COUNCIL REGULATION No 2322/2002 (EURATOM)

of 5 November 2002

concerning the rules for the participation of undertakings, research centres and universities in the implementation of the sixth framework programme of the European Atomic Energy Community (2002 to 2006)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 7 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas:

(1) The sixth framework programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities, also contributing to the creation of the European Research Area (2002 to 2006) (the 'sixth framework programme'), was adopted by Council Decision 2002/668/Euratom [4]. The rules for financial participation by the Community need to be supplemented by other provisions to be laid down in accordance with Article 7 of the Treaty.

(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 specific programme (Euratom) for research and training on nuclear energy, adopted by Council Decision 2002/837/Euratom [5], in order to guarantee the most efficient implementation possible.

(3) The rules for the participation of undertakings, research centres and universities should take account of the nature of the research (including demonstration) and training activities in the field of nuclear energy. 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, 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 Article 101 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) 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 to improve information for and dialogue with society as well as to increase the role of women in research.

(7) 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.

(8) 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 from them,

HAS ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject

This Regulation establishes rules for the participation of enterprises, research centres and universities in research carried out under the sixth framework programme of the European Atomic Energy Community for research and training activities, also contributing to the creation of the European Research Area (2002 to 2006) (hereinafter referred to as the 'sixth framework programme').

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[1] OJ C 103 E, 30.4.2002, p. 331.

[2] Opinion delivered on 3 July 2002 (not yet published in the Official Journal).

[3] Opinion delivered on 17 July 2002 (not yet published in the Official Journal).

[4] OJ L 232, 29.8.2002, p. 34.

[5] OJ L 294, 29.10.2002, p. 74.

Article 2

Definitions

For the purposes of this Regulation:

1. 'R&TD activity' means one of the research and technological development activities, including demonstration activities, and training activities, described in Annexes I and III to the sixth framework programme;

2. 'direct action' means an R&TD activity undertaken by the Joint Research Centre (hereinafter referred to as JRC) in the execution of the tasks assigned to it under the sixth framework programme;

3. 'indirect action' means an R&TD 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 specific programme (Euratom) for research and training on nuclear energy;

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 European Atomic Energy 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. 'budget' means a financial plan estimating all the resources and expenditure needed to carry out an indirect action;

18. '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;

19. '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;

20. '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;

[1] OJ L 199, 31.7.1985, p. 1.

21. 'dissemination' means the disclosure of knowledge by any appropriate means other than publication resulting from the formalities for protecting knowledge;

22. '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;

23. 'work programme' means a plan drawn up by the Commission for the implementation of a specific programme;

24. 'joint programme of activities' means the actions undertaken by participants which are required for implementing a network of excellence;

25. 'implementation plan' means all actions by participants in an integrated project;

26. '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.

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

Scope and general principles

1. The rules set out in this Chapter apply to the participation of legal entities in indirect actions. They apply without prejudice to specific rules for R&TD activities under the priority thematic area 'Fusion energy research' of the specific programme (Euratom) for research and training on nuclear energy set out in Chapter III.

2. Any legal entity participating in an indirect action may receive a Community financial contribution, subject to the provisions of Articles 6 and 7.

3. 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 the provisions of Article 5.

4. 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.

5. 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.

6. 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 R&TD activity.

2. For networks of excellence and integrated projects, the minimum number of participants 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.

When the work programme establishes a minimum number that is greater than or equal to two legal entities established in as many Member States or associated States, this number shall be fixed according to the conditions provided for in paragraph 4.

4. For instruments other than those covered in paragraphs 2 and 3, the minimum number of participants shall not be fewer than two independent legal entities established in two different Member States or associated States, of which at least one shall be a Member State or an associated candidate country.

5. An EEIG or any legal entity established in a Member State or associated State according to its national law 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 paragraph 1 to 4.

Article 6

Participation by legal entities from third countries

1. Subject to other restrictions that may be specified in the work programme of the specific programme, any legal entity established in a third country may participate in R&TD activities, over and above the minimum number of participants fixed in accordance with the terms of Article 5, if such participation is provided for under an R&TD activity or if it is necessary for carrying out the indirect action.

2. Any legal entity established in a third country may receive a Community financial contribution, if provision is made for this under an R&TD activity or if it is essential for carrying out the indirect action.

Article 7

Participation by international organisations

Any international organisation other than the international European interest organisations referred to in Article 4(5) may take part in R&TD activities, subject to the conditions set out in Article 6.

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 programme;

(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 the specific programme, for which grant applications may be submitted to the Commission if so provided for in the work programme of the 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 in 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 competencies 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 plan for the management of intellectual property.

2. In applying paragraph 1(d), the following criteria will 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 R&TD 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.