

REGULATION (EC) No 2321/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 2002

concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 167 and the second paragraph of Article 172 thereof,

Having regard to the proposals from the Commission ⁽¹⁾,

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

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) The Sixth Framework Programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006) ('the Sixth Framework Programme'), was adopted by Decision No 1513/2002/EC of the European Parliament and of the Council ⁽⁴⁾. The rules for financial participation by the Community, as set out in Annex III to that Decision, need to be supplemented by other provisions.

(2) Those provisions should fit into a coherent and transparent framework which takes full account of the objectives and characteristics of the instruments defined in Annex III to the Sixth Framework Programme in order to guarantee the most efficient implementation possible, taking into account the need for easy access of participants through simplified procedures. This will especially be the case for small or medium-sized enterprises (SMEs), owing to the participation of enterprise groupings.

(3) The rules for the participation of undertakings, research centres and universities should take account of the nature of the research and technological development

activities, including demonstration activities. They may, moreover, vary depending on whether the participant is based in a Member State, in an associated State, whether a candidate country or not, or in a third country, and on its legal structure, namely whether it is a national organisation, an international organisation, of European interest or not, a SME, a European Economic Interest Grouping, or an association formed by participants.

(4) In conformity with the Sixth Framework Programme, the participation of legal entities from third countries should be envisaged, in line with the objectives of international cooperation, particularly as enshrined in Articles 164 and 170 of the Treaty.

(5) International organisations which are dedicated to developing cooperation in the field of research in Europe and which are largely made up of Member States or associated States contribute to the creation of the European Research Area. They should therefore be encouraged to participate in the Sixth Framework Programme.

(6) The Joint Research Centre takes part in indirect research and technological development actions on the same basis as legal entities established in a Member State.

(7) Activities under the Sixth Framework Programme should comply with the financial interests of the Community and should safeguard those interests. The Commission's responsibility for the implementation of the framework programme and its specific programmes also includes the financial aspects arising therefrom.

(8) The rules governing the dissemination of research results should promote the protection of intellectual property and the use and dissemination of those results. They should ensure that participants have mutual access to pre-existing know-how and to knowledge arising from research work to the extent necessary to conduct the research work or to use the resulting knowledge. At the same time, they should guarantee the protection of the participants' intellectual assets. They should also take account of the features of the integrated projects and networks of excellence, in particular by offering a high degree of flexibility to the participants, and allowing them to agree among themselves on the most suitable arrangements for their collaboration and for the exploitation of the resulting knowledge. These agreements may form part of a consortium agreement.

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 275, OJ C 103 E, 30.4.2002, p. 266 and OJ C 262 E, 29.10.2002, p. 489.

⁽²⁾ OJ C 94, 18.4.2002, p. 1.

⁽³⁾ Opinion of the European Parliament of 3 July 2002 (not yet published in the Official Journal), and Council Decision of 5 November 2002.

⁽⁴⁾ OJ L 232, 29.8.2002, p. 1.

(9) Activities under the Sixth Framework Programme should be conducted in compliance with ethical principles, including those reflected in the Charter of Fundamental Rights of the European Union, and should strive both to increase the role of women in research and to improve information for, and dialogue with, society, as well as promote participation from the outermost regions of the Community,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject

This Regulation establishes rules for the participation of enterprises, research centres and universities in, and rules for the dissemination of results from research carried out under the Sixth Framework Programme of the European Community for, research, technological development and demonstration activities contributing to the creation of the European Research Area and to innovation (2002-2006) (hereinafter referred to as the 'Sixth Framework Programme'), with the exception of RTD activities executed by a joint undertaking or any other structure set up pursuant to Article 171 of the Treaty.

Article 2

Definitions

For the purposes of this Regulation:

1. 'RTD activity' means one of the research and technological development activities, including demonstration activities, described in Annexes I and III to the Sixth Framework Programme;
2. 'direct action' means an RTD activity undertaken by the Joint Research Centre (hereinafter referred to as the JRC) in the execution of the tasks assigned to it under the Sixth Framework Programme;
3. 'indirect action' means an RTD activity undertaken by one or more participants by means of an instrument of the Sixth Framework Programme;
4. 'instruments' means the mechanisms for indirect Community intervention as laid down in Annex III to the Sixth Framework Programme, with the exception of Community financial participation pursuant to Article 169 of the Treaty;
5. 'contract' means a grant agreement between the Community and the participants concerning the performance of an indirect action establishing rights and obligations between the Community and the participants on the one hand, and between the participants in that indirect action on the other;
6. 'consortium agreement' means an agreement that participants in an indirect action conclude amongst themselves for its implementation. Such an agreement shall not affect participants' obligations to the Community and to one another arising out of this Regulation or the contract;
7. 'participant' means a legal entity contributing to an indirect action and having rights and obligations with regard to the Community under the terms of this Regulation or according to the contract;
8. 'legal entity' means any natural person, or any legal person created under the national law of its place of establishment, under Community law, or international law, having legal personality and being entitled to have rights and obligations of any kind in its own name;
9. 'consortium' means all the participants in the same indirect action;
10. 'coordinator' means the participant appointed by participants in the same indirect action and accepted by the Commission, having specific additional obligations arising out of this Regulation and the contract;
11. 'international organisation' means any legal entity arising from an association of States, other than the Community, established on the basis of a treaty or similar act, having common institutions and an international legal personality distinct from that of its Member States;
12. 'international European interest organisation' means an international organisation, the majority of whose members are European Community Member States or associated States, and whose principal objective is to promote European scientific and technological cooperation;
13. 'associated candidate country' means an associated State acknowledged by the Community as a candidate for accession to the European Union;
14. 'associated State' means a State 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 Sixth Framework Programme;
15. 'third country' means a State that is neither a Member State nor an associated State;

16. 'European Economic Interest Grouping (EEIG)' means any legal entity established in accordance with Council Regulation (EEC) No 2137/85⁽¹⁾;
17. 'small and medium-sized enterprises' (hereinafter referred to as SMEs) means enterprises which meet the criteria set out in Commission Recommendation 96/280/EC⁽²⁾;
18. 'enterprise grouping' means any legal entity made up for the most part of SMEs and representing their interests;
19. 'budget' means a financial plan estimating all the resources and expenditure needed to carry out an indirect action;
20. 'irregularity' means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a legal entity which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it through unjustified expenditure;
21. 'pre-existing know-how' means the information which is held by participants prior to the conclusion of the contract or acquired in parallel with it, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection;
22. 'knowledge' means the results, including information, whether or not they can be protected, which are yielded by direct actions and indirect actions, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection;
23. 'dissemination' means the disclosure of knowledge by any appropriate means other than publication resulting from the formalities for protecting knowledge;
24. 'use' means the direct or indirect utilisation of knowledge in research activities or for developing, creating and marketing a product or process or for creating and providing a service;
25. 'work programme' means a plan drawn up by the Commission for the implementation of a specific programme.
26. 'joint programme of activities' means the actions undertaken by participants which are required for implementing a network of excellence;
27. 'access rights' means licences and rights to use knowledge or pre-existing know-how;
28. 'legitimate interest' means a participant's interest of any kind, particularly a commercial interest, that may be claimed in the cases specified in this Regulation; to this end, the participant must prove that failure, in any given instance, to take account of his interest would result in him suffering disproportionately great harm;
29. 'implementation plan' means all actions by participants in an integrated project;
30. 'industrial States' means those third countries that are members of G7;
31. 'public body' means a public sector body or a legal entity governed by private law with a public service mission providing adequate financial guarantees.

Article 3

Independence

1. Two legal entities shall be independent of one another for the purposes of this Regulation where there is no controlling relationship between them. A controlling relationship shall exist where one legal entity directly or indirectly controls the other or one legal entity is under the same direct or indirect control as the other. Control may result in particular from:

- (a) direct or indirect holding of more than 50 % of the nominal value of the issued share capital in a legal entity, or of a majority of voting rights of the shareholders or associates of that entity;
- (b) direct or indirect holding in fact or in law of decision-making powers in a legal entity.

2. Direct or indirect holding of more than 50 % of the nominal value of the issued share capital in a legal entity or of a majority of voting rights of the shareholders or associates of the said entity by public investment corporations, institutional investors or venture-capital companies and funds shall not in itself constitute a controlling relationship.

⁽¹⁾ OJ L 199, 31.7.1985, p. 1.

⁽²⁾ OJ L 107, 30.4.1996, p. 4.

3. Ownership or supervision of legal entities by the same public body shall not in itself give rise to a controlling relationship between them.

CHAPTER II

PARTICIPATION IN INDIRECT ACTIONS

Article 4

General principles

1. Any legal entity participating in an indirect action may receive a Community financial contribution subject to Articles 6 and 7.

2. Any legal entity established in an associated State may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State, subject to Article 5.

3. The JRC may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State.

4. Any international European interest organisation may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State in accordance with its headquarters agreement.

5. The work programmes may specify and restrict the participation of legal entities in an indirect action according to their activity and type and according to the instrument deployed and to take into account specific objectives of the Sixth Framework Programme.

Article 5

Minimum numbers of participants and their place of establishment

1. The work programmes shall specify the minimum number of participants required for each indirect action and also their place of establishment, according to the nature of the instrument and the objectives of the RTD activity.

2. Subject to paragraph 3, the minimum number of participants established by the work programmes shall not be fewer than three independent legal entities established in three different Member States or associated States, of which at least two shall be Member States or associated candidate countries.

3. Specific support actions and actions in favour of human resources and mobility, except for research training networks, may be executed by a single legal entity.

4. An EEIG or any legal entity established in a Member State or associated State according to its national law and which is made up of independent legal entities meeting the criteria of this Regulation may be the sole participant in an indirect action, provided that its composition is in accordance with the conditions fixed pursuant to the provisions of paragraphs 1 and 2.

Article 6

Participation by legal entities from third countries

1. Over and above the minimum number of participants fixed in accordance with Article 5, any legal entity established in a third country may participate in RTD activities provided for under the heading 'Focussing and Integrating Community Research' of the Sixth Framework Programme. Detailed provisions for this participation may be set out in the relevant work programme. The involvement of participants from Industrial States may be subject to arrangements of a reciprocal nature, which could take the form of a scientific and technological agreement.

Any legal entity established in a third country targeted by the specific international cooperation activities provided under the heading 'Focussing and Integrating Community Research' of the Sixth Framework Programme may receive a Community financial contribution within the limits of the budget allocated in Annex II to the Sixth Framework Programme for the action referred to in Article 164(b) of the Treaty.

Any legal entity established in a third country other than a country covered by the second subparagraph, and taking part in the RTD activities referred to in the first subparagraph, may receive a Community financial contribution if provision is made for this purpose under an RTD activity or if it is essential for carrying out the indirect action.

2. Any legal entity established in a third country which has concluded a scientific and technological cooperation agreement with the Community may take part in RTD activities other than those covered by paragraph 1, over and above the minimum number of participants fixed pursuant to Article 5, in accordance with the conditions stipulated in that agreement.

It may receive a Community financial contribution if provision is made for this under an RTD activity or if it is essential for carrying out the indirect action.

3. Any legal entity established in a third country other than those covered by paragraph 2 may take part in RTD activities other than those covered by paragraph 1, over and above the minimum number of participants fixed in accordance with Article 5, if such participation is provided for under an RTD activity or if it is necessary for carrying out the indirect action.

It may receive a Community financial contribution if provision is made for this under an RTD activity or if it is essential for carrying out the indirect action.

Article 7

Participation by international organisations

Any international organisation other than international European interest organisations may take part in the RTD activities referred to in Article 6(1), subject to the conditions set out in the first and third subparagraphs thereof, and in other RTD activities subject to the conditions set out in paragraphs 2 and 3 of that Article.

Article 8

Conditions relating to technical competence and resources

1. Participants shall have the knowledge and technical competence needed to carry out the indirect action.

2. At the time when they present their proposal, participants shall have at least the potential resources needed to carry out the indirect action, and shall be able to specify the relevant source of those funds made available by third parties, including public authorities.

As work progresses, participants shall have the resources as and when needed to carry out the indirect action.

The resources needed to carry out the indirect action are understood to be human resources, infrastructure, financial resources and, if necessary, intangible property and other resources made available by a third party on the basis of a prior commitment.

Article 9

Submission of proposals for indirect actions

1. Proposals for indirect actions shall be submitted under the terms of calls for proposals. These terms shall be set out in the work programmes.

Calls for proposals may involve a two-stage evaluation procedure. In this case, following a positive evaluation of an outline proposal in the first stage, the proposers concerned shall be requested to submit a complete proposal in the second stage.

2. Paragraph 1 shall not apply to:

(a) specific support actions for the activities of the legal entities identified in the work programmes;

(b) specific support actions consisting of a purchase or service governed by the terms applicable to public procurement procedures;

(c) specific support actions with particular characteristics and value to the objectives and the scientific and technological content of specific programmes, for which grant applications may be submitted to the Commission if so provided for in the work programme of the relevant specific programme and where such a request does not fall within the scope of an open call for proposals;

(d) specific support actions covered by Article 11.

3. The Commission may issue calls for expressions of interest in order to assist it in identifying precise objectives and requirements that may be included in the work programmes and in the calls for proposals. This shall be without prejudice to any subsequent decision adopted by the Commission regarding the evaluation and selection of proposals for indirect actions.

4. Calls for expressions of interest and calls for proposals shall be published in the *Official Journal of the European Communities* and shall also be given the widest possible publicity, in particular using the Internet pages of the Sixth Framework Programme and through specific information channels such as the national contact points set up by the Member States and the associated States.

Article 10

Evaluation and selection of proposals for indirect actions

1. The proposals for indirect actions covered by Article 9(1) and Article 9(2)(c) shall be evaluated according to the following criteria, where applicable:

(a) scientific and technological excellence and the degree of innovation;

(b) ability to carry out the indirect action successfully and to ensure its efficient management, assessed in terms of resources and competences and including the organisational arrangements laid down by the participants;

(c) relevance to the objectives of the specific programme;

(d) European added value, critical mass of resources mobilised and contribution to Community policies;

(e) quality of the plan for using and disseminating the knowledge, potential for promoting innovation, and clear plans for the management of intellectual property.

2. In applying paragraph 1(d), the following criteria shall also be taken into account:

(a) for networks of excellence, the scope and degree of the effort to achieve integration and the network's capacity to promote excellence beyond its membership, as well as the prospects of the durable integration of their research capabilities and resources after the end of the period covered by the Community's financial contribution;

(b) for integrated projects, the scale of ambition of the objectives and the capacity of the resources to make a significant contribution to reinforcing competitiveness or solving societal problems;

(c) for integrated initiatives relating to infrastructure, the prospects of the initiative's continuing long term after the end of the period covered by the Community's financial contribution.

3. In applying paragraphs 1 and 2, the following additional criteria can be taken into account:

(a) synergies with education at all levels;

(b) readiness and capacity to engage with actors beyond the research community and with the public as a whole, to help spread awareness and knowledge and to explore the wider societal implications of the proposed work;

(c) activities to increase the role of women in research.

4. Calls for proposals shall determine, in accordance with the type of instruments deployed or the objectives of the RTD activity, how the criteria set out in paragraph 1 are to be applied by the Commission.

These criteria, and those of paragraphs 2 and 3, may be specified or complemented in the work programme, in particular to take account of the contribution of the proposals for indirect actions to improve information for and dialogue with society and to promote the competitiveness of SMEs.

5. A proposal for an indirect action which contravenes fundamental ethical principles or which does not fulfil the conditions set out in the work programme or in the call for proposals shall not be selected. Such a proposal may be

excluded from the evaluation and selection procedures at any time.

Any participant who has committed an irregularity in the implementation of an indirect action may be excluded from the evaluation and selection procedure at any time, due regard being had to the principle of proportionality.

6. The Commission shall evaluate the proposals with the assistance of independent experts appointed in accordance with Article 11. For some specific support actions, particularly those covered by Article 9(2), independent experts shall be appointed only if the Commission deems it appropriate. The Commission shall publish the list of the experts selected.

All proposals submitted for indirect actions shall be treated confidentially by the Commission, which shall ensure that the principle of confidentiality is upheld in all procedures and that the independent experts are bound by this.

Unless otherwise specified in the call for proposals, proposals shall not be evaluated anonymously.

7. Proposals for indirect actions shall be selected on the basis of the evaluation results and having regard to the Community funds available. The Commission shall adopt and publish guidelines setting out detailed provisions for evaluation and selection procedures.

Article 11

Appointment of independent experts

1. The Commission shall designate independent experts to assist with the evaluation required under the Sixth Framework Programme and the specific programmes, and also for the assistance referred to in Article 10(6) and the second subparagraph of Article 18(1).

It may in addition set up groups of independent experts to advise on the implementation of Community research policy.

2. The Commission shall appoint the independent experts in accordance with one of the following procedures:

(a) The independent experts appointed by the Commission for the evaluations provided for in Article 6 of the Sixth Framework Programme and its specific programmes shall be very high-ranking individuals from the fields of science, industry or politics with significant experience in research, research policy or research programme management at national or international level.

- (b) The independent experts appointed by the Commission to assist in the evaluation of proposals for networks of excellence and integrated projects and in the monitoring of the projects selected and carried out shall be individuals from the fields of science, industry and/or with experience in the field of innovation and also with the highest level of knowledge and who are internationally recognised authorities in the relevant specialist area.
- (c) The independent experts appointed by the Commission to form the groups referred to in the second subparagraph of paragraph 1 shall be professionals renowned for their knowledge, skills and top-level experience in the field or regarding the issues to be dealt with by the group.
- (d) For cases other than those covered by points (a), (b) and (c), and in order to take the various operators in the research sector into consideration in a balanced manner, the Commission shall appoint independent experts with skills and knowledge appropriate to the tasks assigned to them. To this end, it shall rely on calls for applications from individuals or calls addressed to research institutions with a view to establishing lists of suitable candidates, or may, if it deems appropriate, select any individual with the appropriate skills from outside the lists.

3. When appointing an independent expert, the Commission will ensure that the expert is not faced with a conflict of interests in relation to the matter on which he is required to give an opinion. To this end, the Commission shall require experts to sign a declaration to the effect that there is no such conflict of interest at the time of their appointment and undertaking to inform the Commission if one should arise in the course of their duties.

Article 12

Contracts and consortium agreements

1. The Commission shall conclude a contract for each proposal selected for an indirect action. This contract shall be drawn up in accordance with the provisions of the Sixth Framework Programme, and in accordance with this Regulation, taking into account the characteristics of the various instruments concerned.

The Commission, after conferring with interested parties from the Member States and the Associated States, will prepare a model contract to facilitate the drawing up of contracts.

2. The contract shall establish the rights and obligations of all participants in accordance with this Regulation, and in particular the provisions for the scientific, technological and financial monitoring of the indirect action, for the updating of its objectives, changes in consortium membership, the payment of the Community financial contribution and, if applicable, conditions for the eligibility of any necessary expenditure, as well as rules for dissemination and use.

The contract, which shall be concluded between the Commission and all participants in an indirect action, shall enter into force on signature by the Commission and the coordinator. The other participants identified in the contract shall accede to it in accordance with its terms and shall enjoy the rights and take on the obligations of participants.

Any participant joining an ongoing indirect action shall accede to the contract and enjoy the rights and take on the obligations of participants towards the Community.

3. In order to ensure the protection of the financial interests of the Community, appropriate penalties shall be included in the contracts, as defined, *inter alia*, in Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁽¹⁾.

4. The conclusion of a contract shall not affect the right of the Commission to adopt a recovery decision, enforceable in accordance with Article 256 of the Treaty, to obtain reimbursement of an amount due from a participant. Before adopting a decision of this kind, the Commission shall ask for the participant's comments to be submitted before a specified date.

5. Participants in an indirect action shall conclude a consortium agreement, unless otherwise specified in the call for proposals. The Commission shall publish non-binding guidelines on points that may be addressed by the consortium agreement, such as:

- (a) the internal organisation of the consortium;
- (b) intellectual property rights arrangements;
- (c) settlement of internal disputes, pertaining to the consortium agreement.

To this end the Commission shall confer with interested parties from the Member States and the associated States.

Article 13

Execution of indirect actions

1. The consortium shall implement the indirect action and shall take all necessary and reasonable measures to that end.

The Community financial contribution shall be paid to the coordinator. The coordinator shall administer the Community financial contribution regarding its allocation between participants and activities in accordance with the contract and with decisions taken by the consortium according to the internal procedures established in the consortium agreement.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.

Participants shall inform the Commission of any event, including modification of the consortium agreement, which might affect the implementation of the indirect action and the rights of the Community.

2. Technical implementation of the indirect action shall be the collective responsibility of the participants. Each participant shall also be liable for the use of the Community financial contribution in proportion to his share of the project up to a maximum of the total payments he has received.

Should a participant breach the contract and should the consortium not make good this breach, the Commission may, as a last resort and if all other approaches have been explored, hold the participants liable under the following conditions:

- (a) Independently of the appropriate action it shall take against the defaulting participant, the Commission shall require the remaining participants to implement the indirect action.
- (b) Should implementation be impossible or should the remaining participants refuse to comply with subparagraph (a), the Commission may terminate the contract and recover the Community financial contribution. When investigating the financial disadvantage, the Commission shall take into account the work already undertaken and results obtained, thereby establishing the debt.
- (c) As regards the part of the debt established in accordance with subparagraph (b) that is owed by the defaulting participant, the Commission shall distribute it among the remaining participants, on the basis of each participant's share of the expenses accepted and up to the amount of the Community financial contribution each participant is entitled to receive.

Where a participant is an international organisation, a public body or a legal entity whose participation in the indirect action is guaranteed by a Member State or an associated State, that participant shall be solely responsible for its own debt and shall not bear the debt of any other participant.

3. Paragraph 2 shall not apply to indirect actions implemented by means of instruments such as specific research projects for SMEs, actions to promote and develop human resources and mobility and, when duly justified, specific support actions.

4. The coordinator shall keep accounts making it possible to determine at any time what portion of the Community funds has been allocated to each participant for the purposes of the project. It shall communicate that information to the Commission every year.

5. When several legal entities are grouped in a common legal entity acting as a sole participant in accordance with Article 5(4), that legal entity shall take on the duties set out in paragraphs 1, 2(a) and 2(b) of this Article. The liability of its members shall be defined in accordance with the law under which this common legal entity was established.

Article 14

Community financial contribution

1. In accordance with Annex III to the Sixth Framework Programme, and within the limits of the Community framework for State aid for research and development ⁽¹⁾, the Community financial contribution may take the following forms:

- (a) For networks of excellence, it shall take the form of a fixed grant for integration on the basis of the joint programme of activities. The amount of that grant shall be calculated taking into account the degree of integration, the number of researchers that all participants intend to integrate, the characteristics of the field of research concerned and the joint programme of activities. It shall be used to complement the resources deployed by the participants in order to carry out the joint programme of activities.

This grant shall be paid out on the basis of results, following the ongoing execution of the joint programme of activities, and on condition that its expenses, which are to be certified by an external auditor, or in the case of public bodies, a competent public officer, are greater than the grant itself.

- (b) For some actions to promote human resources and mobility and some specific support actions, except for the indirect actions covered by Article 9(2)(b), it may take the form of a lump-sum payment.
- (c) For integrated projects and the other instruments, except for those covered by points (a) and (b) and indirect actions covered by Article 9(2)(b), it shall take the form of a grant to the budget, calculated as a percentage of the budget established by the participants to carry out the indirect action, adapted according to the type of activity and taking into account the cost model used by the participant concerned.

The expenses needed to implement the indirect action shall be certified by an external auditor or, in the case of public bodies, a competent public officer.

⁽¹⁾ OJ C 45, 17.2.1996, p. 5.

2. Eligible expenses shall be defined in accordance with the first subparagraph of Article 12(2) and must meet the following conditions:

- (a) they must be actual, economic and necessary for the implementation of the indirect action;
- (b) they must be determined in accordance with the usual accounting principles of the individual participant;
- (c) they must be recorded in the accounts of the participants or, in the case of the resources of third parties referred to in the third subparagraph of Article 8(2), in the corresponding financial documents of those third parties;
- (d) they shall be exclusive of indirect taxes, duties and interest and may not give rise to profit.

By way of derogation from the actual cost principle and with the agreement of the participants, the contract may lay down average rates of Community financial participation by type of expenditure or pre-set lump sums, as well as a value by activity which shall approximate to the expenses envisaged.

3. Costs for management of the consortium shall be reimbursed up to 100 % of the costs incurred and shall include the cost of audit certificates. In this case legal entities which participate in the indirect action on an additional cost basis may claim the full costs they have incurred for management, in so far as they can produce detailed evidence of them. The contracts shall lay down a maximum percentage of management costs in relation to the Community contribution. A share of no more than 7 % shall be reserved for management costs by the consortium.

Article 15

Changes in consortium membership

1. A consortium may modify its membership on its own initiative and may in particular extend it to include any legal entity contributing to the implementation of the indirect action.

A participant's withdrawal shall not affect access rights under Articles 26(2) and 27(2).

The consortium must notify any change of its membership to the Commission, which may object within six weeks of the notification. New participants shall accede to the contract in accordance with the terms of Article 12(2).

2. The joint programme of activities for a network of excellence or the implementation plan for an integrated project shall specify which changes in the membership of the consortium shall require the prior publication of a competitive call.

The consortium shall publish the competitive call and advertise it widely using specific information support, particularly

Internet sites on the Sixth Framework Programme, the specialist press and brochures, and the national contact points set up by the Member States and associated States for information and support.

The consortium shall evaluate offers in the light of the criteria which governed the evaluation and selection of the indirect action, defined according to the terms of Article 10(4) and (5), and with the assistance of independent experts appointed by the consortium on the basis of the criteria described in Article 11(2)(b).

Subsequent modification of the consortium shall follow the procedure established in the third subparagraph of paragraph 1.

Article 16

Additional financial contribution

The Commission may increase the Community financial contribution to an indirect action already under way in order to expand its scope to cover new activities which may involve new participants.

It shall do so in the case of the indirect actions referred to in Articles 9(1) and 9(2)(c) by way of a call for supplementary proposals, which the Commission shall publish and advertise in accordance with Article 9(4) and which may be restricted, if necessary, to indirect actions already under way. The Commission shall evaluate and select such proposals in accordance with Article 10.

Article 17

Consortium activities in favour of third parties

If the contract provides for the consortium to undertake all or some of its activities in favour of third parties, the consortium shall ensure that this is properly made public, in accordance, where applicable, with the contract.

The consortium shall evaluate and select any application received from third parties in accordance with the principles of transparency, fairness and impartiality and also with the terms of the contract.

Article 18

Scientific, technological and financial monitoring and audits

1. The indirect actions to which the Community contributes shall be periodically evaluated by the Commission on the basis of progress reports which shall also cover the implementation of the plan for the use or dissemination of knowledge submitted by the participants in accordance with the terms of the contract.

In monitoring the networks of excellence, the integrated projects and, where necessary, other indirect actions, the Commission shall be assisted by independent experts appointed in accordance with Article 11(2).

The Commission shall ensure that all the information, which it receives on pre-existing know-how and on knowledge expected or acquired during the course of an indirect action, is treated with confidentiality.

2. In accordance with the contract, the Commission shall take any useful steps to ensure that the objectives of the indirect action are achieved with proper regard for the financial interests of the Community. The Commission may, where necessary for the sake of these interests, adjust the Community financial contribution or suspend the indirect action if the terms of this Regulation or of the contract have been infringed.

3. The Commission, or any representative authorised by it, shall have the right to carry out scientific, technological and financial audits on the participants, in order to ensure that the indirect action is being or has been performed under the conditions claimed and in accordance with the terms of the contract.

The contract shall specify the conditions under which the participants may object to a technological audit of the use and dissemination of the knowledge being carried out by certain authorised representatives of the Commission.

4. Pursuant to Article 248(2) of the Treaty, the Court of Auditors may verify the use of the Community's financial contribution.

Article 19

Information made available to Member States and associated States

The Commission shall make available to any Member State or associated State, upon request, its useful information on knowledge arising from work carried out in an indirect action, provided that such information is relevant to public policies, unless the participants provide a reasoned case against doing so.

Under no circumstances, shall such availability transfer any rights or obligations of the Commission and the participants, as set out in Articles 21 to 28, to Member States or associated States receiving such information.

Unless such general information becomes public or is made available by the participants or has been communicated without any confidentiality restrictions, Member States and associated States shall comply with the Commission's obligations on confidentiality as established by this Regulation.

Article 20

Protection of the financial interests of the Community

The Commission shall ensure that, when indirect actions are implemented, the financial interests of the Community are protected by effective checks and by deterrent measures and, if irregularities are detected, by penalties which are effective, proportionate and dissuasive, in accordance with Council Regulations (EC, Euratom) No 2988/95 and (Euratom, EC) No 2185/96⁽¹⁾, and with Regulation (EC) No 1073/1999 of the European Parliament and of the Council⁽²⁾.

CHAPTER III

RULES FOR DISSEMINATION AND USE

Article 21

Ownership of knowledge

1. Knowledge arising from work carried out under direct actions shall be the property of the Community.

2. Knowledge arising from work carried out under indirect actions provided for in Article 9(2)(b) and (d) shall be the property of the Community. Knowledge arising from work carried out under other indirect actions shall be the property of the participants carrying out the work leading to that knowledge.

3. Where several participants have jointly carried out work generating the knowledge referred to in paragraph 2 and where their respective share of the work cannot be ascertained, they shall have joint ownership of such knowledge. They shall agree among themselves on the allocation and the terms of exercising the ownership of the knowledge in accordance with the provisions of this Regulation and of the contract.

4. Knowledge arising from work carried out under cooperative or collective research projects shall be the joint property of the SMEs or the enterprise groupings, which shall agree on the allocation and the terms of exercising the ownership of the knowledge in particular in the consortium agreement in accordance with the provisions of this Regulation and of the contract.

⁽¹⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

⁽²⁾ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 1).

5. If personnel employed by a participant are entitled to claim rights to knowledge, the participant shall take steps or reach appropriate agreements to ensure that these rights can be exercised in a manner compatible with its obligations under this Regulation and the contract.

6. Where a participant transfers ownership of knowledge, it shall take steps or conclude agreements to pass on its obligations, in particular concerning the granting of access rights, the dissemination and use of the knowledge, under this Regulation and the contract, to the assignee. As long as the participant is required to grant access rights, it shall give prior notice to the Commission and the other participants in the same indirect action of the envisaged assignment and the assignee.

The Commission or other participants in the indirect action may object within 30 days of notification to such a transfer of ownership. The Commission may object to any transfer of ownership to third parties, in particular to those not established in a Member State or an associated State, if such a transfer is not in accordance with the interests of developing the competitiveness of the dynamic, knowledge-based European economy, or is inconsistent with ethical principles. The other participants may object to any transfer of ownership if this would adversely affect their access rights.

Article 22

Protection of knowledge

1. Where knowledge is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection in conformity with relevant legal provisions, the contract and the consortium agreement, and having due regard to the legitimate interests of the participants concerned.

2. Where the Commission considers it necessary to protect knowledge in a particular country, and where such protection has not been applied for or has been waived, the Commission may, with the agreement of the participant concerned, adopt protective measures. In this event, and as far as that particular country is concerned, the Community shall take on the obligations regarding the granting of access rights in the place of the participant. The participant may only refuse if it can demonstrate that its legitimate interests will be significantly impaired.

3. A participant may publish or allow the publication, on whatever medium, of data concerning knowledge it owns or knowledge obtained during work in connection with cooperative or collective research projects, provided that this does not affect the protection of that knowledge. The Commission and the other participants in the same indirect action shall be given prior written notice of any planned publication. A copy of such data shall on request be made available to them within 30 days of the request. The Commission and the other participants may object to the publication within a period of 30 days from receipt of the data, if they consider that the

protection of their knowledge could thereby be adversely affected.

Article 23

Use and dissemination of knowledge

1. The participants and the Community shall use or cause to be used the knowledge which they own arising from the direct actions or indirect actions, in accordance with the interests of the participants concerned. The participants shall set out the terms of use in a detailed and verifiable manner, in accordance with this Regulation and the contract.

2. If dissemination of the knowledge does not adversely affect its protection or use, the participants shall ensure that it is disseminated within a period laid down by the Community. Should the participants fail to do so, the Commission may disseminate the knowledge. Particular account shall be taken of the following factors:

- (a) the need to safeguard intellectual property rights;
- (b) the benefits of swift dissemination, for example in order to avoid duplication of research efforts and to create synergies between indirect actions;
- (c) confidentiality;
- (d) the legitimate interests of the participants.

Article 24

Making available knowledge arising from direct actions

Knowledge arising from work carried out under direct actions may be made available to one or more interested legal entities, in particular to those established in a Member State or an Associated State, provided that the said legal entities undertake to use the knowledge or to ensure that it is used. Such availability of knowledge shall be subject to appropriate conditions to be laid down and published by the Commission, in particular concerning the payment of fees.

Article 25

Principles for access rights in indirect actions

1. Access rights in accordance with Articles 26 and 27 shall be granted on written request. The granting of access rights may be made conditional on the conclusion of specific agreements, aimed at ensuring that they are used only for the intended purpose, and the giving of appropriate undertakings as to confidentiality. Participants may also conclude agreements with the purpose, in particular, of granting additional or more favourable access rights, including access rights to third parties, in particular to enterprises associated with participants, or specifying the requirements applicable to access rights, but not restricting the latter. Such agreements shall comply with the applicable competition rules.

The Commission may object to any grant of access rights to third parties, in particular to those not established in a Member State or an Associated State, if such a grant is not in accordance with the interests of developing the competitiveness of the dynamic, knowledge-based European economy, or is inconsistent with ethical principles.

2. Access rights to pre-existing know-how shall be granted provided that the participant concerned is free to grant them.

3. A participant may explicitly exclude specific pre-existing know-how from the obligation to grant access rights by means of a written agreement between the participants, before the participant concerned signs the contract or before a new participant joins the indirect action. The other participants may only withhold their agreement if they demonstrate that implementation of the indirect action or their legitimate interests will be significantly impaired thereby.

4. Except where the participant granting access rights so agrees, such rights shall confer no entitlement to grant sub-licences.

Article 26

Access rights for the execution of indirect actions

1. Participants in the same indirect action shall enjoy access rights to the knowledge arising from work carried out under the indirect action and to the pre-existing know-how, if that knowledge or pre-existing know-how is needed to carry out their own work under that indirect action. Access rights to knowledge shall be granted on a royalty-free basis. Access rights to pre-existing know-how shall also be granted on a royalty-free basis, unless otherwise agreed, before signature of the contract.

2. Subject to its legitimate interests, the termination of the participation of a participant shall in no way affect the obligation to grant access rights pursuant to paragraph 1 to the other participants in the same indirect action until its end.

Article 27

Access rights for use

1. Participants in the same indirect action shall enjoy access rights to the knowledge arising from work carried out under the indirect action and to the pre-existing know-how, if that knowledge or pre-existing know-how is needed to use their own knowledge. Access rights to knowledge shall be granted on a royalty-free basis, unless otherwise agreed, before signature of the contract. Access rights to pre-existing know-how shall be granted under fair and non-discriminatory conditions.

2. Subject to the participants' legitimate interests, access rights may be requested under the conditions laid down in paragraph 1 until two years after the end of the indirect action or after the termination of the participation of a participant, whichever falls earlier, unless there is provision for a longer period.

Article 28

Incompatible or restrictive commitments

1. Participants shall make no commitments incompatible with the obligations provided for in this Regulation.

2. Participants in the same indirect action shall be informed as soon as possible by the participant required to grant access rights of any limitations to the granting of access rights to pre-existing know-how, of any obligations to grant rights to knowledge, or of any restriction which might substantially affect the granting of access rights, as the case may be.

Article 29

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

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

Done at Brussels, 16 December 2002.

For the European Parliament

The President

P. COX

For the Council

The President

M. FISCHER BOEL