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DRAFT REPORT

on the proposal for a Council regulation setting up the "ENIAC Joint Undertaking"
(COM(2007)0356 – C6-0275/2007 – 2007/0122(CNS))

Committee on Industry, Research and Energy

Rapporteur: Nikolaos Vakalis

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation setting up the "ENIAC Joint Undertaking"
(COM(2007)0356 – C6-0275/2007 – 2007/0122(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2007)0356),
 - having regard to Articles 171 and 172 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0275/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Budgets (A6-0000/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 8

(8) The JTI on Nanoelectronics should create a sustainable public-private partnership and increase and leverage private and public investment in the sector of nanoelectronics in Europe, which for the purpose of this Regulation includes the Members States and Countries associated with the Seventh Framework Programme. The JTI on Nanoelectronics should also achieve effective coordination and synergy

(8) The JTI on Nanoelectronics should create a sustainable public-private partnership and increase and leverage private and public investment in the sector of nanoelectronics in Europe, which for the purpose of this Regulation includes the Members States and Countries associated with the Seventh Framework Programme. The JTI on Nanoelectronics should also achieve effective coordination and synergy

of resources and funding from the Framework Programme, industry, national R&D programmes and intergovernmental R&D schemes, thus contributing to strengthen Europe's future growth, competitiveness and sustainable development. Finally, its objective should be to foster collaboration between all stakeholders such as industry, national authorities, academic and research centres pulling together and focusing the research effort.

of resources and funding from the Framework Programme, industry, national R&D programmes and intergovernmental R&D schemes, thus contributing to strengthen Europe's future growth, competitiveness and sustainable development. Finally, its objective should be to foster collaboration between all stakeholders such as industry, national authorities, academic and research centres **and small and medium-sized enterprises (SMEs)** pulling together and focusing the research effort.

Justification

It is important to specify the role of the SMEs in the objectives.

Amendment 2 Recital 11

(11) The ambition and scope of the stated objectives of the JTI on Nanoelectronics, the scale of the financial and technical resources that need to be mobilised, and the need to achieve effective coordination and synergy of resources and funding, call for action to be taken by the Community. Therefore, it is necessary to set up a Joint Undertaking (hereinafter the "ENIAC Joint Undertaking") under Article 171 of the Treaty as a legal entity responsible for the implementation of the JTI on Nanoelectronics. To ensure the appropriate management of R&D activities initiated under the Seventh Framework Programme, the ENIAC Joint Undertaking should be set up for a period ending on 31 December 2017, **which may be extended**.

(11) The ambition and scope of the stated objectives of the JTI on Nanoelectronics, the scale of the financial and technical resources that need to be mobilised, and the need to achieve effective coordination and synergy of resources and funding, call for action to be taken by the Community. Therefore, it is necessary to set up a Joint Undertaking (hereinafter the "ENIAC Joint Undertaking") under Article 171 of the Treaty as a legal entity responsible for the implementation of the JTI on Nanoelectronics. To ensure the appropriate management of R&D activities initiated under the Seventh Framework Programme, the ENIAC Joint Undertaking should, **taking into account the innovation cycles in the sector of nanoelectronics**, be set up for a period ending on 31 December 2017.

Justification

ENIAC needs a clear "sunset clause". It should be clear to all participants that this instrument has a strict deadline and has to develop results within the given time limits. It is not a permanent structure. After all, innovation does not need more than 10 years to complete its cycle.

Amendment 3
Recital 22

(22) The need to ensure ***stable employment conditions and equal treatment of staff***, and ***in order to*** attract specialised scientific and technical staff of the highest calibre, requires ***the application of*** the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, ("the Staff Regulation") ***to all staff recruited by the ENIAC Joint Undertaking***

(22) The need to ensure ***efficient operation of the ENIAC Joint Undertaking*** and to attract specialised scientific and technical staff of the highest calibre, requires ***that, in agreement with the governing board of the ENIAC Joint Undertaking and in accordance with*** the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, ("the Staff Regulation") ***the Commission second as many officials as may be needed to the ENIAC Joint Undertaking and recruit the remaining staff needed by contract, taking into account the fact that the staff costs should be kept low and the time for the setting up of the ENIAC Joint Undertaking short.***

Justification

The structure of the ENIAC Joint Undertaking should be light and flexible. Opting for the structure of a Community body does not exclude the adoption of a more flexible, faster and cheaper recruitment procedure. The public-private character of the JTI requires that the ENIAC Joint Undertaking shall be able to start operating immediately, whereas sticking to the "Staff Regulation" procedures without derogations would mean unavoidable delays. The "implementing rules" (article 8.3) should ensure that secondments and recruitment of contract agents can be put in place very fast.

Amendment 4
Article 1, paragraph 1

1. For the implementation of the Joint Technology Initiative (hereinafter JTI) on Nanoelectronics, a Joint Undertaking within the meaning of Article 171 of the Treaty (hereinafter the "ENIAC Joint Undertaking") is hereby set up for a period ending on 31 December 2017. ***This period may be extended by a revision of this Regulation.***

1. For the implementation of the Joint Technology Initiative (hereinafter JTI) on Nanoelectronics, a Joint Undertaking within the meaning of Article 171 of the Treaty (hereinafter the "ENIAC Joint Undertaking") is hereby set up for a period ending on 31 December 2017.

Justification

ENIAC needs a clear "sunset clause". It should be clear to all participants that this instrument has a strict deadline and has to develop results within the given time limits. It is not a permanent structure. After all, innovation does not need more than 10 years to complete its cycle.

Amendment 5 Article 2, point (d)

(d) ensure the efficiency and durability of the JTI on Nanoelectronics; ***deleted***

Justification

This reference cannot be listed as an objective of similar nature to that of points a, b, c and e. "Efficiency" seems to be a self-evident objective, whereas "durability" should not be one of them.

Amendment 6 Article 3, paragraph 2, point (b)

(b) any non-EU, non-candidate and non-associated country (hereinafter "Third Country") pursuing R&D policies or programmes in the area of Nanoelectronics; ***deleted***

Justification

The JTIs need to keep their European focus. They are designed with the aim to turn Europe into a worldwide champion in certain areas. Participation of third countries does not seem to contribute to this logic.

Amendment 7 Article 4, paragraph 2, point (b)

(b) a financial contribution from the Community of up to EUR 10 million;

(b) a financial contribution from the Community of up to EUR 10 million, payable in instalments of up to EUR 1,5 million per annum or a sum equal to 50% of the contribution from AENEAS, whichever figure is lower; any part of this contribution not spent during the year shall be made available in the following

years for the R&D activities;

Justification

This amendment aims at decreasing to the minimum necessary the expenditure for running costs, while increasing to the maximum possible the resources available for R&D activities. We must send a clear signal of compressing administrative costs and tipping the scales in favour of R&D, and we can achieve this by providing more flexibility to the management of the ENIAC Joint Undertaking resources.

Amendment 8

Article 4, paragraph 3, point (a)

(a) a financial contribution from the Community of up to EUR 440 million to finance Projects;

(a) a financial contribution from the Community of up to EUR 440 million to finance Projects, ***which may be increased by any unspent part of the contribution from the Community towards running costs, as provided for in paragraph 2(b);***

Amendment 9

Article 8, paragraph 2 a (new)

2a. The Commission may, in agreement with the Governing Board, second officials to the ENIAC Joint Undertaking.

Justification

Opting for the structure of a Community body does not exclude the adoption of a more flexible, faster and cheaper recruitment procedure. The public-private character of the JTI requires that the ENIAC Joint Undertaking shall be able to start operating immediately, whereas sticking to the "Staff Regulation" procedures without derogations would mean unavoidable delays. The "implementing rules" (article 8.3) should ensure that secondments and recruitment of contract agents can be put in place very fast and that costs are kept to the minimum.

Amendment 10

Article 10, paragraph 1 a (new)

1a. The ENIAC Joint Undertaking shall be solely responsible for meeting its

obligations.

Justification

Some essential clauses from Article 18 of the Statute of the ENIAC Joint Undertaking (Annex) need to be inserted in order to avoid discrepancy between the articles of the Regulation and those of the Statute.

Amendment 11

Article 10, paragraph 1 b (new)

1b. The ENIAC Joint Undertaking shall not be responsible for meeting the financial obligations of its Members. It shall not be liable for any ENIAC Member State failing to meet its obligations resulting from calls for proposals launched by the ENIAC Joint Undertaking.

Justification

Some essential clauses from Article 18 of the Statute of the ENIAC Joint Undertaking (Annex) need to be inserted in order to avoid discrepancy between the articles of the Regulation and those of the Statute.

Amendment 12

Article 10, paragraph 1 c (new)

1c. The Members shall not be liable for any of the ENIAC Joint Undertaking's obligations. The financial liability of the Members is an internal liability towards the ENIAC Joint Undertaking only, and is limited to their commitment to contribute to the resources as set out in Article 4.

Justification

Some essential clauses from Article 18 of the Statute of the ENIAC Joint Undertaking (Annex) need to be inserted in order to avoid discrepancy between the articles of the Regulation and those of the Statute.

Amendment 13

Article 12, paragraph 2

2. No later than **31 December 2010 and 31 December 2015**, the Commission shall conduct interim *evaluations* of the ENIAC Joint Undertaking with the assistance of independent experts. This evaluation shall cover the quality and efficiency of the ENIAC Joint Undertaking and progress towards the objectives set. The Commission shall communicate the conclusions thereof, accompanied by its observations to the European Parliament and the Council.

2. No later than **31 December 2011** the Commission shall conduct *an* interim *evaluation* of the ENIAC Joint Undertaking with the assistance of independent experts. This evaluation shall cover the quality and efficiency of the ENIAC Joint Undertaking and progress towards the objectives set. The Commission shall communicate the conclusions thereof, accompanied by its observations to the European Parliament and the Council.

Justification

There is no need for two interim evaluations. One interim and one final report suffice.

Amendment 14
Article 16

The Commission and AENEAS shall take all necessary preparatory actions for the setting up of the ENIAC Joint Undertaking until its bodies are fully operational.

The Commission and AENEAS shall take all necessary preparatory actions for the setting up of the ENIAC Joint Undertaking until its bodies are fully operational *and ensure that the ENIAC Joint Undertaking is fully operational within three months of the entry into force of this Regulation.*

Justification

There is a need to create an obligation for the Commission to set up the ENIAC JU within 3 months of adoption of the Regulation. This is extremely important for the private sector who has committed to participate in the project.

Amendment 15
Article 18

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

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union. ***It shall expire on 31 December 2017.***

Justification

ENIAC needs a clear "sunset clause". It should be clear to all participants that this instrument has a strict deadline and has to develop results within the given time limits. It is not a permanent structure. After all, innovation does not need more than 10 years to complete

its cycle.

Amendment 16
Annex, Article 1, paragraph 4

4. This period may be extended by *deleted*
amending these Statutes in accordance
with the provisions of Article 22, taking
into account the progress made towards
achieving the objectives of the ENIAC
Joint Undertaking and provided that
financial sustainability is ensured.

Justification

ENIAC needs a clear "sunset clause". It should be clear to all participants that this instrument has a strict deadline and has to develop results within the given time limits. It is not a permanent structure. After all, innovation does not need more than 10 years to complete its cycle.

Amendment 17
Annex, Article 2, paragraph 1, point (d)

(d) ensure the efficiency and durability of *deleted*
the JTI on Nanoelectronics;

Justification

This reference cannot be listed as an objective of similar nature to that of points a, b, c and d. "Efficiency" seems to be a self-evident objective, whereas "durability" should not be one of them.

Amendment 18
Annex, Article 2, paragraph 2, point (g)

(g) to manage communication and dissemination of the activities of the ENIAC Joint Undertaking subject to confidentiality obligations;

(g) to manage communication and dissemination of the activities of the ENIAC Joint Undertaking subject to confidentiality obligations, ***with special emphasis on communication and dissemination to SMEs and research centres;***

Justification

SMEs and research centres have the most limited resources to be involved in the initiative, but on the other hand, these have the most potential for innovative uptake and follow-up of the R&D processes of the ENIAC Joint Undertaking. They should be assisted in getting involved in the process.

Amendment 19

Annex, Article 2, paragraph 2, point (h)

(h) to publish information on the Projects, including the name of the participants and the amount of the financial contribution of the ENIAC Joint Undertaking;

(h) to publish information on the Projects, including the name of the participants and the amount of the financial contribution ***per participant*** of the ENIAC Joint Undertaking;

Justification

This addition enables the ENIAC Joint Undertaking to determine the contributions owed by its members and adds to transparency.

Amendment 20

Annex, Article 3, paragraph 2, point (b)

(b) any non-EU, non-candidate and non-associated country (hereinafter "Third Country") pursuing R&D policies or programmes in the area of Nanoelectronics;

deleted

Justification

The JTIs need to keep their European focus. They are designed with the aim to turn Europe into a worldwide champion in certain areas. Participation of third-countries does not seem to contribute to this logic.

Amendment 21

Annex, Article 4, paragraph 3

3. Any application for membership of the ENIAC Joint Undertaking by Third Countries shall be considered by the Governing Board, which shall make a recommendation to the Commission. The Commission may make a proposal to

deleted

amend this Regulation on the accession of the Third Country, subject to the successful completion of negotiations with the ENIAC Joint Undertaking.

Justification

The JTIs need to keep their European focus. They are designed with the aim to turn Europe into a worldwide champion in certain areas. Participation of third-countries does not seem to contribute to this logic.

Amendment 22

Annex, Article 4, paragraph 4

4. Decisions of the Governing Board on accession of any other legal entity ***or recommendations of the Governing Board on the accession of Third Countries*** shall be made taking into account the relevance and potential added value of the applicant for the achievement of the objectives of the ENIAC Joint Undertaking.

4. Decisions of the Governing Board on accession of any other legal entity shall be made taking into account the relevance and potential added value of the applicant for the achievement of the objectives of the ENIAC Joint Undertaking.

Justification

The JTIs need to keep their European focus. They are designed with the aim to turn Europe into a worldwide champion in certain areas. Participation of third-countries does not seem to contribute to this logic.

Amendment 23

Annex, Article 4, paragraph 5

5. Any Member may withdraw from the ENIAC Joint Undertaking. Withdrawal shall become effective and irrevocable six months after notification to the other Members following which the former Member shall be discharged from any obligations other than those already ***existing previous to its*** withdrawal.

5. Any Member may withdraw from the ENIAC Joint Undertaking. Withdrawal shall become effective and irrevocable six months after notification to the other Members following which the former Member shall be discharged from any obligations other than those already ***undertaken through decisions of the ENIAC Joint Undertaking in accordance with this Statute prior to the Member's*** withdrawal.

Justification

The discharge from any future obligation for withdrawing Members is not clear. The clarification ensures that the upfront commitment of members to support the running costs as stated in 10.4 is not an “existing obligation” that would be excluded from the discharge.

Amendment 24

Annex, Article 7, paragraph 1, point (f a) (new)

(fa) The Public Authorities Board may permit other Member States which are not ENIAC Member States to participate in its activities as observers;

Justification

Member States not members of the ENIAC Joint Undertaking should be given the possibility to get involved in ENIAC's operations. This possibility may raise their interest to participate eventually in this European initiative. In any case, we must keep non-ENIAC Member States informed about new technological developments in the field and potential societal applications in the future, for which national policies should be adequately prepared on time.

Amendment 25

Annex, Article 9, paragraph 2

2. The Executive Director shall be appointed by the Governing Board ***from*** a list of candidates proposed by the Commission, for a period of up to three years. After an evaluation of the Executive Director's performance, the Board may extend the term of office ***once*** for a further period of not more than ***four*** years.

2. The Executive Director shall be appointed by the Governing Board ***on the basis of*** a list of candidates proposed by the Commission ***following a call for expression of interest published in the Official Journal of the European Union, on the Internet and in the press in all Member States of the European Union***, for a period of up to three years. After an evaluation of the Executive Director's performance, the Board may extend the term of office for a further period of not more than ***three*** years, ***following which a call for expression of interest will be published in the same way.***

Justification

The amendment aims at increasing transparency and fostering the efficiency of the ENIAC Joint Undertaking's operation. The Executive Director should be able to serve for a period substantial enough to be evaluated, and to be renewed if proved to be capable. At the end of

his term, there should be an open call, from which the Director in office should not be excluded as a matter of principle.

Amendment 26
Annex, Article 10, paragraph 7

7. Should any Member of the ENIAC Joint Undertaking be in default of its commitments concerning its agreed financial contribution to the ENIAC Joint Undertaking, the Executive Director shall convene a meeting of the Governing Board to decide whether ***the remaining Members should revoke*** the defaulting Member's membership or if any other measures should be taken until its obligations have been met.

7. Should any Member of the ENIAC Joint Undertaking be in default of its commitments concerning its agreed financial contribution to the ENIAC Joint Undertaking, the Executive Director ***shall notify such Member in writing thereof and shall set a reasonable period in which such default may be remedied. If the default has not been remedied within such period, the Executive Director*** shall convene a meeting of the Governing Board to decide whether the defaulting Member's membership ***should be revoked*** or if any other measures should be taken until its obligations have been met.

Justification

This possibility must be given in order to avoid conflicts.

Amendment 27
Annex, Article 13, paragraph 1

1. The Multiannual Strategic Plan shall specify the strategy and plans for achieving the objectives of the ENIAC Joint Undertaking, including the Research Agenda.

1. The Multiannual Strategic Plan shall specify the strategy and plans for achieving the objectives of the ENIAC Joint Undertaking, including the Research Agenda. ***Once approved by the Governing Board, the Multiannual Strategic Plan shall be made public.***

Justification

The Multiannual Strategic Plan, describing the activities planned for the following years, is of utmost importance for potential future participants.

Amendment 28
Annex, Article 13, paragraph 2

2. The Annual Work Programme shall describe the scope and budget of calls for proposals needed to implement the Research Agenda for a particular year.

2. The Annual Work Programme shall describe the scope and budget of calls for proposals needed to implement the Research Agenda for a particular year.
Once approved by the Governing Board, the Annual Work Programme shall be made public.

Justification

It is needless to underline the relevance of the Annual Work Programme for the potential applicants to Calls.

Amendment 29
Annex, Article 13, paragraph 3

3. The Annual Implementation Plan shall specify the plan for the execution of all the activities of the ENIAC Joint Undertaking for a particular year, including planned calls for proposals and actions needing to be implemented through Calls for tenders. The Annual Implementation Plan shall be presented by the Executive Director to the Governing Board together with the Annual Budget Plan.

3. The Annual Implementation Plan shall specify the plan for the execution of all the activities of the ENIAC Joint Undertaking for a particular year, including planned calls for proposals and actions needing to be implemented through Calls for tenders. The Annual Implementation Plan shall be presented by the Executive Director to the Governing Board together with the Annual Budget Plan. ***Once approved by the Governing Board, the Annual Implementation Plan shall be made public.***

Justification

For information and transparency on ENIAC's implementation activities.

Amendment 30
Annex, Article 13, paragraph 5, subparagraph 2

The Annual Activity Report shall be presented by the Executive Director together with the Annual Accounts and balance sheets.

The Annual Activity Report shall be presented by the Executive Director together with the Annual Accounts and balance sheets. ***The Annual Activity Report shall identify the participation of SMEs in the ENIAC Joint Undertaking and in the R&D activities.***

Justification

It is an important aspect, which gives rise to more SMEs participation.

Amendment 31

Annex, Article 15, paragraph 4, point (a)

(a) Calls for proposals launched by the ENIAC Joint Undertaking shall be open to participants established in ENIAC Member States and in any other Member State of the European Union or Associated Country.

a) Calls for proposals launched by the ENIAC Joint Undertaking shall be open to participants established in ENIAC Member States and in any other Member State of the European Union or Associated Country. ***Calls for proposals shall be made public to the greatest extent possible, including on the Internet and in the press in all Member States of the European Union.***

Justification

This is in order to promote an open and wide participation to ENIAC R&D activities.

Amendment 32

Annex, Article 17, paragraph 2

2. The members of the staff of the ENIAC Joint Undertaking shall be temporary agents and contract agents and shall have fixed-term contracts extendable ***once*** up to a maximum total period of ***seven*** years.

2. The members of the staff of the ENIAC Joint Undertaking shall be temporary agents and contract agents and shall have fixed-term contracts extendable ***twice*** up to a maximum total period of ***ten*** years. ***Furthermore, the Commission may, in agreement with the Government Board, second officials to the ENIAC Joint Undertaking.***

Justification

The structure of the ENIAC Joint Undertaking should be light and flexible. Opting for the structure of a Community body does not exclude the adoption of a more flexible, faster and cheaper recruitment procedure. This amendment shall enable the ENIAC Joint Undertaking to start operating immediately, whereas sticking to the "Staff Regulation" procedures would mean unavoidable delays. The staff that is proven capable should stay employed until the end of 2017, since it is not efficient to reemploy new staff for a remaining small period of time.

Amendment 33
Annex, Article 21, paragraph 5

5. When any physical asset has been dealt with as provided for in paragraph 4, any further assets shall be used to cover the liabilities of the ENIAC Joint Undertaking and the costs relating to its winding-up. Any surplus **or deficit** shall be distributed among **or met by** the Members existing at the time of the winding-up in proportion to their actual contribution to the ENIAC Joint Undertaking.

5. When any physical asset has been dealt with as provided for in paragraph 4, any further assets shall be used to cover the liabilities of the ENIAC Joint Undertaking and the costs relating to its winding-up. Any surplus shall be distributed among the Members existing at the time of the winding-up in proportion to their actual contribution to the ENIAC Joint Undertaking.

Justification

The reference to “deficit” should be deleted, since this would imply a liability of members of the ENIAC Joint Undertaking, in contradiction to article 18.6. of the Statute and article 10 of the Regulation.

Amendment 34
Annex, Article 23, paragraph 2, point (a)

(a) “Information” shall mean any drawings, specifications, photographs, samples, models, processes, procedures, instructions, software, reports, papers, or any other technical and/or commercial information, know-how, data or documents of any kind, including oral information, other than **subject matter protected by** “Intellectual Property Rights” (IPR);

(a) “Information” shall mean any drawings, specifications, photographs, samples, models, processes, procedures, instructions, software, reports, papers, or any other technical and/or commercial information, know-how, data or documents of any kind, including oral information, other than “Intellectual Property Rights” (IPR);

Justification

Without this deletion, the definition might become unclear, since a lot of “Information” might be material covered by IPR.

Amendment 35
Annex, Article 23, paragraph 2, point (i)

(i) “Access Right” shall mean non-exclusive licences and user rights to Foreground or Background, which rights shall not include the right to sublicense unless otherwise agreed upon in the Project

(i) “Access Right” shall mean non-exclusive licenses and user rights to Foreground or Background **to be granted under Project Agreements**, which rights shall not include the right to sublicense

Agreement;

unless otherwise agreed upon in the Project Agreement;

Justification

Access Rights should be granted under Project Agreements setting forth the terms and conditions regarding a specific project, including the project's IPR policy. The grant agreement should only refer to this IPR policy and stipulate that project participants must conclude an IPR arrangement that is not in conflict with this policy.

Amendment 36

Annex, Article 23, paragraph 3, subparagraph 3.2.1

3.2.1. Project participants in the same Project shall conclude among themselves a Project Agreement that shall govern, inter alia, the Access Rights to be granted in accordance with this Article. Project participants may define the Background needed for the purposes of the Project and, where appropriate, may agree to exclude specific Background.

3.2.1. Project participants in the same Project shall conclude among themselves a Project Agreement that shall govern, inter alia, the Access Rights to be granted in accordance with this Article. ***Project participants may decide to grant broader Access Rights than required by this Article.*** Project participants may define the Background needed for the purposes of the Project and, where appropriate, may agree to exclude specific Background.

Justification

The Access Rights to be granted under this Article should be granted at all times, but Project participants should enjoy leeway to grant broader Access Rights if they so agree.

Amendment 37

Annex, Article 23, paragraph 3, subparagraph 3.2.4

3.2.4. Participants in the same Project shall enjoy Access Rights to Background if this is needed for the Use of their own Foreground of that Project, provided that the owner of the Background is entitled to grant them. Such Access Rights shall be granted on a non-exclusive basis on fair, reasonable and non-discriminatory conditions.

3.2.4. Participants in the same Project shall enjoy Access Rights to Background if this is needed for the Use of their own Foreground of that Project, provided that the owner of the Background is entitled to grant them. Such Access Rights shall be granted on a non-exclusive ***and non-transferable*** basis on fair, reasonable and non-discriminatory conditions.

Justification

The addition is made to avoid that this clause might be interpreted as granting “transferable”

access rights, due to the difference with paragraph 3.2.3.

Amendment 38

Annex, Article 23, paragraph 3, subparagraph 3.3.1

3.3.1. Where Foreground is capable of being profitably exploited, its owner (i) shall provide for its appropriate and effective protection, having due regard to its legitimate interests, particularly commercial interests, and those of the other participants in the Project concerned **and (ii) shall use it or ensure that it is used.**

3.3.1. Where Foreground is capable of being profitably exploited, its owner (i) shall provide for its appropriate and effective protection, **and (ii) shall use it, or license its use either royalty-free or on fair, reasonable and non-discriminatory conditions,** having due regard to its legitimate interests, particularly commercial interests, and those of the other participants in the Project concerned.

Justification

It is not possible to ensure that something is used, but an obligation to grant licenses (subject to legitimate interests) to somebody desiring to obtain a license could be included. 'Particularly commercial interest' should refer to both the Party providing Foreground as well as the other participants in the Project.

Amendment 39

Annex, Article 23, paragraph 3, subparagraph 3.4.1

3.4.1. Where a participant transfers ownership of Foreground, it shall pass on its obligations regarding such Foreground to the transferee including the obligation to pass those obligations on to any subsequent transferee. These obligations shall include those relating to the granting of Access Rights, and dissemination and use.

3.4.1. Where a participant transfers ownership of Foreground, it shall pass on its obligations regarding such Foreground to the transferee including the obligation to pass those obligations on to any subsequent transferee. These obligations shall include those relating to the granting of Access Rights, and dissemination and use. **In the event of such a transfer, the participant concerned shall notify in advance the other participants in the same Project of the name and contact details of the transferee.**

Justification

Article 3.4.1 already contains the obligation to make any transfer subject to Access Rights related obligations, so article 3.4.2 should be deleted. It should also be deleted because it is cumbersome for industry. This amendment substantially ensures the protection of the notification obligations provided for in article 3.4.2, while avoiding a procedure that is

cumbersome for industry.

Amendment 40
Annex, Article 23, paragraph 3, subparagraph 3.4.2

3.4.2. Subject to its obligations deleted
concerning confidentiality, where a
Project participant is required to pass on
its obligations to provide access rights, it
shall give at least 45 days prior notice to
the other participants of the envisaged
transfer , together with sufficient
information concerning the envisaged
new owner of the Foreground to permit
the other participants to exercise their
access rights. Following notification, any
other participant may object within 30
days or within a different time-limit
agreed in writing, to any envisaged
transfer of ownership on the grounds that
it would adversely affect its access rights.
Where any of the other participants
demonstrate that their access rights would
be adversely affected, the intended
transfer shall not take place until
agreement has been reached between
participants concerned.

Justification

The deleted article 3.4.2 is unnecessary because article 3.4.1. already contains the obligation to make any transfer subject to Access Rights related obligations. It should also be deleted because it is cumbersome for industry.

EXPLANATORY STATEMENT

The background

As a result of a fragmentation of its efforts, the EU faces the risk of a steady loss of competitiveness in many research fields that could cause it to fall behind Asia and the USA. To meet these challenges, the Specific Programme "Cooperation" of the European Community Seventh Framework Programme for research, technological development, and demonstration activities introduces Joint Technology Initiatives (JTIs) as a way of realising public-private partnerships in research at the European level. Nanoelectronics is one of the areas where a JTI could have particular relevance.

Microelectronics – with applications in computers, mobile phones, digital TV, medical equipment, car navigation – has changed our world and our everyday lives. Nanoelectronics is now the next revolutionary step. It is an important and strategic technology for Europe. It represents a rapidly growing market that generates highly qualified jobs, contributes to sustainable development and stimulates innovation by building communication and intelligence into nearly everything. Nanoelectronic components integrated in electronic and communication systems, cars, planes, buildings, medical equipment, and even in clothes, enable a 1.250 billion euros market with a strong annual average growth rate. The industries nanoelectronics affects more widely (such as the multimedia sector, telecommunications, transport, health, environment, industrial processing, etc.) account for an estimated 5.000 billion euros. R&D in nanoelectronics in Europe employs some 10.000 researchers. Nanoelectronics can thus be considered as a “big business” in its own right.

Building on the experience of the European Technology Platform on Nanoelectronics set up in 2004, the JTI in nanoelectronics (ENIAC JTI) aims to create a single, Europe-wide R&D programme that will help EU industry achieve world leadership in nanoelectronics by combining a critical mass of Community, national, and private resources within one coherent, flexible, and efficient legal framework. At present, the industry's research landscape is challenged by fragmentation. At the national level, many programmes co-exist, but the relevant research activities are spread over several, often disconnected, programmes. The current scattered and unstructured system is ineffective and inefficient. A focused and coherent programme needs to be put in place in order to facilitate Europe becoming the leader in the world wide nanoelectronics race.

Positions of the rapporteur

A. The rapporteur views positively the establishment of a Joint Undertaking (JU) in the field of nanoelectronics.

The nanoelectronics sector already possesses an important European added value, since the innovations it will bring to a series of applications will not only influence the daily life of everyone, but will also have a direct influence on many Community policies (e.g. energy efficiency and security of energy supply; mobility of data, goods and people; healthcare; active aging; environmental policies, etc.). Yet, the complexity of the sector as well as the need for substantial financial resources and for interaction between the different players

(research centres and universities, major producers of semiconductors, materials, equipment and applications, high technology SMEs, national and regional authorities, and financial institutions) require coordinated action, supported by a firm legal framework, if the EU really wants to compete at worldwide level. We must support the European efforts in favour of nanoelectronics research and manufacturing.

B. The rapporteur would like to highlight the three features of the new JU instrument on which he lays great importance:

1. The proposed JU constitutes (together with the other three proposals) the first European public-private partnership to be tested in practice in the EU. This gives us a huge responsibility to ensure that there are no incipient impediments in its structure and way of operating. If we wish to be successful and use this model in the future: the private sector should be respected as an equal partner; rules and procedures need to be flexible, departing where necessary from the traditional way of doing things, and respond to the special needs of this new architectural structure of the public-private partnership.
2. The JU should maintain a European focus. The technology developed by the ENIAC JU should be built and retained in Europe if we have the aspiration to turn the EU into a worldwide leader in nanoelectronics.
3. The nanoelectronics technology is expected to result in enormous benefits to the European, national and regional economies in terms of industrial competitiveness, business development, employment and the general wellbeing of citizens. Therefore, given the fact that a JU can only materialise with the support of the Community, it is advisable that the JU does not develop into an exclusive club of members. It should establish links in Europe with innovation drivers (e.g. SMEs and small research teams) and all Member States, irrespective of their membership in the ENIAC JU.

C. Consequently, and after taking into account the above aspects, the rapporteur is of the opinion that the following proposals should be considered:

1. ENIAC needs a clear "sunset clause". It should be clear to all participants that this is no permanent structure, but an instrument with a strict deadline, which has to develop results within the given time limits. The deadline should be the end of 2017, as it is widely accepted that innovation does not need more than 10 years to complete its cycle. One interim and one final report should suffice to evaluate the ENIAC activities.
2. The structure of the ENIAC Joint Undertaking should be light and flexible. Opting for the structure of a Community body does not exclude the adoption of a more flexible, faster and cheaper recruitment procedure. The public-private character of the JTI requires that the ENIAC JU shall be able to start operating immediately, whereas sticking to the "Staff Regulation" procedures without derogations would mean unavoidable delays. Thus, the Commission may second a number of officials to the ENIAC JU, while the rest of the staff needed can be recruited as contract agents. The rapporteur proposes that staff costs are kept as low as possible and opens the possibility to transfer unspent money for the running costs to R&D activities. In addition, he would like to see an obligation for the Commission to set up the ENIAC JU within 3 months of adoption of the Regulation. This is extremely important for the private sector who has committed to participate in the project.

3. The rapporteur proposes to allow participation in the ENIAC JU only for the EU Member States (and the associated countries). The ENIAC JU needs to keep its European focus, as is the case in the other two JU initiatives: Clean Sky and Innovative Medicines. The JUs are designed with the aim to turn Europe into a worldwide champion in certain areas. Participation of third countries does not seem to contribute to this logic. In addition, the 7th Framework Programme gives ample other possibilities for international cooperation in the research area, including in the field of nanoelectronics.
4. Special attention should be given to the involvement of small research centres and SMEs, as these have the most potential for innovative uptake and follow-up of the R&D processes of the ENIAC JU. They should be assisted in getting involved in the process. Appropriate communication and dissemination of the ENIAC JU activities should help towards this direction.
5. The rapporteur proposes that Member States which are not ENIAC Member States have the possibility to participate in the JU activities as observers. The rapporteur is of the opinion that this possibility will, on the one hand, raise the interest of Member States to participate in this European initiative. On the other hand, it is advisable that Member States which do not have direct industrial stakes in this area have nevertheless the possibility to follow the technological developments in the field, as these are linked to important societal applications in the future, for which national policies should be adequately prepared on time.
6. Every effort must be made to increase transparency and to foster efficiency of the ENIAC Joint Undertaking. Thus, the ENIAC's Multiannual Strategic Plan, Annual Work Programme and Annual Implementation Plan, as well as all its calls for proposals, have to be made public. The Executive Director, whose role in the operation of the ENIAC is crucial, should be selected on the basis of an open call for expression of interest and should be able to serve for as long as he is proved capable. Similarly, the staff that is proved capable should stay employed until the end of 2017, since it is not efficient to reemploy new staff for a remaining small period of time.
7. Intellectual property issues should be adjusted to the specific nature of the public-private partnership. A balance should be achieved between the interests of the big corporate companies and smaller players, such as SMEs and research centres. Project participants should enjoy leeway to grant broad access rights by agreement. Commercial interests of all participants should always be taken into account before licensing use of foreground. Finally, any transfer of ownership over foreground should be accompanied by some basic guarantees, which at the same time should not be too cumbersome for industry.