, mostly SME's. These risks will be spread over all actions funded by the RTD framework programme, even beyond the actions in which those paying into the fund would participate,

⁽⁵⁸⁾ Opinion No 2/2004, paragraph VIII: *'Internal control systems require an appropriate balance between the cost of controlling a particular budgetary area and the benefits the checks bring in terms of limiting the risk of loss and irregularity to an acceptable level.'*

⁽⁵⁹⁾ The amendments proposed by the Court to increase the autonomy of the consortia (see Articles 18, 19, and 23 to 26) and the Commission's verification of the existence, legal status and operational and financial capacity of participants (see Article 16a) should reduce the potential risk to the Community budget to such an extent that in a majority of cases the authorising officer would not have to invoke a third-party joint and several guarantee or the irrevocable and unconditional joint guarantee (which, according to Article 182(3) of the Implementing Rules of the Financial Regulation, is mandatory if pre-financing is above 80 % of total grant).

- third, the Commission proposal strongly discriminates between different types of legal entities, thereby discouraging the participation of non-public entities in the RTD framework programmes ⁽⁶⁰⁾. It also reduces the amount of funding available for research,
- fourth, the number of actual cases where legal entities defaulted on their obligations towards the Communities under previous framework programmes is extremely low,
- fifth, the 'guarantee fund' would cover a third party financial risk to the Community budget by diverting funds from science,
- finally, the Commission proposal does not explain what happens to funds not needed to cover losses caused by defaulting participants. In the Court's view, and according to the budgetary principles of annuality and universality underlying the Financial Regulation, excess funds which could not be assigned as revenue to the framework programme would also effectively be unavailable for research ⁽⁶¹⁾.

Therefore, the Court recommends the deletion of 'whereas' (20) and Article 38.

Chapter III: Dissemination and use, and access rights (Article 39 to Article 52)

Establishing access rights to foreground for affiliated entities

82. In the case of industry participants, the relevant background for an indirect action is often not owned by the legal entities participating but by another entity within an industrial group. In the Court's view, and in line with the obligation to use the foreground stated in Article 46(1), access rights to foreground should also be given to affiliated entities of participants in an indirect action subject to certain conditions (see Article 42 and Articles 49 to 50). In particular, the affiliated company must:

- be established in a Member State or an Associated Country,

⁽⁶⁰⁾ Note that the Commission proposes in Article 38(2) that the following do not have to contribute to the 'Guarantee fund': public bodies, legal entities whose participation in the indirect action is guaranteed by a Member State or an Associated Country, higher and secondary education establishments, participants in actions to support training and career development of researchers, frontier research actions, and actions for the benefit of specific groups with the exception of actions for the benefit of SME's.

⁽⁶¹⁾ See also Opinion No 10/2005, paragraphs 20 and 22.

- grant reciprocal access rights in respect of any background which it holds and which is needed to use the foreground,
- comply with the obligations concerning confidentiality in accordance with Article 3.

The Court's proposal for reciprocal access rights for affiliated entities would remove this specific disincentive and therefore could enhance industrial participation in the RTD framework programmes.

Promoting the use of jointly-owned foreground

83. In the Court's view, the provision that co-owners are able to use the jointly-owned foreground is constructive because it discourages situations where the jointly-owned knowledge may not be exploited at all due to the reluctance of certain consortia members to give authorisation for protection of the knowledge. However, the Commission proposal could increase the risk that, if no prior arrangement is concluded, participants would structure their work as much as possible to avoid joint ownership, which in turn means that participants may be less inclined to cooperate. In the Court's view it should be left to the consortium to agree on how to deal with such a joint ownership, in accordance with this Regulation, the grant agreement and the consortium agreement. Therefore, the Court recommends adding the obligation to conclude a joint ownership agreement in Article 40(1) and deleting Article 40(2)(b), thereby creating an incentive for participants to enter into a joint ownership agreement.

Notification of the Commission of a transfer of ownership should be required only in specific circumstances

84. In the Court's view, there is no general necessity for the Commission to be informed of a transfer of ownership. However, where a transfer is inconsistent with developing the competitiveness of the European economy or with ethical principles, prior notification should be given to the Commission. The Court recommends that the Commission should establish rules providing guidance concerning such cases. In all other cases, arrangements concerning the transfer of ownership should be dealt with by the participants (see Article 42 and Article 43).

No limitation or exclusion of access rights after the grant award

85. In the Court's view, it would be inconsistent and unnecessary to allow background (i.e. all intellectual property rights needed for the implementation of the indirect action or the use of the results) which is subject to access rights to be further limited or excluded (see Article 48). Such a limitation or exclusion of

specific background could imply that indirect actions cannot be performed as originally proposed or that the resulting foreground cannot be disseminated.

86. Moreover, access rights should be granted by definition to all participants in an indirect action (see Article 49). Only if further conditions to such access rights are required is there a need to have an explicit request and further agreement between the parties concerned. In the Court's view, access rights should be granted to affiliated entities on a reciprocal base as described above (see paragraph 82).

Chapter IV: European Investment Bank (Article 53)

Clarification needed with regard to the 'Risk Sharing Finance Facility'

87. As proposed by the Commission in Annex III b) of the 'Decision', the 'Risk Sharing Finance Facility' funding scheme consists in the provision of a grant to the European Investment Bank (EIB). In the Court's view, however, further clarification is needed as to the scope of the EIB's loan and guarantee financing activities ⁽⁶²⁾ (see whereas (23) and Article 53).

88. With regard to the 'Risk Sharing Finance Facility' funding scheme, the Court also recommends a clarification of whether all parts of the 'Rules for Participation' apply to grants to the EIB (including the provisions of Chapter III Dissemination and use, access rights).

89. Furthermore, according to the Commission proposal, Community financial support to the EIB will be provided on the basis of the provisions of the Financial Regulation only. However, further clarification is needed as to how and according to which rules the EIB will allocate its loan and guarantee financing. In the Court's view, these should be provided and administered by the EIB in accordance with its own rules, taking into account the general orientation and principles established by the Commission in the grant agreement (see Article 53(2) and (3)).

Chapter V: Final provisions (Article 54)

90. Given the seven year programming period for the Seventh Framework Programme, the 'Rules for Participation' should provide for a review and a possible revision after a certain period. The proposed interim evaluation should assess in particular whether the intended simplification of administrative and financial aspects has been achieved and, if necessary, propose what additional measures should be taken (see Article 54).

⁽⁶²⁾ In particular, it should also be clarified whether, based on the wording in Annex III of the 'Decision', this extends to actions outside the scope of the Seventh Framework Programme, such as EUREKA projects, or whether actions other than those referred to in Annex III (i.e. joint technology initiatives, large projects — including Eureka projects, and new research infrastructures) could be the beneficiaries of the EIB's loan and guarantee financing activities.

CONCLUSION

91. The Court considers that in many areas the Commission proposal constitutes an important step towards the simplification and flexibility necessary for an economic, effective and efficient implementation of the Seventh Framework Programme.

92. However, for the reasons set out above, the principles and criteria that should have guided these changes have not always been followed and, as a consequence, the Commission has missed the opportunity to achieve the required simplification. In particular, in the Court's view, some of the Commission proposals are not justified and risk complicating the management of the Seventh Framework Programme unnecessarily.

93. In other areas, where further simplification and more flexibility is needed, the Court recommends additional changes, such as:

- organising a centralised and *ex-ante* verification and certification of the legal entities participating (see paragraphs 34 to 36),
- requiring the Commission services to use common databases and to exchange data electronically (see paragraphs 41 to 42),
- applying a more flexible governance structure for indirect actions (see paragraphs 45 to 55),

- using reviews (or hearings), ideally by peers, as a monitoring tool for indirect actions (see paragraph 56),
- providing for a single cost reimbursement system which allows participants to determine the Community financial contribution in a transparent, robust and simple-to-administer way (see paragraphs 63 to 70),
- encouraging the use and the dissemination of results of indirect actions and the transfer of ownership (see paragraphs 82 to 84).

94. The Commission's proposal for the 'Rules for Participation' provides some elements of such a simplified system, in particular by introducing a single cost system, but falls short of creating a transparent, robust and simple-to-administer system to calculate and report costs and determine the Community financial contribution. The proposed cost reimbursement system will result in a system which is overly complicated and inherently difficult to verify for the Commission. Moreover, there is insufficient correlation between the proposed structure for the reimbursement of costs and the (cost) accounting information at the level of participants. As a result, and unless significant changes are adopted by the legislator, the dissatisfaction of participants will persist and the rate and frequency of over-declaration of costs by participants will continue to be material under the Seventh Framework Programme.

This opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 5 April 2006.

For the Court of Auditors
Hubert WEBER
President

ANNEX:

'RULES FOR PARTICIPATION'

COM(2005)705 final — REGULATION

<p style="text-align: center;">Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 to 2013) (Text with EEA relevance)</p>	<p style="text-align: center;">Modifications proposed by THE COURT OF AUDITORS in its Opinion No 1/2006</p>	<p style="text-align: center;">(see para- graph of Opinion No 1/2006)</p>
<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>Having regard to the Treaty establishing the European Community, and in particular Article 167 and the second paragraph of Article 172 thereof,</p> <p>Having regard to the proposal from the Commission ⁽¹⁾,</p> <p>Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,</p> <p>Having regard to the opinion of the Court of Auditors ⁽¹⁾,</p> <p>Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽²⁾,</p> <p>WHEREAS:</p>		
<p>(1) The Seventh Framework Programme was adopted by Decision No (.../.../EC) of the European Parliament and of the Council of (...) concerning the seventh framework programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ⁽¹⁾.</p>		5.
<p>It is the responsibility of the Commission to ensure the implementation of the framework programme and its specific programmes, including the related financial aspects.</p>		6.
<p>(2) The Seventh Framework Programme is implemented in accordance with Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾, hereinafter 'the Financial Regulation', and Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of the Financial Regulation ⁽⁴⁾, hereinafter 'the Implementing Rules'.</p>	<p>(2) The Seventh Framework Programme <u>is to be</u> is implemented in accordance with Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾, hereinafter 'the Financial Regulation', and Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of the Financial Regulation ⁽⁴⁾, hereinafter 'the Implementing Rules'.</p>	
<p>(3) The Seventh Framework Programme is also implemented in accordance with the State aid rules, in particular the rules on State aid for research and development ⁽⁵⁾.</p>	<p>(3) The Seventh Framework Programme is <u>also to be</u> implemented in accordance with the State aid rules, in particular the rules on State aid for research and development ⁽⁵⁾.</p>	15, 16.

⁽¹⁾ OJ C (...), (...), p. (...).

⁽²⁾ Opinion of the European Parliament of April 2005, and Council Decision of (...).

⁽³⁾ OJ L 248, 16.9.2002, p. 1.

⁽⁴⁾ OJ L 357, 31.12.2002, p. 1, as amended by Commission Regulation (EC, Euratom) No 1261/2005 (OJ L 201, 2.8.2005, p. 3).

⁽⁵⁾ Currently Community Framework for State Aid for Research and Development, (OJ C 45, 17.2.1996, p. 5). See also World Trade Organization (WTO) Agreement on subsidies and countervailing measures, Article 8 (see OJ L 336, 23.12.1994).

(4) The rules for the participation of undertakings, research centres and universities should provide a coherent and transparent framework to ensure efficient implementation and ease of access for all participants in the Seventh Framework Programme.		
	(new whereas (4a)) <u>This Regulation is also to apply to the activities funded in the framework of the European Research Council (ERC).</u>	2, 17.
(5) The Seventh Framework Programme should promote participation from the outermost regions of the Community, as well as from a wide range of undertakings, research centres and universities.		
(6) The definition of micro, small and medium-sized enterprises (SMEs) provided in Commission Recommendation 2003/361/EC ⁽⁶⁾ should apply, for reasons of coherence and transparency.		
(7) It is therefore appropriate to permit not only the participation of legal persons, provided that they are entitled to exercise rights and assume obligations, but natural persons. The participation of natural persons will ensure that the creation and development of scientific excellence and ability are not limited to Community funding of projects involving only legal persons, ensuring also the participation of SMEs that are not legal persons.	(7) It is therefore appropriate to permit not only the participation of legal persons, provided that they are entitled to exercise rights and assume obligations, but also of natural persons, <u>provided that they are entitled to exercise rights and assume obligations.</u> The participation of natural persons will ensure that the creation and development of scientific excellence and ability are not limited to Community funding of projects involving only legal persons, ensuring also the participation of SMEs that are not legal persons.	
(8) It is necessary to establish the minimum conditions for participation, both as a general rule and with regard to the specificities of indirect actions under the Seventh Framework Programme. In particular, rules should be laid down regarding the number of participants and their place of establishment.		
(9) It is appropriate that any legal entity should be free to participate once the minimum conditions have been satisfied. Participation over and above the minimum should ensure the efficient performance of the indirect action concerned.	(9) It is appropriate that any legal entity should be free to participate once the minimum conditions have been satisfied. Participation over and above the minimum <u>legal requirements</u> should not impair ensure the efficient implementation performance of the indirect action concerned.	22, 23, 24.
(10) International organisations dedicated to developing cooperation in the field of research in Europe and largely made up of Member States or Associated countries should be encouraged to participate in the Seventh Framework Programme.		
(11) In line with the objectives of international cooperation as described by Articles 164 and 170 of the Treaty, the participation of legal entities established in third countries should also be envisaged, as should the participation of international organisations. However, it is appropriate to require that such participation be justified in terms of the enhanced contribution thereby made to the objectives sought under the Seventh Framework Programme.		
	(new whereas (11a)) <u>The Commission should implement the Seventh Framework Programme in accordance with the principles of an integrated internal control framework.</u>	
(12) In line with the objectives mentioned above, it is necessary to establish the terms and conditions for providing Community funding to participants in indirect actions.	(12) In line with the objectives mentioned above, it is necessary to establish the terms and conditions for providing Community funding, <u>as set out in part (a) of Annex III to Decision (.../...) establishing the Seventh Framework Programme</u> , to participants in indirect actions.	

⁽⁶⁾ OJ L 124, 20.5.2003, p. 36.

<p>(13) It is necessary for the Commission to establish further rules and procedures, in addition to those provided for in the Financial Regulation and its Implementing Rules, to govern the submission, evaluation, selection and award of proposals. In particular the rules governing the use of independent experts should be established.</p>	<p>(13) It is necessary for The Commission is to establish <u>and to adopt</u> further rules and procedures, in addition to those provided for in the Financial Regulation and its Implementing Rules <u>and this Regulation</u>, to govern the submission, evaluation, selection and <u>negotiation award</u> of proposals <u>and the award of grants</u>. In particular these rules <u>should include provisions</u> governing the use of independent experts should be established.</p>	<p>32, 33.</p>
<p>(14) It is appropriate for the Commission to establish further rules and procedures, in addition to those provided for in the Financial Regulation and its Implementing Rules, to govern the assessment of the legal and financial viability of participants in indirect actions under the Seventh Framework Programme.</p>	<p>(14) It is appropriate for The Commission should establish <u>and adopt</u> further rules and procedures, in addition to those provided for in the Financial Regulation and its Implementing Rules, to govern the <u>verification of the existence, legal status and operational and financial capacity assessment</u> of the legal and financial viability of participants in indirect actions under the Seventh Framework Programme.</p>	<p>34, 35, 36.</p>
<p>(15) In this context, the Financial Regulation and the Implementing Rules, govern <i>inter alia</i> the protection of the Community's financial interests, the fight against fraud and irregularity, the procedures for the recovery of sums owed to the Commission, exclusion from contract and grant procedures and related penalties, and audits, checks, and inspections by the Commission and the Court of Auditors, pursuant to Article 248(2) of the Treaty.</p>	<p>(15) In this context, the Financial Regulation, its and the Implementing Rules, and <u>Council Regulation (EC, Euratom) No 2988/1995 (7)</u> govern <i>inter alia</i> the protection of the Community's financial interests, the fight against fraud and irregularity, the procedures for the recovery of sums owed to the Commission, exclusion from contract and grant procedures and related penalties, and audits, checks, and inspections by the Commission and the Court of Auditors, pursuant to Article 248(2) of the Treaty.</p>	<p>19.</p>
<p>(16) The agreements concluded for each action should provide for supervision and financial control by the Commission, or any representative authorised by the Commission, as well as audits by the Court of Auditors and on-the-spot checks carried out by the European Anti-Fraud Office (OLAF), in accordance with the procedures laid down in Council Regulation N° 2185/96.</p>	<p>(16) The agreements concluded for each action <u>are to</u> should provide for supervision and financial control by the Commission, or any representative authorised by the Commission, as well as audits by the Court of Auditors and on-the-spot checks carried out by the European Anti-Fraud Office (OLAF), in accordance with the procedures laid down in Council Regulations <u>No 2185/96, No 1073/99 and No 1074/99</u>. Similarly, the agreements <u>are to provide for audits by the Court of Auditors, which, pursuant to Article 248(2) of the Treaty, may carry out its audits according to its own rules.</u></p>	<p>18, 19.</p>
<p>(17) The Commission should monitor both the indirect actions carried out under the Seventh Framework Programme and the Seventh Framework Programme and its Specific Programmes.</p>	<p>(17) The Commission should monitor <u>the implementation of both the indirect actions carried out under the Seventh Framework Programme, and the Seventh Framework Programme and its Specific Programmes and the completion of previous framework programmes.</u> <u>The Commission presents the results of its monitoring activities to a committee composed of representatives of Member States, and chaired by the Commission.</u></p>	<p>57.</p>
<p>(18) The rules governing the dissemination of research results should ensure that, where appropriate, the participants protect the intellectual property generated in actions, and use and disseminate those results.</p>	<p>(18) The rules governing the dissemination of research results should ensure that, where appropriate, the participants <u>and their affiliated entities</u> protect the intellectual property generated in actions, and use and disseminate those results.</p>	
<p>(19) While respecting the rights of the owners of intellectual property, those rules should be designed to ensure that participants have access to information they bring to the project and to knowledge arising from research work carried out in the project to the extent necessary to conduct the research work or to use the resulting knowledge.</p>	<p>(19) While respecting the rights of the owners of intellectual property, those rules should be designed to ensure that participants <u>and their affiliated entities</u> have access to information they bring to the project and to knowledge arising from research work carried out in the project to the extent necessary to conduct the research work or to use the resulting knowledge.</p>	

(7) OJ C (...), (...), p. (...).

(20) The obligation established in the sixth Framework Programme for certain participants to take financial responsibility for their partners in the same consortium will be waived. Depending on the level of risk associated with non-recovery of sums, part of the Community financial contribution may be retained to cover amounts due and not reimbursed by defaulting partners. The participants that would have been obliged to cover the financial responsibility for other participants would contribute to risk avoidance, which the Commission shall retain at the time it makes payments.	(20) The obligation established in the sixth Framework Programme for certain participants to take financial responsibility for their partners in the same consortium will be waived. Depending on the level of risk associated with non-recovery of sums, part of the Community financial contribution may be retained to cover amounts due and not reimbursed by defaulting partners. The participants that would have been obliged to cover the financial responsibility for other participants would contribute to risk avoidance, which the Commission shall retain at the time it makes payments.	34, 35, 36, 80, 81.
(21) Community contributions to a joint undertaking or any other structure set up pursuant to Article 171 of the Treaty, or pursuant to Article 169 of the Treaty do not fall within the scope of this Regulation.	(21) Community contributions to a joint undertaking or any other structure set up pursuant to Article 171 of the Treaty, or pursuant to Article 169 of the Treaty do not fall within the scope of this Regulation.	
(22) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.	(22) Any action covered by tThis Regulation should respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.	
(23) The Community may award a grant to the European Investment Bank (EIB) to foster private sector investment in eligible large European RTD actions by increasing the capacity of the Bank to manage risk, thus allowing for (i) a larger volume of EIB lending for a certain level of risk, and (ii) the financing of riskier European RTD actions than would be possible without such Community support.	(23) The Community may award a grant to the European Investment Bank (EIB) to foster private sector investment in eligible large European RTD actions <u>identified in part (b) of Annex III to Decision (.../...) establishing the Seventh Framework Programme</u> by increasing the capacity of the Bank to manage risk, thus allowing for (i) a larger volume of EIB lending for a certain level of risk, and (ii) the financing of riskier European RTD actions than would be possible without such Community support.	2.
(24) The Community may provide financial support, as established in the Financial Regulation, <i>inter alia</i> by means of:	(24) The Community may provide financial support, as established in the Financial Regulation, <i>inter alia</i> by means of:	
(a) public procurements, in the form of a price for goods or services established by contract and selected on the basis of calls for tender;	(a) public procurements, in the form of a price for goods or services established by contract and selected on the basis of calls for tender;	
(b) grants;	(b) grants;	
(c) subscriptions to an organisation in the form of a membership fee;	(c) subscriptions to an organisation in the form of a membership fee;	
(d) honoraria for independent experts identified in Article 17 of this Regulation.	(d) honoraria for independent experts identified in Article 17 of this Regulation.	
HAVE ADOPTED THIS REGULATION: CHAPTER I Introductory provisions		
<i>Article 1</i>	<i>Article 1</i>	
Subject matter	Subject matter and scope	
This Regulation lays down the rules for the participation of undertakings, research centres and universities and other legal entities in actions undertaken by one or more participants by means of funding schemes identified in part (a) of Annex III to Decision (.../...) establishing the Seventh Framework Programme, hereinafter 'indirect actions'.	(1.) This Regulation lays down the rules for the participation of undertakings, research centres and universities and other legal entities in actions undertaken by one or more participants by means of funding schemes identified in part (a) of Annex III to Decision (.../...) establishing the Seventh Framework Programme, hereinafter 'indirect actions', with the exception referred to in paragraph 8 of this Article.	20, 21.

<p>It also lays down rules, in accordance with those laid down in Regulation (EC/Euratom) No 1605/2002, hereinafter 'the Financial Regulation', and Regulation (EC/Euratom) No 2342/2002, hereinafter 'the Implementing Rules', concerning the Community financial contribution to participants in indirect actions under the Seventh Framework Programme.</p>	<p>(2.) It also lays down rules, in accordance with those laid down in Regulation (EC/Euratom) No 1605/2002, hereinafter 'the Financial Regulation', and Regulation (EC/Euratom) No 2342/2002, hereinafter 'the Implementing Rules', concerning the Community financial contribution to participants in indirect actions under the Seventh Framework Programme.</p>	
<p>As regards the results of research carried out under the Seventh Framework Programme, this Regulation lays down rules for the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium, hereinafter 'dissemination'.</p>	<p>(3.) As regards the results of research carried out under the Seventh Framework Programme, this Regulation lays down rules for the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium, hereinafter 'dissemination'.</p>	
<p>In addition, it lays down rules for the direct or indirect utilisation of foreground in further research activities other than those covered by the indirect action concerned, or for developing, creating and marketing a product or process, or for creating and providing a service, hereinafter 'use'.</p>	<p>(4.) In addition, it lays down rules for the direct or indirect utilisation of foreground in further research activities other than those covered by the indirect action concerned, or for developing, creating and marketing a product or process, or for creating and providing a service, hereinafter 'use'.</p>	
<p>In respect of both foreground and background, this Regulation lays down rules concerning licences and user rights thereto, hereinafter 'access rights'.</p>	<p>(5.) In respect of both foreground and background, this Regulation lays down rules concerning licences and user rights thereto, hereinafter 'access rights'.</p>	
<p></p>	<p>(6.) <u>This Regulation shall apply to actions funded within the framework of the European Research Council (ERC).</u></p>	<p>2, 17.</p>
<p></p>	<p>(7.) <u>This Regulation shall apply to grants to the European Investment Bank (EIB) to contribute to the provisioning and capital allocation for its loan and guarantee financing, for actions identified in the Annex III to Decision (.../...) establishing the Seventh Framework Programme.</u></p> <p>(8.) <u>moved from whereas (21)) Community contributions to a joint undertaking or any other structure set up pursuant to Article 171 of the Treaty, or pursuant to Article 169 of the Treaty, identified in part (b) of Annex III to Decision (.../...) establishing the Seventh Framework Programme shall not fall within the scope of this Regulation.</u></p>	
<p style="text-align: center;"><i>Article 2</i></p>		<p>14.</p>
<p style="text-align: center;">Definitions</p>		
<p>For the purposes of this Regulation, the following definitions shall apply in addition to those set out in the Financial Regulation and the Implementing Rules:</p>		
<p>(1) 'foreground' means the results, including information, whether or not they can be protected, which are generated by actions. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;</p>		
<p>(2) 'background' means information which is held by participants prior to their accession to the grant agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to the grant agreement, and which is needed for carrying out the indirect action or for using the results of the indirect action;</p>	<p>(2) 'background' means information which is held by participants prior to <u>the conclusion of their accession to the grant agreement</u>, as well as copyrights or other intellectual property rights or applications thereof pertaining to such information, <u>the application for which has been filed before their accession to the grant agreement</u>, and which <u>that</u> is needed for carrying out the indirect action or for using the <u>foreground results</u> of the indirect action;</p>	
<p>(3) 'research organisation' means a non-profit making organisation which carries out scientific or technical research as its main objective;</p>	<p>(3) 'research organisation' means <u>a legal entity registered as</u> a non-profit-making organisation which carries out scientific or technical research as its main objective;</p>	

<p>(4) 'third country' means a State that is not a Member State;</p> <p>(5) 'Associated country' means a third country which is party to an international agreement with the Community, under the terms or on the basis of which it makes a financial contribution to all or part of the Seventh Framework Programme;</p> <p>(6) 'international organisation' means an intergovernmental organisation, other than the European Community, which has legal personality under international public law, as well as any specialised agency set up by such an international organisation;</p>		
<p>(7) 'international European interest organisation' means an international organisation, the majority of whose members are Member States or Associated countries, and whose principal objective is to promote scientific and technological cooperation in Europe;</p>	<p>(7) 'international European interest organisation' means an international organisation, the majority of whose members are Member States or Associated Countries, <u>or public research organisations or national funding agencies of those states and countries</u>, and whose principal objective is to promote scientific and technological cooperation in Europe;</p>	
<p>(8) 'international cooperation partner country' means a third country which the Commission classifies as a low-income, lower-middle-income or upper-middle-income country and which is identified as such in the work programmes;</p> <p>(9) 'public body' means any legal entity established as such by national public law, and international organisations;</p> <p>(10) 'SMEs' mean micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6 May 2003;</p> <p>(11) 'work programme' means a plan adopted by the Commission for the implementation of a specific programme as identified in Article 3 of Decision (.../...);</p>		
<p>(12) 'funding schemes' mean the mechanisms for the Community funding of indirect actions as established in part (a) of Annex III to Decision (.../...);</p>	<p>(12) 'funding schemes' mean the mechanisms for the Community funding of indirect-actions as established in part (a) of in Annex III to Decision (.../...);</p>	20, 21.
<p>(13) 'RTD performer' means a legal entity carrying out research and technological development activities for the benefit of specific groups in research projects for the benefit of those groups.</p>	<p>(13) 'RTD performer' means a legal entity carrying out research and technological development activities for the benefit of specific groups in research projects for the benefit of those groups as established in part (a), section 6. of Annex III to Decision (.../...).</p>	
<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Confidentiality</p> <p>Subject to the conditions established in the grant agreement, appointment letter or contract, the Commission and the participants shall keep confidential any data, knowledge and documents communicated to them as confidential.</p>		

<p style="text-align: center;">CHAPTER II</p> <p style="text-align: center;">Participation</p> <p style="text-align: center;">SECTION 1</p> <p style="text-align: center;">MINIMUM CONDITIONS</p> <p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;">General principles</p> <p>1. Any undertaking, university or research centre or other legal entity, whether established in a Member State or Associated country, or in a third country, may participate in an indirect action provided that the minimum conditions laid down in this Chapter have been met, including any conditions specified pursuant to Article 12.</p>		
<p>However, in the case of an indirect action as referred to in Articles 5(1), 7, 8 or 9, under which it is possible for the minimum conditions to be met without the participation of a legal entity established in a Member State, the attainment of the objectives laid down in Articles 163 and 164 of the Treaty must thereby be enhanced.</p>	<p>However, in the case of an indirect action as referred to in Articles 5(1), 7, 8 or 9, under which it is possible for the minimum conditions to be met without the participation of a legal entity established in a Member State, the attainment of the objectives laid down in Articles 163 and 164 of the Treaty must thereby be enhanced.</p>	
<p>A legal entity is any natural person, or any legal person created under the national law of its place of establishment, or under Community law or international law, which has legal personality and which may, acting under its own name, exercise rights and be subject to obligations.</p>	<p>(A legal entity is any natural person, or any legal person created under the national law of its place of establishment, or under Community law or international law, which has legal personality and which may, acting under its own name, exercise rights and be subject to obligations.)</p>	
	<p>However, in the case of an indirect action as referred to in Articles 5(1), 7, 8 or 9, under which it is possible for the minimum conditions to be met without the participation of a legal entity established in a Member State, the attainment of the objectives laid down in Articles 163 and 164 of the Treaty must thereby be enhanced.</p>	
<p>2. In the case of natural persons, references to establishment shall be deemed to refer to habitual residence.</p>	<p>(2. In the case of natural persons, references to establishment shall be deemed to refer to habitual residence.)</p>	
<p>3. The Joint Research Centre of the European Commission, hereinafter 'the JRC', may participate in indirect actions on the same footing and with the same rights and obligations as a legal entity established in a Member State.</p>		
<p style="text-align: center;"><i>Article 5</i></p>		22, 23, 24.
<p style="text-align: center;">Minimum conditions</p>		
<p>1. The minimum conditions for indirect actions shall be the following:</p>	<p>1. The minimum conditions for <u>the participation in</u> indirect actions shall be <u>that the following:</u></p>	
<p>(a) at least three legal entities must participate, each of which is established in a Member State or Associated country, and no two of which are established in the same Member State or Associated country;</p>	<p>(a) at least three legal entities must participate, each of which is established in a Member State or Associated country, and no two of which are established in the same Member State or Associated country;</p>	
	<p>(b) <u>the countries in which these legal entities are established must include at least three different Member States or Associated countries;</u></p>	
<p>(b) all three legal entities must be independent of each other in accordance with Article 6.</p>	<p>(bc) <u>at least all three of the</u> legal entities must be independent of each other in accordance with Article 6.</p>	

<p>2. For the purposes of point (a) of paragraph 1, where one of the participants is the JRC, or an international European interest organisation or an entity created under Community law, it shall be deemed to be established in a Member State or Associated country other than any Member State or Associated country in which another participant in the same action is established.</p>		
<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Independence</p> <p>1. Two legal entities shall be regarded as independent of each other where neither is under the direct or indirect control of the other or under the same direct or indirect control as the other.</p> <p>2. For the purposes of paragraph 1, control may in particular take either of the following forms:</p> <p>(a) the direct or indirect holding of more than 50 % of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;</p> <p>(b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.</p> <p>3. However, the following relationships between legal entities shall not in themselves be deemed to constitute controlling relationships:</p> <p>(a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50 % of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;</p> <p>(b) the legal entities concerned are owned or supervised by the same public body.</p>		
<p style="text-align: center;"><i>Article 7</i></p>		22, 23, 24.
<p style="text-align: center;">Indirect actions concerning international cooperation partner countries</p>		
<p>For collaborative projects addressing the participation of international cooperation partner countries in parity with Member States or Associated countries, as identified in the work programme, the minimum conditions shall be the following:</p>	<p>For collaborative projects, <u>as established in part (a), section 1., of Annex III to Decision (.../...), which involve addressing</u> the participation of international cooperation partner countries in parity with Member States or Associated countries, as identified in the work programme, the minimum conditions shall be the following:</p>	
<p>(a) at least four legal entities must participate;</p>	<p>(a) at least four legal entities must participate;</p>	
<p>(b) at least two of the legal entities referred to in point (a) must be established in Member States or Associated countries, but no two may be established in the same Member State or Associated country;</p>	<p>(b) <u>the countries in which at least two of the participating</u> legal entities referred to in subparagraph (a) <u>are must be established must include at least two in</u> Member States or Associated countries, <u>but no two may be established in the same Member State or Associated country;</u></p>	
<p>(c) at least two of the legal entities referred to in point (a) must be established in international cooperation partner countries, but no two may be established in the same international cooperation partner country;</p>	<p>(c) <u>the countries in which at least two of the participating</u> legal entities referred to in subparagraph (a) <u>are must be established must include at least two in</u> international cooperation partner countries, <u>but no two may be established in the same international cooperation partner country;</u></p>	
<p>(d) all four legal entities referred to in point (a) must be independent of each other in accordance with Article 6.</p>	<p>(d) <u>all at least four of the participating</u> legal entities must be independent of each other in accordance with Article 6.</p>	

<p style="text-align: center;"><i>Article 8</i></p> <p>Coordination and support actions, and training and career development of researchers</p> <p>For coordination and support actions, and actions in favour of training and career development of researchers, the minimum condition shall be the participation of one legal entity.</p> <p>The first paragraph shall not apply in the case of actions that coordinate research projects.</p>		
<p style="text-align: center;"><i>Article 9</i></p>		2.
<p style="text-align: center;">Investigator-driven 'frontier' research projects</p>		
<p>For indirect actions to support investigator-driven 'frontier' research projects funded in the framework of the European Research Council, the minimum condition shall be the participation of one legal entity established in a Member State or in an Associated country.</p>	<p><u>(1.)</u> For indirect actions to support investigator-driven 'frontier' research projects funded in the framework of the European Research Council, as established in part (a), section 4. of Annex III to Decision (.../...), the minimum condition shall be the participation of one legal entity established in a Member State or in an Associated country.</p>	
	<p><u>(2.)</u> The Commission shall take appropriate measures to ensure the portability of grants for investigator-driven 'frontier' research projects funded within the framework of the European Research Council between legal entities established within Member States or Associated countries.</p>	25, 26.
<p style="text-align: center;"><i>Article 10</i></p>		24.
<p style="text-align: center;">Sole participants</p>		
<p>Where the minimum conditions for an indirect action are satisfied by a number of legal entities, which together form one legal entity, the latter may be the sole participant in an indirect action, provided that it is established in a Member State or Associated country.</p>	<p>Where the minimum conditions for an indirect action are satisfied by a number of legal entities, which together constitute form one legal entity, such as European Economic Interest Groups (EEIG) or international European interest organisations, the latter legal entity may be the sole participant in an indirect action, provided that it is established in a Member State or Associated country.</p>	
<p style="text-align: center;"><i>Article 11</i></p> <p style="text-align: center;">International organisations and legal entities established in third countries</p> <p>Participation in indirect actions shall be open to international organisations and legal entities established in third countries after the minimum conditions laid down in this Chapter have been met, as well as any conditions specified in the specific programmes or relevant work programmes.</p> <p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Additional conditions</p> <p>In addition to the minimum conditions laid down in this Chapter, specific programmes or work programmes may lay down conditions regarding the minimum number of participants.</p> <p>They may also lay down, according to the nature and objectives of the indirect action, additional conditions to be met as regards type of participant and, where appropriate, place of establishment.</p>		

<p style="text-align: center;">SECTION 2 PROCEDURES</p> <p style="text-align: center;">SUBSECTION 1 CALLS FOR PROPOSALS</p> <p style="text-align: center;"><i>Article 13</i></p> <p style="text-align: center;">Calls for proposals</p>		
<p>1. The Commission shall issue calls for proposals for indirect actions in accordance with the requirements laid down in the relevant specific programmes and work programmes.</p>	<p>1. The Commission shall issue calls for proposals for indirect actions in accordance with the requirements laid down in the relevant specific programmes and work programmes.</p>	20, 21.
<p>In addition to the publicity specified in the Implementing Rules, the Commission shall publish calls for proposals in the Internet pages of the Seventh Framework Programme, through specific information channels, and at the national contact points set up by the Member States and the Associated countries.</p> <p>2. Where appropriate, the Commission shall specify in the call for proposals that the participants need not establish a consortium agreement.</p>		
<p style="text-align: center;"><i>Article 14</i></p>		20, 21, 27, 28.
<p style="text-align: center;">Exceptions</p>		
<p>The Commission shall not issue calls for proposals for the following:</p>	<p><u>In accordance with the Financial Regulation and its Implementing Rules,</u> tThe Commission shall not issue calls for proposals for the following:</p>	
<p>(a) coordination and support actions to be carried out by legal entities identified in the specific programmes or in the work programmes when the specific programme permits the work programmes to identify beneficiaries, in accordance with the Implementing Rules;</p>	<p>(a) coordination and support actions to be carried out by legal entities identified in the specific programmes or in the work programmes where <u>when</u> the specific programme permits the work programmes to identify beneficiaries, in accordance with the Implementing Rules;</p>	
<p>(b) coordination and support actions consisting of a purchase or service subject to the rules on public procurement set out in the Financial Regulation;</p>	<p>(b) coordination and support actions consisting of a purchase <u>of a good or a service established by contract and selected</u> subject to the rules on public procurement set out in the Financial Regulation;</p>	
	<p>(c) coordination and support actions relating to the award of study, research or training scholarships and prizes following contests;</p>	
<p>(c) coordination and support actions relating to the appointment of independent experts;</p>	<p>(ed) coordination and support actions relating to the appointment of independent experts;</p>	
<p>(d) other actions, where so provided by the Financial Regulation or the Implementing Rules.</p>	<p>(ed) other actions <u>implemented on the basis of decisions by the Council and the European Parliament (or by the Council in consultation with the European Parliament) identified in part (b) of Annex III to Decision (.../...) establishing the Seventh Framework Programme</u> where so provided by the Financial Regulation or the Implementing Rules.</p>	

SUBSECTION 2 EVALUATION OF PROPOSALS	SUBSECTION 2 EVALUATION, SELECTION, NEGOTIATION OF PROPOSALS AND AWARD OF GRANTS	
<i>Article 15</i>	<i>Article 15</i>	30, 31.
Evaluation, selection and award	Evaluation principles and, selection and award criteria	
1. The Commission shall evaluate all the proposals submitted in response to a call for proposals on the basis of the principles for evaluation, and the selection and award criteria set out in the specific programme and the work programme.	1. The Commission shall evaluate all the proposals <u>for indirect actions</u> submitted in response to a call for proposals on the basis of the <u>evaluation</u> principles for evaluation , and the selection and award criteria set out <u>in this Regulation</u> , the specific programme and the work programme.	
The work programme may set out specific criteria or further details on the application of the criteria.		
	(1a.) Specific selection and award criteria may in particular be defined for investigator-driven 'frontier' research funded within the framework of the European Research Council.	31.
	(1b.) Where established in the work programmes or the calls for proposals, remote evaluations may be carried out.	4, 31.
2. A proposal which contravenes fundamental ethical principles or which does not fulfil the conditions set out in the specific programme, the work programme or in the call for proposals shall not be selected. Such a proposal may be excluded from the evaluation, selection and award procedures at any time.	2. A proposal which contravenes fundamental ethical principles or which does not fulfil the conditions set out in the specific programme, the work programme or in the call for proposals shall not be <u>eligible for participation and selected</u> . Such a proposal may be excluded from the evaluation procedures at any time.	31.
3. Proposals shall be selected on the basis of the evaluation results.	3. Proposals shall be selected on the basis of the evaluation results.	
<i>Article 16</i>	<i>Article 16</i>	32, 33.
Submission, evaluation, selection and award procedures	Submission, evaluation, selection, <u>negotiation</u> and award procedures	
1. The Commission shall adopt and publish rules governing the procedure for the submission of proposals, as well as the related evaluation, selection and award procedures. In particular, it shall lay down detailed rules for the two-stage procedure for submission, and rules for the two-step evaluation procedure.	1. The Commission shall adopt and publish rules governing the procedure for the submission of proposals, as well as the related evaluation, selection, <u>negotiation</u> and award procedures. In particular, it shall lay down detailed rules for the two-stage procedure for submission, and rules for the two-step evaluation procedure.	
2. Where a call for proposals specifies a two-stage submission procedure, only those proposals that pass the evaluation criteria for the first stage shall be requested to submit a complete proposal in the second stage.		
3. Where a call for proposals specifies a two-step evaluation procedure, only those proposals that pass the first step, based on the evaluation of a limited set of criteria, shall go forward for further evaluation.		
	(3a.) Unless otherwise specified in the work programme, proposals for indirect actions must be submitted electronically.	4.
4. The Commission shall adopt and publish rules to ensure consistent verification of the existence and legal status of participants in indirect actions as well as their financial capacity.	4. The Commission shall adopt and publish rules to ensure consistent verification of the existence and legal status of participants in indirect actions as well as their financial capacity.	

	<p>(4a.) moved from Article 15(3)) Proposals for indirect actions shall be selected on the basis of a comparative analysis of the evaluation results.</p> <p>(5.) Participants shall be informed in writing of the evaluation result. In the case of indirect actions proposed by a consortium, the evaluation result and the information concerning the selection of the proposal may be communicated to the co-ordinator only.</p> <p>(6.) For those proposals selected, the Commission may agree, if necessary, with participants to modify the scientific, operational and financial aspects of the indirect action, within the limits of the work programme and the call for proposal, and taking into account the results of the evaluation of the proposal.</p> <p>(7.) Applying the verification procedure set out in Article 16a, the Commission shall ensure that participants have the operational and financial capacity needed to carry out the indirect action as and when needed.</p> <p>(8.) The Commission shall award grants for those proposals for which negotiations have been successfully completed. All other proposals shall be rejected.</p>	37, 38.
	Article 16a	34, 35, 36, 42.
	<p>Verification of existence, legal status and operational and financial capacity of participants in indirect actions</p> <p>The Commission shall be responsible for verifying the existence, the legal status and the operational and financial capacity of participants in indirect actions. The verification shall be based on appropriate supporting documents provided by the participant, allowing its existence and legal status as well as its financial and operational capacity to be ascertained. These documents must be up-dated periodically, or whenever requested by the Commission. To avoid double verification, the Commission shall certify a successful verification, which until further notice shall be considered as sufficient for all proposals submitted by the same participant. For this purpose the Commission shall set up a single verification and certification system and shall adopt and publish specific rules.</p>	
Article 17		39.
Appointment of independent experts		
<p>1. The Commission shall appoint independent experts to assist with evaluations required under the Seventh Framework Programme, and its specific programmes.</p> <p>For coordination and support actions, referred to in Article 14, independent experts shall be appointed only if the Commission deems it appropriate.</p>	<p>1. The Commission shall appoint independent experts to assist with evaluations of indirect actions and monitoring activities as required under the Seventh Framework Programme, and its specific programmes.</p> <p>For coordination and support actions, referred to in Article 14, independent experts shall be appointed only if the Commission deems it appropriate.</p>	
<p>2. Independent experts shall be chosen considering the skills and knowledge appropriate to the tasks assigned to them.</p>		

<p>Independent experts shall be identified and selected on the basis of calls for applications from individuals and calls addressed to national research agencies, research institutions or enterprises with a view to establishing lists of suitable candidates.</p> <p>The Commission may, if deemed appropriate, select any individual with the appropriate skills from outside the lists.</p> <p>Appropriate measures shall be taken to ensure reasonable gender balance when appointing groups of independent experts.</p>		
	<p>(2a.) For the evaluation and the monitoring of investigator-driven 'frontier' research, experts shall be appointed by the Commission on the basis of a proposal by the Scientific Council of the European Research Council.</p>	40.
<p>3. When appointing an independent expert, the Commission shall take all necessary steps to ensure that the expert is not faced with a conflict of interests in relation to the matter on which the expert is required to provide an opinion.</p>	<p>3. When appointing an independent expert, the Commission shall take appropriate measures all necessary steps to ensure that the expert is not faced with a conflict of interests in relation to the matter on which the expert is required to provide an opinion.</p>	
<p>4. The Commission shall adopt a model appointment letter, hereinafter 'the appointment letter', which shall include a declaration that the independent expert has no conflict of interest at the time of appointment and that he undertakes to inform the Commission if any conflict of interest should arise in the course of providing his opinion or carrying out his duties. The Commission shall conclude an appointment letter between the Community and each independent expert.</p>		44.
	<p>(4a.) The Commission shall adopt and publish rules governing the appointment and the use of independent experts.</p>	32, 33.
<p>5. The Commission shall publish periodically in any appropriate medium the list of the independent experts that have assisted it for each specific programme.</p>	<p>5. The Commission shall publish periodically in any appropriate medium the list and the function of the independent experts that have assisted it for each framework programme and its specific programmes.</p>	
	<i>Article 17a</i>	4, 41, 42.
	Databases and electronic exchange of data	
	<p>(1.) The Commission shall take appropriate measures to ensure that data relating to all the indirect actions funded under the Seventh Framework Programme are recorded and processed in integrated databases and a common computerised system.</p> <p>(2.) The Commission shall encourage the electronic exchange of data for all aspects regarding the management of proposals and grants.</p>	
SUBSECTION 3 IMPLEMENTATION AND GRANT AGREEMENTS	SUBSECTION 3 IMPLEMENTATION OF INDIRECT ACTIONS AND GRANT AGREEMENTS	
<i>Article 18</i>	<i>Article 18</i>	
General	General Provisions regarding the implementation of grant agreements	
<p>1. The participants shall implement the indirect action and shall take all necessary and reasonable measures to that end. Participants in the same indirect action shall implement the work jointly and severally towards the Community.</p>		
<p>2. The Commission shall draw up, on the basis of the model provided for in Article 19.7 and taking into account the characteristics of the funding scheme concerned, a grant agreement between the Community and the participants.</p>	<p>2. The Commission shall draw up, on the basis of the model provided for in Article 19.7 and taking into account the characteristics of the funding scheme concerned, a grant agreement between the Community and the participants.</p>	

3. Participants shall make no commitments incompatible with the grant agreement.		
4. Where a participant fails to comply with its obligations, the other participants shall comply with the grant agreement without any complementary Community contribution unless the Commission expressly relieves them of that obligation.		
5. If the implementation of an action becomes impossible or if the participants fail to implement it, the Commission shall ensure the termination of the action.	5. If the implementation of an action becomes impossible or if the participants fail to implement it, the Commission shall ensure the termination of the action <u>in accordance with Article 21.</u>	56.
6. Participants shall ensure that the Commission is informed of any event which might affect the implementation of the indirect action or the interests of the Community.		
<i>Article 19</i>	<i>Article 19</i>	43, 44, 45, 46, 47, 48, 49, 50.
General provisions for inclusion in grant agreements	General provisions for inclusion in grant agreements	
1. The grant agreement shall establish the rights and obligations of the participants with regard to the Community, in accordance with Decision (.../...), this Regulation, the Financial Regulation, and the Implementing Rules, and in accordance with the general principles of Community law.		
It shall also establish, in accordance with the same conditions, the rights and obligations of legal entities who become participants when the indirect action is ongoing.	It shall also establish, in accordance with the same conditions, the rights and obligations of legal entities who become participants when the indirect action is ongoing.	
	(1a. moved from Article 18(2)) For each indirect action, with the exception of those referred to in Article 14, the Commission shall draw up, on the basis of using the models provided for referred to in Article 19(7) and taking into account the characteristics of the funding scheme concerned, a grant agreement between the Community and the coordinator acting on behalf of the participants.	
2. Where appropriate, the grant agreement shall provide which part of the Community financial contribution will be based on the reimbursement of eligible costs, and which part will be based on flat rates (including scale of unit costs) or lump-sums.	2. Where appropriate, the grant agreement shall specify the duration of the action, the scientific and technical work to be carried out, a budget of total estimated costs and provide which part of the maximum Community financial contribution to the indirect action will be based on the reimbursement of eligible costs, and which part will be based on flat rates (including scale of unit costs) or lump-sums.	
3. The grant agreement shall specify which changes in the composition of the consortium are to require the prior publication of a competitive call.	3. The grant agreement shall specify which changes in the composition of the consortium are to require the prior publication of a competitive call.	
4. The grant agreement shall require the submission to the Commission of periodic progress reports concerning the implementation of the indirect action concerned.	4. The grant agreement shall require the submission to the Commission of periodic progress reports concerning the implementation of the indirect action concerned <u>and, where appropriate, may also provide for reviews to assess the implementation of the indirect action concerned.</u>	56.
5. Where appropriate, the grant agreement may provide that the Commission is to be notified in advance of any intended transfer of ownership of foreground to a third party.	5. Where appropriate, the grant agreement may provide that the Commission is to be notified in advance of any intended transfer of ownership of foreground to a third party.	

<p>6. Where the grant agreement requires participants to carry out activities that benefit third parties, the participants shall advertise this widely and identify, evaluate and select third parties transparently, fairly and impartially. If provided for in the work-programme, the grant agreement shall establish criteria for the selection of such third parties. The Commission reserves the right to object to the selection of the third parties.</p>		
<p>7. The Commission shall establish a model grant agreement in accordance with this Regulation.</p>	<p>7. The Commission shall establish <u>and adopt</u> a model grant agreements <u>specific to each of the funding schemes identified in part (a) of Annex III to Decision (.../...) establishing the Seventh Framework Programme</u> in accordance with this Regulation.</p>	
<p>8. The model grant agreement shall reflect the principles laid down in the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers ⁽⁸⁾. It shall address, as appropriate, synergies with education at all levels; readiness and capacity to foster dialogue and debate on scientific issues and research results with a broad public beyond the research community; activities to increase the participation and role of women in research; and activities addressing socio-economic aspects of the research.</p>	<p>8. The model grant agreements shall reflect the principles laid down in the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers ⁽⁸⁾. It shall address, as appropriate, synergies with education at all levels; readiness and capacity to foster dialogue and debate on scientific issues and research results with a broad public beyond the research community; activities to increase the participation and role of women in research; and activities addressing socio-economic aspects of the research.</p>	
	<p>(8a. moved from whereas (16)) The model grant agreements concluded for each action shall should provide for supervision and financial control by the Commission, or any representative authorised by the Commission, as well as audits by the Court of Auditors and on-the-spot checks carried out by the European Anti-Fraud Office (OLAF), in accordance with the procedures laid down in Council Regulations No 2185/96, No 1073/99 and No 1074/99.</p>	<p>19.</p>
<p>Article 20</p>		
<p>Provisions concerning access rights, use and dissemination</p>		
<p>1. The grant agreement shall establish the respective obligations of the participants with regard to access rights, use and dissemination, in so far as those obligations have not been laid down in this Regulation.</p>	<p>1. The grant agreement shall establish the respective <u>rights and</u> obligations of the participants with regard to access rights, use and dissemination, in so far as those <u>rights and</u> obligations have not been laid down in this Regulation.</p>	
<p>For those purposes, it shall require the submission to the Commission of a plan for the use and dissemination of foreground.</p> <p>2. The grant agreement may specify the conditions under which the participants may object to a technological audit of the use and dissemination of the foreground being carried out by certain authorised representatives of the Commission.</p>		
<p>Article 21</p> <p>Provisions concerning termination</p> <p>The grant agreement shall specify the grounds for its termination, in whole or in part, in particular for non-compliance with this Regulation, non-performance or breach, as well as the consequences for participants of any non-compliance on the part of another participant.</p>		

⁽⁸⁾ OJ L 75, 22.3.2005, p. 67.

<p style="text-align: center;"><i>Article 22</i></p> <p style="text-align: center;">Specific provisions</p> <p>1. In the case of indirect actions to support existing research infrastructures and, where applicable, new research infrastructures, the grant agreement may lay down specific provisions relating to confidentiality, publicity and access rights and commitments that might affect users of the infrastructure.</p> <p>2. In the case of indirect actions to support training and career development of researchers, the grant agreement may lay down specific provisions on confidentiality, access rights and commitments relating to the researchers benefiting from the action.</p> <p>3. In the case of indirect actions in the field of security and space research, the grant agreement may lay down specific provisions on confidentiality, classification of information, access rights, transfer of ownership of foreground and the use thereof.</p> <p>4. Where appropriate, the grant agreement for indirect actions addressing security issues, other than those referred to in paragraph 3, may also include such specific provisions.</p>		
	<p>(5.; moved from Article 47) In the case of investigator-driven 'frontier' research actions, participants shall actively ensure the grant agreement may lay down specific provisions relating to dissemination of foreground, taking into account the need to safeguard intellectual property rights, the benefits of swift dissemination, confidentiality, and the legitimate interests of the participants.</p>	
<p style="text-align: center;"><i>Article 23</i></p>	<p style="text-align: center;"><i>Article 23</i></p>	<p style="text-align: center;">45, 46, 47, 48, 49, 50.</p>
<p style="text-align: center;">Signature and accession</p>	<p style="text-align: center;">Signature and accession in the case of multi-partner indirect actions</p>	
<p>The grant agreement shall enter into force upon signature by the coordinator and the Commission.</p>	<p>(1.) The grant agreement shall enter into force upon signature by the coordinator, <u>acting on behalf of the other participants</u>, and the Commission.</p>	
<p>It shall apply to each participant that has formally acceded thereto.</p>	<p>It shall apply to each participant that has formally acceded thereto <u>to the consortium agreement</u>.</p>	
	<p>(2.) (Changes in the composition of the consortium shall be subject to written approval by the Commission in accordance with Article 26(4).)</p>	
<p style="text-align: center;">SUBSECTION 4 CONSORTIA</p>		
<p style="text-align: center;"><i>Article 24</i></p>		<p style="text-align: center;">51, 52.</p>
<p style="text-align: center;">Consortium agreements</p>		
<p>Save where otherwise provided in the call for proposals, all legal entities wishing to participate in an indirect action shall draw up an agreement, hereinafter 'the consortium agreement', to govern the following:</p>	<p>(1.) Save where Unless otherwise provided for in the call for proposals, all legal entities wishing to participate in an indirect action shall <u>conclude draw up</u> an agreement, hereinafter 'the consortium agreement', to govern the following:</p>	
	<p><u>It may establish additional rights and obligations of the participants in an indirect action, in accordance with the provisions established in the grant agreement, to govern the following:</u></p>	

(a) the internal organisation of the consortium;	(a) the <u>legal representation and the internal organisation of the consortium, confidentiality arrangements and the settlement of internal disputes, including provisions regarding the withdrawal, removal or exchange of any of the participants;</u>	
(b) the distribution of the Community financial contribution;	(b) the distribution of <u>the budget of estimated costs, the distribution of the Community financial contribution, the forms of grants used in accordance with Article 30(1) and provisions regarding the reporting and calculating of costs in accordance with Article 30(2);</u>	
(c) additional rules on dissemination and use including intellectual property rights arrangements, as appropriate;	(c) additional rules on <u>ownership of foreground generated by the indirect action, transfer of such ownership, access rights,</u> dissemination and use including intellectual property rights arrangements, as appropriate;	
(d) the settlement of internal disputes.	(d) <u>the settlement of internal disputes.</u>	
	(2.) The consortium agreement shall be concluded by all participants wishing to participate in an indirect action before the signature of the grant agreement by the coordinator. (3.) In accordance with this Regulation the Commission shall establish model consortium agreements specific to each of the funding schemes identified in part (a) of Annex III to Decision (.../...) establishing the Seventh Framework Programme.	
<i>Article 25</i>		45, 46, 47, 48, 49, 50.
Coordinator		
1. The legal entities wishing to participate in an indirect action shall appoint one of their number to act as coordinator to carry out the following tasks in accordance with this Regulation, the Financial Regulation, the Implementing Rules, and the grant agreement:	1. The legal entities wishing to participate in an indirect action shall appoint <u>among themselves a one of their number to act as coordinator</u> to carry out the following tasks in accordance with this Regulation, the Financial Regulation, the Implementing Rules, and the grant agreement:	
(a) to ensure that the legal entities identified in the grant agreement complete the necessary formalities for accession to the grant agreement, as provided for therein;	(a) to ensure that the legal entities <u>participating in the indirect action comply with their obligations under the grant agreement and the consortium agreement identified in the grant agreement complete the necessary formalities for accession to the grant agreement, as provided for therein;</u>	
(b) to receive the Community financial contribution and to distribute it ;	(b) to receive the Community financial contribution and to distribute it <u>according to the provisions specified in the consortium agreement;</u>	
(c) to keep the financial accounts in order, to keep records and to inform the Commission of the distribution of the Community financial contribution in accordance with Article 36;	(c) <u>to keep the financial accounts in order,</u> to keep records and to inform the Commission of the distribution of the Community financial contribution in accordance with <u>Article 24(b) and Article 36;</u>	
(d) to ensure efficient and correct communication between the participants and the Commission.	(d) to ensure efficient and correct <u>reporting of the scientific and technical deliverables and progress of work communication</u> between the participants and, <u>in accordance with Article 19(4), to the Commission.</u>	
	(e) <u>to terminate the participation of legal entities should a participant not comply with its obligations under the grant agreement or the consortium agreement.</u>	
2. The coordinator shall be identified in the grant agreement.	2. The coordinator shall be identified in the <u>grant agreement consortium agreement.</u>	
The appointment of a new coordinator shall require the written approval of the Commission.	<u>The appointment of a new coordinator shall require the written approval of the Commission.</u>	

	(3.) Where provided for in the consortium agreement, the coordinator may subcontract its administrative and management activities in accordance with Article 33(4).	53.
Article 26		54, 55.
Changes in the consortium		
1. The participants in an indirect action may propose the addition of a new participant or the removal of an existing participant.	1. The participants in an indirect action may <u>agree to add</u> propose the addition of a new participant or <u>to remove the removal of</u> an existing participant in accordance with the respective provisions established in the consortium agreement.	
2. Any legal entity which joins an ongoing action shall accede to the grant agreement.	2. Any legal entity which joins an ongoing action shall accede to the grant agreement and <u>the consortium agreement.</u>	
3. Where provided for in the grant agreement, the consortium shall publish a competitive call and advertise it widely using specific information support, particularly Internet sites on the seventh framework programme, the specialist press and brochures, and the national contact points set up by the Member States and Associated countries for information and support.	3. Where provided for in the grant agreement, the consortium shall publish a competitive call and advertise it widely using specific information support, particularly Internet sites on the seventh framework programme, the specialist press and brochures, and the national contact points set up by the Member States and Associated countries for information and support.	55.
The consortium shall evaluate offers in the light of the criteria which governed the initial action and with the assistance of independent experts appointed by the consortium, in accordance with the principles laid down in Articles 15, and Article 17, respectively.	The consortium shall evaluate offers in the light of the criteria which governed the initial action and with the assistance of independent experts appointed by the consortium, in accordance with the principles laid down in Articles 15, and Article 17, respectively.	
4. The consortium shall notify any change of its composition to the Commission, which may object within 45 days of the notification.	4. The consortium shall notify any change of its composition to the Commission, which may object within 45 days of the notification.	
Changes in the composition of the consortium associated with proposals for other changes to the grant agreement which are not directly related to the change in composition shall be subject to written approval by the Commission.	(Changes in the composition of the consortium associated with proposals for other changes to the grant agreement which are not directly related to the change in composition shall be subject to written approval by the Commission.)	
SUBSECTION 5 MONITORING OF PROGRAMMES AND INDIRECT ACTIONS AND COMMUNICATION OF INFORMATION		
Article 27	Article 27	39, 56.
Monitoring	Monitoring and review	
The Commission shall monitor the implementation of indirect actions on the basis of the periodic progress reports submitted pursuant to Article 19(4).	(1.) The Commission shall monitor the implementation of indirect actions on the basis of the periodic progress reports submitted pursuant to Article 19(4).	
In particular, the Commission shall monitor the implementation of the plan for the use and dissemination of foreground, submitted pursuant to the second subparagraph of Article 20(1).	...	
	(2.) The Commission may also carry out reviews of indirect actions on a periodic basis, or on their completion. <u>Such reviews may also be carried out to determine whether the indirect action should be terminated in accordance with Article 18(5).</u>	
For those purposes, the Commission may be assisted by independent experts appointed in accordance with Article 17.	For those purposes, the Commission may be assisted by independent experts appointed in accordance with Article 17.	

<p>The Commission shall monitor the seventh framework programme, its specific programmes and, where appropriate, previous framework programmes, with the assistance of independent experts appointed in accordance with Article 17. In addition, it may set up groups of independent experts appointed in accordance with Article 17, to advise on the implementation of Community research policy.</p>	<p>(3.) The Commission shall monitor the Sseventh Fframework Pprogramme, its specific programmes and, where appropriate, previous framework programmes, with the assistance of independent experts appointed in accordance with Article 17. In addition, it may seek advice set up groups of independent experts appointed in accordance with Article 17, to advise on the implementation of Community research policy.</p>	
	<p>(4. moved from above) For those purposes, the Commission may be assisted by independent experts appointed in accordance with Article 17.</p>	
	<p>(5.) The Commission shall present to a committee composed of representatives of Member States, and chaired by the Commission, the results of its monitoring activities in accordance with paragraphs 1 to 3 of this Article.</p>	57.
	<p>(6.) The responsibility for monitoring investigator-driven 'frontier' research funded within the framework of the ERC shall be with the ERC's 'Scientific Council', or its competent sub-committees.</p>	56.
<p>Article 28</p> <p>Information to be made available</p> <p>1. Upon request, the Commission shall make available to any Member State or Associated country any useful information in its possession on foreground arising from work carried out in the context of an indirect action, provided that the following conditions are met:</p> <p>(a) the information concerned is relevant to public policy;</p> <p>(b) the participants have not provided sound and sufficient reasons for withholding the information concerned.</p> <p>2. Under no circumstances shall the provision of information pursuant to paragraph 1 be deemed to transfer to the recipient any rights or obligations of the Commission or of the participants.</p> <p>However, the recipient shall treat any such information as confidential unless it becomes public or is made available publicly by the participants, or unless it was communicated to the Commission without restrictions on its confidentiality.</p> <p style="text-align: center;">SECTION 3 COMMUNITY FINANCIAL CONTRIBUTION</p> <p style="text-align: center;">SUBSECTION 1 ELIGIBILITY FOR FUNDING AND FORMS OF GRANTS</p> <p style="text-align: center;">Article 29</p> <p style="text-align: center;">Eligibility for funding</p> <p>1. Where any of the following legal entities participates in an indirect action, it may receive a Community financial contribution:</p>		

<p>(a) any legal entity established in a Member State or an Associated country, or created under Community law,</p> <p>(b) any international European interest organisation,</p> <p>(c) any legal entity established in an international cooperation partner country.</p> <p>2. In the case of a participating international organisation, other than an international European interest organisation, or a legal entity established in a third country other than an international cooperation partner country, a Community financial contribution may be granted provided that at least one of the following conditions is satisfied:</p> <p>(a) provision is made to that effect in the specific programmes or in the relevant work programme,</p> <p>(b) it is essential for carrying out the indirect action,</p> <p>(c) such funding is provided for in a bilateral scientific and technological agreement or any other arrangement between the Community and the country in which the legal entity is established.</p>		
<i>Article 30</i>		
Forms of grants		3, 58, 59, 60, 61.
<p>1. The Community financial contribution for grants identified in part a) of Annex III to the Seventh Framework Programme shall be based on the reimbursement of eligible costs.</p>	<p>1. The Community financial contribution for grants identified in part a) of Annex III to the Seventh Framework Programme shall <u>consist of</u> be based on the reimbursement, <u>in part or in whole</u>, of eligible costs.</p>	
<p>However, the Community financial contribution may take the form of flat rate financing, including scale of unit costs, or lump sum financing, or it may combine the reimbursement of eligible costs with flat rates and lump sums.</p>	<p>However, the Community financial contribution may take the form of flat rate financing, including scale of unit costs, or lump sum financing, or it may combine the reimbursement of eligible costs with flat rates and lump sums.</p>	
	<p>Lump sums for whole indirect actions may be used only for coordination and support actions and actions for training and career development of researchers.</p>	60.
<p>The Community financial contribution may also take the form of scholarships or prizes.</p>	<p>The Community financial contribution may also take the form of scholarships or prizes.</p>	
<p>2. While the Community financial contribution shall be calculated by reference to the cost of the indirect action as a whole, it shall be based on the reported costs of each participant.</p>	<p>2. While the <u>maximum</u> Community financial contribution <u>for the indirect action</u> shall be <u>defined</u> calculated by reference to the cost of the indirect action as a whole, it shall be according to the activities carried out by and based on the budget of estimated reported costs for of each participant.</p>	61.
<i>Article 31</i>		
Reimbursement of eligible costs		
<p>1. Grants shall be co-financed by the participants.</p>	<p>1. <u>Indirect actions awarded a</u> Ggrants <u>from the Community budget</u> shall be co-financed by the participants.</p>	
<p>The Community financial contribution to reimburse eligible costs shall not give rise to a profit.</p>	<p>The Community financial contribution to reimburse eligible costs shall not give rise to a profit. Whether or not there is a profit shall be determined at the level of each participant.</p>	62.
<p>2. Receipts shall be taken into consideration for the payment of the grant at the end of the implementation of the action.</p>	<p>2. Receipts shall be taken into consideration for the payment of the grant at the end of the implementation of the action <u>in accordance with Article 33(5).</u></p>	

3. In order to be considered eligible, costs incurred for the implementation of an indirect action shall meet the following conditions:	3. In order to be considered eligible, costs incurred <u>by each participant</u> for the implementation of an indirect action shall meet the following conditions:	
(a) they must be actual;		
(b) they must have been incurred during the duration of the action, with the exception of final reports when provided for in the grant agreement;		
(c) they must have been determined in accordance with the usual accounting and management principles and practices of the participant and used for the sole purpose of achieving the objectives of the indirect action and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;	(c) they must have been determined and have been used according to the usual accounting and management principles of the country where the legal entity is established and cost accounting practices of the participant and incurred for the sole purpose of achieving the objectives of the indirect action and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;	63, 65.
(d) they must be recorded in the accounts of the participant and paid and, in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;	(d) they must be recorded in the accounts of the participant and paid and, in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;	
(e) they must be exclusive of non-eligible costs, in particular identifiable indirect taxes including value added tax, duties, interest owed, provisions for possible future losses or charges, exchange losses, cost related to return on capital, costs declared or incurred, or reimbursed in respect of another Community project, debt and debt service charges, excessive or reckless expenditure, and any other cost that does not meet the conditions referred to in points (a) to (d).	(e) they must be exclusive of non-eligible costs, in particular <u>recoverable identifiable</u> indirect taxes, including value added tax, duties, interest owed, provisions for possible future losses or charges, exchange losses, costs related to return on capital, costs declared or incurred, or reimbursed in respect of another Community project, debt and debt service charges, excessive or reckless expenditure, and any other cost that does not meet the conditions referred to in points (a) to (d).	64.
For the purposes of point (a), average personnel costs may be used if they are consistent with the management principles and accounting practices of the participant and do not differ significantly from actual costs.	For the purposes of point (a), average personnel costs may be used if they are consistent with the management principles and accounting practices of the participant and do not differ significantly from actual costs.	
<i>Article 32</i>	<i>Article 32</i>	66, 67, 68, 69, 70.
Direct eligible costs and indirect eligible costs	Direct eligible costs and indirect eligible costs	
1. Eligible costs shall be composed of costs attributable directly to the action, hereinafter 'direct eligible costs' and, where applicable, of costs which are not attributable directly to the action, but which have been incurred in direct relationship with the direct eligible costs attributed to the action, hereinafter 'indirect eligible costs'.		
	(1a.) Direct costs can be composed of personnel, travel and subsistence, and other specific costs.	67.
	(1b.) Personnel costs shall include remuneration and related charges for personnel directly employed by a participant. They shall be charged on the basis of the participant's records of time actually spent by personnel on the indirect action. A participant may charge average costs or unit scales for specific categories of staff, provided that they are established in accordance with its usual cost accounting practices.	

	<p>(1c.) Travel and subsistence costs for personnel participating in the indirect action shall be charged as actual costs incurred or based on unit scales, provided that they are established in accordance with the participant's usual cost accounting practices, or based on unit scales established by the Commission.</p> <p>(1d.) Other specific costs, including durable equipment, user fees, consumables, subcontracting, shall be eligible only if defined in the grant agreement.</p>	
2. For the coverage of indirect eligible costs, a participant may opt for a flat-rate of its total direct eligible costs, excluding its direct eligible costs for subcontracting.	2. For the coverage of indirect eligible costs, a participant may charge actual costs or may opt for a flat-rate for of its total direct eligible personnel costs, excluding its direct eligible costs for subcontracting, provided that it is established in accordance with its usual cost accounting practices.	68, 69, 70.
3. The grant agreement may provide that the reimbursement of indirect eligible costs is to be limited to a maximum percentage of the direct eligible costs, excluding the direct eligible costs for subcontracting, in particular in the case of coordination and support actions, and, where appropriate, actions for training and career development of researchers.	3. The grant agreement may provide that the reimbursement of indirect eligible costs is to be limited to a maximum percentage of the direct eligible personnel costs, excluding the direct eligible costs for subcontracting, in particular in the case of coordination and support actions, and, where appropriate, actions for training and career development of researchers.	68.
<i>Article 33</i>		3, 71, 72, 73.
Upper funding limits		
1. For research and technological development activities, the Community financial contribution may reach a maximum of 50 % of the total eligible costs.		
However, in the case of public bodies, secondary and higher education establishments, research organisations and SMEs, it may reach a maximum of 75 % of the total eligible costs.		71, 72.
2. For demonstration activities, the Community financial contribution may reach a maximum of 50 % of the total eligible costs.		
3. For activities supported by frontier research actions, coordination and support actions, and actions for the training and career development of researchers, the Community financial contribution may reach a maximum of 100 % of the total eligible costs.		
4. For management and audit certificates, and other activities not covered by paragraphs 1, 2 and 3, the Community financial contribution may reach a maximum of 100 % of the total eligible costs.	4. For management activities (including and audit certificates) and training activities in actions that do not fall under the funding scheme for training and career development of researchers, coordination, networking, and dissemination and other activities not covered by paragraphs 1, 2 and 3, the Community financial contribution may be up to reach a maximum of 100 % of the total eligible costs.	73.
The other activities referred to in the first subparagraph include, <i>inter alia</i> , training in actions that do not fall under the funding scheme for training and career development of researchers, coordination, networking, and dissemination.	The other activities referred to in the first subparagraph include, <i>inter alia</i> , training in actions that do not fall under the funding scheme for training and career development of researchers, coordination, networking, and dissemination.	
5. For the purposes of paragraphs 1 to 4, eligible costs minus receipts shall be taken into consideration in order to determine the Community financial contribution.	5. For the purposes of paragraphs 1 to 4, eligible costs and minus receipts shall be taken into consideration in order to determine the Community financial contribution.	

6. Paragraphs 1 to 5 shall apply, as appropriate, in the case of indirect actions where flat rate financing or lump sum financing is used for the whole indirect action.	6. Paragraphs 1 to 5 shall apply, as appropriate, in the case of indirect actions where flat rate financing or lump sum financing is used for the whole indirect action.	
<i>Article 34</i>	<i>Article 34</i>	74.
Reporting and audit of eligible costs	Reporting and audit of eligible costs	
1. Periodic reports shall be submitted to the Commission regarding eligible costs, financial interest yielded by pre-financing, and receipts in relation with the indirect action concerned and, where appropriate, certified by an audit certificate, in accordance with the Financial Regulation and the Implementing Rules.	1. All Periodic reports shall be submitted to the Commission regarding eligible costs, financial interest yielded by pre-financing, and receipts relating to in relation with the indirect action concerned shall be periodically reported to the Commission and, where appropriate, certified by an audit certificate, in accordance with the Financial Regulation and the Implementing Rules.	
The existence of co-financing in relation with the concerned action shall be reported and, where appropriate, certified at the end of the action.	The existence of co-financing in relation with the concerned action shall be reported and, where appropriate, certified at the end of the action.	
2. In the case of public bodies, research organisations, and higher and secondary education establishments, an audit certificate as required under paragraph 1 may be established by a competent public officer.	2. In the case of public bodies, research organisations, and higher and secondary education establishments, an audit certificate as required under paragraph 1 may be established by a competent public officer.	
	<i>Article 34a</i>	69, 75, 76, 77.
	Audit certificates	
	(1.) Reported costs shall be certified in accordance with the Financial Regulation and the Implementing Rules.	
	(2.) In accordance with this Regulation and the provisions of the grant agreement, audit certificates shall provide assurance that:	75.
	(a) the costs claimed by the participant are eligible;	
	(b) the costs, interest on pre-financing and receipts have been correctly determined and are substantiated by adequate supporting documents.	
	(3.) Audit certificates shall be provided by an external auditor or, in the case of public bodies, a competent public officer. The external auditor must comply with the requirements established in accordance with the 8th Council Directive 84/253/EEC of 10 April 1984. The competence of the public officer shall be determined by the national legislation and the relevant authorities. The external auditor or, in the case of public bodies, the competent public officer providing the audit certificate, must be independent of the participant in charge of the selection of the auditor.	76.
	(4.) The Commission shall have access to the supporting documents for these audit certificates.	77.
<i>Article 35</i>	<i>Article 35</i>	59, 78, 79.
Networks of Excellence	Networks of Excellence	
1. Unless otherwise provided for in the work programme, the Community financial contribution to Networks of Excellence shall be in the form of a lump-sum calculated according to the number of researchers to be integrated in the Network of Excellence and the duration of the action.	1. Unless otherwise provided for in the work programme, the Community financial contribution to Networks of Excellence shall be in the form of a lump-sum calculated according to the number of researchers to be integrated in the Network of Excellence and the duration of the action.	

2. The unit value for lump sums paid under paragraph 1 shall be EUR 23 500 per year and per researcher.	2. The unit value for lump sums paid under paragraph 1 shall be EUR 23 500 per year and per researcher.	
That amount shall be adjusted by the Commission in accordance with the Financial Regulation and the Implementing Rules.	That amount shall be adjusted by the Commission in accordance with the Financial Regulation and the Implementing Rules.	
3. The work programme shall establish the maximum number of participants and, where appropriate, the maximum number of researchers that may be used as the basis for the calculation of the maximum lump sum pursuant to paragraph 1. However, participants over and above the maxima for the establishment of the financial contribution may participate as appropriate.	3. The work programme shall establish the maximum number of participants and, where appropriate, the maximum number of researchers that may be used as the basis for the calculation of the maximum lump sum pursuant to paragraph 1. However, participants over and above the maxima for the establishment of the financial contribution may participate as appropriate.	
4. The payment of lump sums under paragraph 1 shall be effected by means of periodic releases.	4. The payment of lump sums under paragraph 1 shall be effected by means of periodic releases.	
Those periodic releases shall be made according to the assessment of the progressive implementation of the Joint Programme of Activities through the measurement of integration of research resources and capacities based on performance indicators negotiated with the consortium and specified in the grant agreement.	Those periodic releases shall be made according to the assessment of the progressive implementation of the Joint Programme of Activities through the measurement of integration of research resources and capacities based on performance indicators negotiated with the consortium and specified in the grant agreement.	
<p><i>SUBSECTION 2</i></p> <p>PAYMENT, DISTRIBUTION, RECOVERY AND GUARANTEES</p> <p><i>Article 36</i></p> <p>Payment and distribution</p> <p>1. The Community financial contribution shall be paid to the participants via the coordinator.</p> <p>2. The coordinator shall keep records making it possible to determine at any time what portion of the Community funds has been distributed to each participant.</p> <p>The coordinator shall communicate that information to the Commission upon request.</p> <p><i>Article 37</i></p> <p>Recovery</p> <p>The Commission may adopt a recovery decision in accordance with the Financial Regulation.</p> <p><i>Article 38</i></p>	<p><i>Article 38</i></p>	3, 80, 81.
Retained amounts for risk avoidance	Retained amounts for risk avoidance	
1. Depending on the level of risk associated with non-recovery of sums due to the Community, the Commission may retain a small percentage of the Community financial contribution to each participant in an indirect action in order to cover any amounts due and not reimbursed by defaulting participants in indirect actions.	1. Depending on the level of risk associated with non-recovery of sums due to the Community, the Commission may retain a small percentage of the Community financial contribution to each participant in an indirect action in order to cover any amounts due and not reimbursed by defaulting participants in indirect actions.	
2. Paragraph 1 shall not apply to the following:	2. Paragraph 1 shall not apply to the following:	
(a) public bodies, legal entities whose participation in the indirect action is guaranteed by a Member State or an Associated country, and higher and secondary education establishments;	(a) public bodies, legal entities whose participation in the indirect action is guaranteed by a Member State or an Associated country, and higher and secondary education establishments;	

<p>(b) participants in actions to support training and career development of researchers, frontier research actions, and actions for the benefit of specific groups with the exception actions for the benefit of SMEs.</p>	<p>(b) participants in actions to support training and career development of researchers, frontier research actions, and actions for the benefit of specific groups with the exception actions for the benefit of SMEs.</p>	
<p>The types of participant referred to in points (a) and (b) shall each be responsible for their own debts.</p>	<p>The types of participant referred to in points (a) and (b) shall each be responsible for their own debts.</p>	
<p>3. The amounts retained shall constitute revenue assigned to the Seventh Framework Programme within the meaning of Article 18(2) of the Financial Regulation.</p>	<p>3. The amounts retained shall constitute revenue assigned to the Seventh Framework Programme within the meaning of Article 18(2) of the Financial Regulation.</p>	
<p>4. At the end of the framework programme an assessment shall be made of the amounts required to cover outstanding risks. Any sums in excess of these amounts shall be reimbursed to the framework programme and constitute earmarked revenue.</p>	<p>4. At the end of the framework programme an assessment shall be made of the amounts required to cover outstanding risks. Any sums in excess of these amounts shall be reimbursed to the framework programme and constitute earmarked revenue.</p>	
<p style="text-align: center;">CHAPTER III</p> <p style="text-align: center;">Dissemination and use, and access rights</p> <p style="text-align: center;"> <i>SECTION 1</i></p> <p style="text-align: center;">FOREGROUND</p> <p style="text-align: center;"> <i>SUBSECTION 1</i></p> <p style="text-align: center;">OWNERSHIP</p>		
<p style="text-align: center;"><i>Article 39</i></p> <p style="text-align: center;">Ownership of foreground</p> <p>1. Foreground shall be the property of the Community in the following cases:</p>		
<p>(a) coordination and support actions consisting in a purchase or service subject to the rules on public procurement set out in the Financial Regulation;</p>	<p>(a) coordination and support actions consisting in a purchase <u>of goods</u> or services subject to the rules on public procurement set out in the Financial Regulation <u>and its Implementing Rules</u>;</p>	
<p>(b) coordination and support actions relating to independent experts.</p> <p>2. Foreground arising from work carried out under indirect actions other than those referred to in paragraph 1 shall be the property of the participants carrying out the work generating that foreground.</p> <p>3. If employees or other personnel working for a participant are entitled to claim rights to foreground, the participant shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under the grant agreement.</p>		

<i>Article 40</i>		83.
Joint ownership of foreground		
1. Where several participants have jointly carried out work generating foreground and where their respective share of the work cannot be ascertained, they shall have joint ownership of such foreground.	1. Where several participants have jointly carried out work generating foreground and where their respective share of the work cannot be ascertained, they shall have joint ownership of such foreground. <u>In such cases, the participants concerned shall conclude a joint ownership agreement governing the allocation and terms of exercising that joint ownership.</u>	
2. Where no joint ownership agreement has been concluded regarding the allocation and terms of exercising that joint ownership, each of the joint owners shall be entitled to grant non-exclusive licenses to third parties, without any right to sub-licence subject to the following conditions:	2. Where no such joint ownership agreement has been concluded by the participants in an indirect action regarding the allocation and terms of exercising that joint ownership , each of the joint owners shall be entitled to grant non-exclusive licenses to third parties, without any right to sub-licence, subject to the following conditions:	
(a) prior notice must be given to the other joint owners;	(a) giving prior notice must be given to the other joint owners;	
(b) fair and reasonable compensation must be provided to the other joint owners.	(b) fair and reasonable compensation must be provided to the other joint owners.	
	(3.) The Commission shall establish model joint ownership agreements in accordance with this Regulation.	
<i>Article 41</i>		
Ownership of foreground by specific groups		
1. In the case of actions for the benefit of specific groups, Article 39(2) and Article 40(1) shall not apply. In such cases, foreground shall be jointly owned by the participants which are members of the specific group benefiting from the action, unless otherwise agreed by those participants.	In the case of actions for the benefit of specific groups identified in part (a), section 6, of Annex III to Decision (.../...) establishing the Seventh Framework Programme , Article 39(2) and Article 40(1) shall not apply. In such cases, foreground shall be jointly owned by the participants which are members of the specific group benefiting from the action, unless otherwise agreed by those participants.	
Where the owners of the foreground are not members of that group, they shall ensure that the group is provided with all the rights to foreground that are required for the purposes of using and disseminating that foreground in accordance with the technical annex to the grant agreement.	Where the owners of the foreground are not members of that group, they shall ensure that the group is provided with all the exclusive rights to foreground that are required for the purposes of using and disseminating that foreground in accordance with the technical annex to the grant agreement.	
<i>Article 42</i>	<i>Article 42</i>	82, 84.
Transfer of foreground	Transfer of <u>ownership and access rights regarding foreground</u>	
1. Where a participant transfers ownership of foreground, it shall pass on its obligations to the assignee, in particular those relating to the granting of access rights, and dissemination and use, in accordance with the grant agreement.	1. Where a participant transfers ownership of foreground, it shall pass on its obligations to the assignee, in particular those relating to the granting of access rights, and dissemination and use in accordance with this Regulation, the grant agreement and the consortium agreement.	

	<p><u>(1a.) Foreground shall also be accessible to affiliated entities of the participants carrying out the work generating that foreground if the affiliated company is:</u></p> <p>(a) <u>established in a Member State or an Associated Country;</u></p> <p>(b) <u>granting reciprocal access rights in respect of any background which it holds and which is needed to use the foreground;</u></p> <p>(c) <u>complying with the obligations concerning confidentiality in accordance with Article 3.</u></p>	
<p>2. Subject to its obligations concerning confidentiality, where the participant is required to pass on access rights, it shall give prior notice to the other participants in the same action, together with sufficient information concerning the new owner of the foreground to permit them to exercise their access rights under the grant agreement.</p>	<p>2. Subject to its obligations concerning confidentiality, wWhere a the participant intends is required to pass on access rights, it shall give prior notice to the other participants in the same action, together with sufficient information concerning the new assignee owner of the foreground to permit the other participants them to exercise their access rights under the grant agreement.</p>	
<p>However, the other participants may, by written agreement, waive their right to individual prior notice in the case of transfers of ownership from one participant to a specifically identified third party.</p>	<p>However, the other participants may, by written agreement, waive their right to individual prior notice in the case of transfers of ownership from one participant to a specifically identified third party.</p>	
	<p><u>(2a.) No prior notice to the other participants in the same action needs to be given (one) year after</u></p> <p>(a) <u>the completion of the indirect action, or</u></p> <p>(b) <u>the termination of participation by the owner of the foreground concerned.</u></p>	
<p>3. Following notification in accordance with the first subparagraph of paragraph 2, the other participants may object to any transfer of ownership on the ground that it would adversely affect their access rights.</p>	<p>3. Following notification in accordance with the first subparagraph of paragraph 2 of <u>this Article</u>, any the other participants may object to any transfer of ownership on the ground that it would adversely affect their access rights.</p>	
<p>Where the other participants demonstrate that their rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the participants concerned.</p>	<p>Where <u>any of</u> the other participants demonstrate that their rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the participants concerned.</p>	
<p>4. Where appropriate, the grant agreement may provide, by way of an additional requirement, that the Commission is to be notified in advance of any intended transfer of ownership to a third party.</p>	<p>4. Where appropriate, the grant agreement, may provide, by way of an additional requirement, that tThe Commission is to be notified in advance of any intended transfer of ownership or access rights regarding foreground to a third party which is not established in a Member State or an Associated country.</p>	
<p>Article 43</p>		<p>84.</p>
<p>Preservation of European competitiveness and ethical principles</p>		
<p>The Commission may object to the transfer of ownership of foreground, or to the granting of an exclusive licence regarding foreground, to a legal entity which is established in a third country not associated to the Seventh Framework Programme, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles.</p>	<p><u>In accordance with Article 42(4) of this Regulation, tThe Commission may object to the transfer of ownership of foreground, or to the granting of an exclusive licence regarding foreground, to third parties not a legal entity which is established in a Member State or an Associated country third country not associated to the Seventh Framework Programme, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles.</u></p>	
<p>In such cases, the transfer of ownership or grant of exclusive licence shall not take place unless the Commission is satisfied that appropriate safeguards will be put in place.</p>		

<p style="text-align: center;">SUBSECTION 2</p> <p style="text-align: center;">PROTECTION, PUBLICATION, DISSEMINATION AND USE</p> <p style="text-align: center;"><i>Article 44</i></p> <p style="text-align: center;">Protection of foreground</p> <p>1. Where foreground is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection in conformity with relevant legislation, and having due regard to the legitimate interests, particularly the commercial interests, of the participants in the indirect action concerned.</p>		
<p>Where a participant invokes legitimate interest, it must, in any given instance, show that it would suffer disproportionately great harm.</p>	<p>Where a participant invokes legitimate interest, it must, in any given instance, show that it would suffer disproportionately great harm.</p>	
<p>2. Where the owner of foreground does not protect foreground that it owns, and does not transfer it to another participant in accordance with Article 42(1) and (2), no dissemination activities may take place before the Commission has been informed.</p>		
<p>In such cases, the Commission may, with the consent of the participant concerned, assume ownership of that foreground and adopt measures for its adequate and effective protection. The participant concerned may refuse consent only if it can demonstrate that its legitimate interests would suffer disproportionately great harm.</p>	<p>In such cases, the Commission may, with the consent of the participant concerned, assume ownership of that foreground and adopt measures for its adequate and effective protection. The participant concerned may refuse consent only if it can demonstrate that its legitimate interests would suffer disproportionately great harm.</p>	
<p style="text-align: center;"><i>Article 45</i></p> <p style="text-align: center;">Statement relating to Community financial support</p> <p>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 the assistance of financial support from the Community.</p> <p>The terms of that statement shall be established in the grant agreement.</p>		
<p style="text-align: center;"><i>Article 46</i></p> <p style="text-align: center;">Use and dissemination</p>		
<p>1. The participants shall use the foreground which they own, or ensure that it is used.</p>		82.
<p>2. Each participant shall ensure that the foreground of which it has ownership is disseminated as swiftly as possible. If it fails to do so, the Commission may disseminate that foreground.</p>	<p>2. Each participant shall ensure that the foreground of which it has ownership is disseminated as swiftly as possible. If it fails to do so, the Commission may disseminate that foreground.</p>	
<p>3. Dissemination activities shall be compatible with intellectual property rights, confidentiality, and the legitimate interests of the owner of the foreground.</p>	<p>3. Dissemination activities shall be compatible with intellectual property rights, confidentiality obligations, and the legitimate interests of the owner of the foreground <u>as to the protection or potential protection of foreground</u>.</p>	
<p>4. Prior notice of any dissemination activity shall be given to the other participants concerned.</p>		

Following notification, any of those participants may object if it considers that its legitimate interests in relation to its foreground could suffer disproportionately great harm. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.	Following notification, any of those participants may object <u>within a period to be agreed between the participants in their consortium agreement or by any other written agreement</u> if it considers that its legitimate interests in relation to its foreground <u>or background</u> could suffer disproportionately great harm. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.	
<i>Article 47</i>	<i>Article 47</i>	
Dissemination in relation to frontier research actions	Dissemination in relation to frontier research actions	
In the case of frontier research actions, participants shall actively ensure dissemination of foreground, taking into account the need to safeguard intellectual property rights, the benefits of swift dissemination, confidentiality, and the legitimate interests of the participants.	(moved to Article 22(5)) In the case of frontier research actions, participants shall actively ensure dissemination of foreground, taking into account the need to safeguard intellectual property rights, the benefits of swift dissemination, confidentiality, and the legitimate interests of the participants.	
SECTION 2 ACCESS RIGHTS TO BACKGROUND AND FOREGROUND		
<i>Article 48</i>		85.
Background covered		
Participants may define the background needed for the purposes of the indirect action in a written agreement and, where appropriate, may exclude specific background.	Participants may define the background needed for the purposes of the indirect action in <u>the consortium a written agreement</u> and, where appropriate, may exclude specific background.	
<i>Article 49</i>		82, 86.
Principles		
1. All requests for access rights shall be made in writing.	1. All requests for access rights shall be made in writing.	
	(1a.) Access rights in accordance with Articles 50, 51 and 52 shall be deemed granted to participants and to their affiliated entities provided that: (a) these entities grant reciprocal access rights to all participants and their affiliated entities; (b) such affiliated entities fulfil all obligations towards the Commission and the other participants under this Regulation, the grant agreement, the consortium agreement and any other <u>written agreement of the participants.</u>	
2. Unless otherwise agreed by the owner of the foreground or background, access rights shall confer no entitlement to grant sub-licences.		
3. Exclusive licences for foreground or background may be granted, subject to written confirmation by all the other participants concerned that they waive their access rights thereto.		
4. Without prejudice to paragraph 3, any agreement providing access rights to foreground or background to participants or third parties shall be such as to ensure that potential access rights for other participants are maintained.		

<p>5. Participants in the same action shall inform each other as soon as possible of any limitation to the granting of access rights to background, or of any other restriction which might substantially affect the granting of access rights.</p> <p>6. The termination of its participation in an indirect action shall in no way affect the obligation of that participant to grant access rights to the remaining participants in the same action under the terms and conditions established by the grant agreement.</p>		
<i>Article 50</i>		82.
Access rights for implementation of indirect actions		
<p>1. Access rights to foreground shall be granted to other participants in the same indirect action, if it is needed to enable those participants to carry out their own work under that indirect action.</p>	<p>1. Access rights to foreground shall be granted to other participants in the same indirect action <u>and their affiliated entities</u>, if it is needed to enable those participants to carry out their own work under that indirect action.</p>	
<p>Such access rights shall be granted on a royalty-free basis.</p>		
<p>2. Access rights to background shall be granted to the other participants in the same indirect action, if it is needed to enable those participants to carry out their own work under that indirect action provided that the participant concerned is entitled to grant them.</p>	<p>2. Access rights to background shall be granted to the other participants in the same indirect action <u>and their affiliated entities</u> if it is needed to enable those participants to carry out their own work under that indirect action, provided that the participant concerned is entitled to grant them.</p>	
<p>Such access rights shall be granted on a royalty-free basis, unless otherwise agreed by all participants before their accession to the grant agreement.</p>	<p>Such access rights shall be granted on a royalty-free basis, unless otherwise agreed by all participants <u>in the consortium agreement</u> before their accession to the grant agreement.</p>	
<p>However, RTD Performers shall grant access rights to background on a royalty-free basis.</p>		
<p><i>Article 51</i></p> <p>Access rights for use</p>		
<p>1. Participants in the same indirect action shall enjoy access rights to foreground, if it is needed to use their own foreground.</p>	<p>1. Participants in the same indirect action <u>and their affiliated entities</u> shall enjoy access rights to foreground, if it is needed to use their own foreground.</p>	
<p>Such access rights shall be granted either under fair and reasonable conditions, or royalty-free.</p>	<p>Such access rights shall be granted either under fair and reasonable conditions, or royalty-free, <u>unless otherwise agreed in the consortium agreement.</u></p>	
<p>2. Participants in the same indirect action shall enjoy access rights to background, if it is needed to use their own foreground provided that the participant concerned is entitled to grant them.</p>	<p>2. Participants in the same indirect action <u>and their affiliated entities</u> shall enjoy access rights to background, if it is needed to use their own foreground <u>generated by the indirect action and provided that the participant concerned and its affiliated entities are</u> is entitled to grant them.</p>	
<p>Such access rights shall be granted either under fair and reasonable conditions, or royalty-free.</p>	<p>Such access rights shall be granted either under fair and reasonable conditions, or royalty-free <u>subject to the conditions agreed in the consortium agreement.</u></p>	
<p>3. A request for access rights under paragraphs 1 or 2 may be made up to one year after either of the following events:</p>	<p>3. A request for access rights under paragraphs 1 or 2 <u>of this Article</u> may be made up to <u>(one)</u> year after either of the following events:</p>	
<p>(a) the end of the indirect action ;</p>		

<p>(b) termination of participation by the owner of the background or foreground concerned.</p> <p>However, the participants concerned may agree on a different time limit.</p> <p>4. Subject to the agreement of all the owners concerned, access rights to foreground shall be granted to a RTD performer, on fair and reasonable conditions to be agreed, for the purposes of pursuing further research activities.</p> <p>5. RTD performers shall grant access on a royalty-free basis to background needed to use the foreground generated in the indirect action.</p>		
<p style="text-align: center;"><i>Article 52</i></p> <p style="text-align: center;">Additional provisions regarding access rights for 'frontier' research actions and for actions for the benefit of specific groups</p> <p>1. In the case of frontier research actions, access rights to foreground and background for implementation or use shall be royalty-free, notwithstanding Articles 50 and 51.</p> <p>2. Where the specific group benefiting from the action is represented by a legal entity that participates in the action in their place, that legal entity may grant a sub-licence, in respect of any access right granted to it, to those of its members which are established in a Member State or an Associated country.</p>		
<p style="text-align: center;">CHAPTER IV</p> <p style="text-align: center;">European Investment Bank</p>		2, 20, 21, 87, 88, 89.
<p style="text-align: center;"><i>Article 53</i></p>		
<p>1. The Community may award a grant to the European Investment Bank (EIB) to cover the risk for loans the EIB makes in support of research objectives set out under the seventh Framework Programme (Risk-Sharing Finance Facility).</p>	<p>1. The Community may award a grant to the European Investment Bank (EIB) to <u>contribute to the provisioning and capital allocation for its loan and guarantee financing</u> cover the risk for loans the EIB makes in support of actions implemented on the basis of decisions by the Council and the European Parliament (or by the Council in consultation with the European Parliament) identified in part (b) of Annex III to Decision (.../...) establishing research objectives set out under the seventh Framework Programme (Risk-Sharing Finance Facility).</p>	
<p>2. The EIB shall provide these loans in accordance with the principles of fairness, transparency, impartiality and equal treatment.</p>	<p>2. <u>Taking into account the general orientation and principles established by the Commission in the grant agreement,</u> tThe EIB shall provide <u>and administer</u> these loans <u>and guarantees</u> in accordance with <u>its own rules</u> the principles of fairness, transparency, impartiality and equal treatment.</p>	89.
<p>3. The Commission has the right to object to the use of the Risk-Sharing Finance Facility for certain loans, on terms to be defined in the grant agreement in accordance with the Work Programmes.</p>	<p>3. The Commission has the right to object to the use of the Risk-Sharing Finance Facility for certain <u>loans</u> <u>actions</u>, on terms to be defined in the grant agreement in accordance with the Work Programmes.</p>	89.

<p style="text-align: center;">CHAPTER V Final provisions</p>		
<p style="text-align: center;"><i>Article 54</i></p> <p>This Regulation shall enter into force on the third day following its publication in the <i>Official Journal of the European Union</i>. It shall apply from 1 January 2007.</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p>		60, 90.
	<p><u>This regulation may be revised, subject to an interim evaluation carried out by the Commission no later than 2010.</u></p>	
<p>Done at Brussels,</p> <p style="text-align: center;"><i>For the European Parliament</i> <i>The President</i></p> <p style="text-align: center;"><i>For the Council</i> <i>The President</i></p>		