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.

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[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;