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REPORT

on the amended proposal for a Council decision concerning the rules for the participation of undertakings, research centres and universities in the implementation of the framework programme 2002-2006 of the European Atomic Energy Community (Euratom)
(COM(2001) 823 – C5-0236/2002 – 2001/0327(CNS))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Godelieve Quisthoudt-Rowohl

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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PROCEDURAL PAGE

By letter of 28 May 2002 the Council consulted Parliament, pursuant to Article 250(2) of the EC Treaty and Article 7 of the Euratom Treaty, on the amended proposal for a Council decision concerning the rules for the participation of undertakings, research centres and universities in the implementation of the framework programme 2002-2006 of the European Atomic Energy Community (Euratom) (COM(2001) 823 – 2001/0327(CNS)).

At the sitting of 29 May 2002 the President of Parliament announced that he had referred this proposal to the Committee on Industry, External Trade, Research and Energy as the committee responsible and the Committee on Budgets, the Committee on Legal Affairs and the Internal Market and the Committee on Budgetary Control for their opinions (C5-0236/2002).

The Committee on Industry, External Trade, Research and Energy appointed Godelieve Quisthoudt-Rowohl rapporteur at its meeting of 19 February 2002.

It considered the Commission proposal and the draft report at its meetings of 26 February, 17 and 22 April, and 21 and 28 May 2002.

At the latter meeting it adopted the draft legislative resolution by 41 votes to 2.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Peter Michael Mombaur, Yves Piétrasanta and Jaime Valdivielso de Cué, vice-chairmen; Godelieve Quisthoudt-Rowohl, rapporteur; Nuala Ahern, Konstantinos Alyssandrakis, Sir Robert Atkins, Luis Berenguer Fuster, Guido Bodrato, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Willy C.E.H. De Clercq, Concepció Ferrer, Glyn Ford (for Reino Paasilinna), Pat the Cope Gallagher, Norbert Glante, Alfred Gomolka (for Umberto Scapagnini), Michel Hansenne, Hans Karlsson, Bashir Khanbhai, Werner Langen, Peter Liese (for Marjo Matikainen-Kallström), Caroline Lucas, Eryl Margaret McNally, William Francis Newton Dunn (for Colette Flesch), Angelika Niebler, Paolo Pastorelli, Elly Plooij-van Gorsel, John Purvis, Alexander Radwan (for Dominique Vlasto), Bernhard Rapkay (for Erika Mann), Imelda Mary Read, Mechtild Rothe, Christian Foldberg Rovsing, Paul Rübig, Konrad K. Schwaiger, Claude Turmes, W.G. van Velzen, Alejo Vidal-Quadras Roca, Myrsini Zorba and Olga Zrihen Zaari.

The Committee on Budgets, the Committee on Budgetary Control and the Committee on Legal Affairs and the Internal Market decided not to deliver opinions on 26 February 2002, 16 April 2002 and 19 February 2002 respectively.

The report was tabled on 29 May 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the amended proposal for a Council decision concerning the rules for the participation of undertakings, research centres and universities in the implementation of the framework programme 2002-2006 of the European Atomic Energy Community (Euratom) (COM(2001) 823 – C5-0236/2002 – 2001/0327(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal¹ and amended proposal² to the Council (COM(2001) 725 and COM(2001) 823),
 - having been consulted by the Council pursuant to Article 7 of the Euratom Treaty (C5-0236/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, External Trade, Research and Energy (A5-0205/2002),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 119, second paragraph, of the Euratom Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Calls for initiation of the conciliation procedure if the Council intends to depart from the text approved by Parliament;
 5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

¹ OJ C not yet published.

² OJ C 103 E, 30.4.2002, p. 331.

LEGISLATIVE PROPOSAL

Amended proposal for a Council decision on the rules for the participation of undertakings, research centres and universities in the implementation of the framework programme 2002-2006 of the European Atomic Energy Community (Euratom) (COM(2001) 823 – C5-0236/2002 – 2001/0327(CNS))

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

Title

COUNCIL *DECISION*

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

(This amendment applies throughout. If adopted it will require technical adjustments throughout the text.)

Justification

The rules on participation apply to all potential participants in Community research promotion measures and so have general application. Hence under Article 249 of the EC Treaty they should be adopted as a regulation.

Amendment 2

Title

Concerning the rules for the participation of undertakings, research centres and universities in the implementation of the framework programme 2002-2006 of the European Atomic Energy Community (Euratom)

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

(This amendment applies throughout. If adopted it will require technical adjustments throughout the text.)

¹ OJ C 103E, 30.4.2002, pp. 331-349.

Justification

The programme concerned is the sixth, as the Council has confirmed in its Common Position, so it is a matter of consistency to say so in all legislation affecting the sixth research framework programme.

Amendment 3

Recital 8

(8) Activities under the framework programme must comply with the financial interests of the Community and must safeguard those interests.

(8) Activities under the framework programme must comply with the financial interests of the Community and must safeguard those interests. ***The Community's legitimate concern to protect its financial interests should not result in rules which make it impossible for whole groups of potential participants to participate.***

Justification

This goes with the amendment to Article 14. The wording the Commission there proposes will create problems for universities and other public-law institutions. The risk of unlimited joint and several liability is unacceptable to small businesses.

Amendment 4

Article 2, point (e)

(e) **contract** means a grant agreement concerning the performance of an *indirect action* establishing rights and obligations between the Community and the *participants* in that *indirect action*;

(e) **contract** means a grant agreement ***between the European Commission and the participants*** concerning the performance of an *indirect action* establishing rights and obligations between the Community and the *participants* in that *indirect action*;

Justification

It needs to be clear that the contract is concluded with the participants. The contract governs the relationship between the participants and the Commission.

Amendment 5
Article 2, point (e a) (new)

(ea) consortium contract means agreements that participants in an indirect action conclude between themselves for its implementation. Such agreements shall not affect participants' obligations to the Commission and one another arising out of the Regulation and the contract;

Justification

Introducing the principle of the consortium contract raises the need to define it. The main thing is to make it clear that the consortium contract must comply with the participation rules and the contract between the Commission and participants.

Amendment 6
Article 2, point (h a) (new)

(ha) coordinator means the participant appointed by participants in the same indirect action and accepted by the Commission who will act as their main spokesperson with the Commission;

Justification

The Commission draft refers to coordinators, although without using that term, in Article 13(2). They are the participants to whom the financial contribution is paid.

Amendment 7
Article 2, point (o a) (new)

(oa) work programme means the programme set up by the Commission to implement specific programme decisions;

Justification

'Work programme' comes up several times later in the text, but is not defined. As the concept is used both in this proposal and in that for a decision on the specific programmes in two different contexts, it should be defined.

Amendment 8 Article 2, point (o b) (new)

(ob) joint activity programme covers all actions by participants in the same indirect action in the field of the excellence networks instrument;

Justification

The joint activity programme for the new excellence networks instrument needs defining clearly.

Amendment 9 Article 5, paragraph 5

5. Depending on the type of instrument deployed or the objectives of the RTDT activity, the work programme for the specific programme may, if necessary, restrict participation in an indirect action to legal entities according to their activities or types.

5. In the work programmes for the specific programmes the participation of legal entities in an indirect action may be specified and restricted according to their activity and type, to take account of specific objectives of the framework programme.

Justification

It is in the nature of certain indirect actions, such as SME projects, to apply only to certain target groups.

Amendment 10 Article 6, paragraph 1

1. The work programme 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 RTDT activity.

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.

Notwithstanding the instruments defined in paragraph 2, the minimum number of participants may not be fewer than three independent legal entities established in three different Member States or Associated States, of which at least one legal entity must have its registered office in a Member State or associated applicant State.

Justification

Clarity is served if the conditions in the various instruments do not differ too much.

A minimum of three independent participants from two Member States or associated applicant states in the majority of research projects safeguards their cross-border character and ensures a critical mass of human resources. But the Commission is only proposing two participants.

Amendment 11
Article 6, paragraph 2

2. For networks of excellence and integrated projects, the minimum number of participants shall not be less 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. ~~*deleted*~~

Justification

Deletion is the consequence of the amendment to Article 6(1).

Amendment 12
Article 6, paragraph 3

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*.

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.

Justification

Follows from the amendment to Article 6(1).

Amendment 13
Article 6, paragraphs 4 and 5

4. For *instruments* other than those covered in paragraphs 2 and 3, the minimum number of *participants* shall not be less 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* which is made up of independent *legal entities* meeting the criteria of this ***Decision*** 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***.

5. An *EEIG* or any *legal entity* established ***in accordance with the national legislation*** in a Member State or *Associated State* 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***.

Justification

The EEIG is an important new legal instrument to be used in conjunction with the framework programme.

Amendment 14
Article 7, paragraph 1

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***

1. Any *legal entity* established in a *third country* may participate, over and above the minimum number of *participants* fixed in accordance with the terms of Article 6, ***in***

participate *in RTDT activities*, over and above the minimum number of *participants* fixed in accordance with the terms of Article 6, *if such participation is provided for under an RTDT activity or if it is necessary for carrying out the indirect action.*

RTD activities provided that this concords with the interests of the Community. Details shall be laid down in the work programme.

This shall apply to participation by participants from industrial third countries, if it is possible for Community legal entities to participate in programmes in the third country concerned on a reciprocal basis as a matter of principle.

Justification

The addition is necessary to ensure that the principle of reciprocity is fulfilled in the case of industrial third countries.

Amendment 15

Article 9, paragraph 2, subparagraph 1

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** specify the relevant source.

2. At the time when they present their proposal, *participants* shall have at least the potential resources – ***broken down into their own resources and the extent and nature of any third party resources*** – needed to carry out the *indirect action*, and **be able to** specify the relevant source.

Justification

Wording to aid clarity. To verify the participants' resources from the subsidy point of view requires a breakdown distinguishing their own from third party resources.

Amendment 16

Article 10

1. Proposals for *indirect actions* shall be submitted under the terms of calls for proposals ***published in the Official Journal of the European Communities and, as far as possible, widely advertised by other means.***

1. Proposals for *indirect actions* shall be submitted under the terms of calls for proposals. ***These calls for proposals shall be laid down in the work programmes.***

2. Paragraph 1 shall not apply to:

2. Paragraph 1 shall not apply to:

(a) Specific support actions for the activities of *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 12.

3. Calls for expressions of interest may be issued prior to calls for proposals in order to enable the Commission to identify and evaluate precise objectives and requirements, without prejudice to any decisions it may subsequently take

(a) Specific support actions for the activities of *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 12.

3. Calls for expressions of interest may be issued prior to calls for proposals in order to enable the Commission to identify and evaluate precise objectives and requirements, without prejudice to any decisions it may subsequently take

3a. Calls for expressions of interest and for proposals shall be published in the Official Journal of the European Communities and disseminated by other means as widely as possible, in particular via the Internet pages of the sixth framework programme and specific information channels and supporting national contact points set up by the Member States and Associated States.

Justification

With a success rate of 15 % it is disproportionate to expect large financial and human resources to be deployed on an application. Many potential participants are deterred by the disproportionate cost-benefit ratio. A two-stage procedure may be a sensible step, particularly in the case of very complex tenders, by not demanding a large effort until the benefit is likelier.

Any Commission invitation to tender should be published in the Official Journal of the European Communities and disseminated via the national contact points so that potential participants have the information.

Amendment 17

Article 11

1. The proposals for *indirect actions* covered in Article 10(1) and Article 10(2)(c) shall be evaluated according to the following criteria:

- (a) ***Relevance to the objectives of the specific programme;***
- (b) ***Scientific and technological excellence;***
- (c) ***Added value to the Community, including the critical mass of resources mobilised, the expected impact or contribution to Community policies;***
- (d) ***Quality of the plan for the use or dissemination of the knowledge, potential for promoting innovation, and ability to manage intellectual property;***
- (e) ***The ability to successfully carry out the indirect action, assessed in terms of resources, competencies and organisation.***

2. In applying paragraph 1(c), 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 long-term

1. The proposals for *indirect actions* covered in Article 10(1) and Article 10(2)(c) shall be evaluated according to the following criteria:

- (a) ***scientific and technological excellence and the degree of innovation;***
- (b) ***ability to carry out the indirect action successfully and with efficient management, assessed in terms of resources, competencies and organisation;***
- (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 the use or dissemination of the knowledge, and ability to manage intellectual property.***

2. In applying paragraph 1(c), 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 long-term

integration of their research capabilities and resources after the end of the period covered by the Community 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 financial contribution.

integration of their research capabilities and resources after the end of the period covered by the Community 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 financial contribution.

2a. The selection of proposals for indirect actions shall follow a two-stage procedure according to Article 9, paragraph 1a (new).

In the first stage a project outline is submitted and evaluated in accordance with paragraph 1 (a) to (c).

The applicant is informed, with brief reasons, whether his project is likely or unlikely to be accepted. In the case of an application with slight procedural shortcomings the Commission is required to inform the applicant thereof and enable him to correct them.

In the second round all evaluation criteria shall be used.

Applicants may opt to include other partners before the second stage. The nature of the proposal may not be changed as a result.

The selection procedure should be so designed that in its two stages it lasts no longer than the present single-stage procedure.

3. The work ***programme of the specific programme*** shall determine, in accordance with the type of *instruments* deployed or the objectives of the ***RTDT activity***, which of the criteria set out in paragraph 1 shall be applied by the Commission. These criteria, and those of paragraph 2, will be clarified or complemented, particularly to take account of the contribution of the proposals for

3. The work ***programmes*** shall determine, in accordance with the type of *instruments* deployed or the objectives of the ***RTD activity***, which of the criteria set out in paragraph 1 shall be applied by the Commission. These criteria, and those of paragraph 2, will be clarified or complemented, particularly to take account of the contribution of the proposals for

indirect actions to improve information for and dialogue with society as well as to increase the role of women in research.

4. Any proposal for an *indirect action* which contravenes fundamental ethical principles, particularly those set out in the Charter of Fundamental Rights of the European Union, or which does not fulfil the conditions set out in the work programme or in the call for proposals may be excluded from the evaluation and selection procedure at any time.

Any participant having committed an irregularity in the implementation of an indirect action may be excluded from the evaluation and selection procedure at any time.

5. The Commission shall *evaluate and* select the proposals for *indirect actions in accordance with transparent, fair and impartial procedures laid down in an evaluation manual, which it will make public.*

6. The Commission shall evaluate the proposals with the help of independent experts appointed in accordance with the provisions of Article 12. For some specific support actions, particularly those covered by Article 10(2), independent experts shall be appointed only if the Commission deems it appropriate.

indirect actions to improve information for and dialogue with society, ***promote the competitiveness of small businesses and*** increase the role of women in research.

4. Any proposal for an *indirect action* which contravenes fundamental ethical principles, particularly those set out in the Charter of Fundamental Rights of the European Union, or which does not fulfil the conditions set out in the work programme or in the call for proposals may be excluded from the evaluation and selection procedure at any time.

Any participant having committed an irregularity in the implementation of an indirect action may be excluded from the evaluation and selection procedure at any time.

5. The Commission shall select the proposals for ***financial support following negotiations on the basis of the evaluation results and having regard to the budgetary funds available.***

The Commission shall give reasons for any decision rejecting a proposal.

6. The Commission shall evaluate the proposals with the help of independent experts appointed in accordance with the provisions of Article 12. For some specific support actions, particularly those covered by Article 10(2), independent experts shall be appointed only if the Commission deems it appropriate.

All proposals submitted for indirect actions shall be considered by the Commission in confidence, and evaluated and selected in accordance with transparent and impartial internal procedures laid down in advance under Article 218 of the EC Treaty. Details shall be laid down in the work programme. Proposals shall not be evaluated anonymously.

Justification

Points (a), (b), (d) and (e) in the Commission text become points (c), (a), (e), (e) and (b) respectively in the amendment.

The scientific and technological quality of an application and the degree of innovation should be the first criterion for selection. This reflects the strategic objectives of the Lisbon summit, of making Europe the world's most competitive and dynamic knowledge-based economy.

With a success rate of 15 % it is disproportionate to expect large financial and human resources to be deployed on an application. Many potential participants are deterred by the disproportionate cost-benefit ratio. The two-stage procedure deals with this problem.

To make it possible to expand the criteria to include those that, for instance, are designed to promote the competitiveness of small businesses and strengthen the women in research.

Amendment 18

Article 12, paragraph 3

3. When appointing an independent expert, the Commission shall ensure that the expert will not be 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 promising to inform the Commission if one should arise in the course of their duties.

3. When appointing an independent expert, the Commission shall ensure that the expert will not be 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 promising to inform the Commission if one should arise in the course of their duties. ***They must also undertake to preserve confidentiality. The Commission shall wherever it is able ensure that the principles of confidentiality are upheld in all procedures.***

Justification

The principle of confidentiality is essential in the use of experts. This is part of the Commission's responsibility.

Amendment 19
Article 13, paragraphs 1 and 2

1. **Contracts** for the *indirect action proposals* selected shall **be drawn up on the basis of the appropriate model contract established by the Commission** in accordance with the provisions of the 2002-2006 framework programme **and this Decision, account being taken**, as far as is required, of the characteristics of the various *instruments* concerned.

2. The *contract* shall establish the rights and obligations of *participants* in accordance with this Decision, and in particular the arrangements for the technical, technological and financial monitoring of the *indirect action*, for the updating of its objectives, for changes in consortium membership, for the payment of the Community financial contribution and, if applicable, conditions for the eligibility of any necessary expenditure.

The *contract* shall establish rules for dissemination and use of knowledge and results in accordance with Title II, Chapter 2 of the Treaty.

1. For **each indirect action proposal** selected **the Commission** shall **draw up a contract**. **This shall accord** with the provisions of the *sixth* 2002-2006 framework programme, this **Regulation and the model contract established**, as far as is required, **to take account** of the characteristics of the various *instruments* concerned.

To draw up the model contract the Commission shall consult with interested parties from the Member States and the Associated States.

2. The *contract* shall establish the rights and obligations of *participants* in accordance with this Decision, and in particular the arrangements for the technical, technological and financial monitoring of the *indirect action*, for the updating of its objectives, for changes in consortium membership, for the payment of the Community financial contribution and, if applicable, conditions for the eligibility of any necessary expenditure.

The *contract* shall establish rules for dissemination and use of knowledge and results in accordance with Title II, Chapter 2 of the Treaty.

The contract shall enter into force on signature by the Commission and the coordinator.

The other participants named in the contract shall accede to it in due course in accordance with the arrangements provided. They shall then have a participant's rights and obligations in relation to the Community, as laid down in accordance with paragraph 1, arising from the Regulation and the contract.

Any new participants in an indirect action that is already running shall accede to the contract in accordance with the

arrangements provided and shall then have a participant's rights and obligations in relation to the Community, as laid down in accordance with paragraph 1, arising from the Regulation and the contract.

Justification

The contract should enter into force on signature by the Commission and coordinator. The other partners accede to it later and on accession will have the rights and obligations of a participant in relations with the Community.

Amendment 20
Article 13, paragraph 3

3. In order to ensure the protection of the financial interests of the Community, appropriate penalties shall be included in the contracts.

3. In order to ensure the protection of the financial interests of the Community, appropriate penalties shall be included in the contracts, ***as defined in Regulation No 2988/95 on protecting the Communities' financial interests.***

Justification

The addition is not essential as the relevant regulation will be applied even without the reference here. But it makes the wording more user-friendly, since those unfamiliar with the regulation can now find out what 'the appropriate penalties' means.

Amendment 21
Article 13 a (new)

Article 13a

Consortium contract

1. Participants in an indirect action shall regulate their relations with one another in a consortium contract.

Agreements concluded in the consortium contract must keep to the framework set out in this Regulation and may not contradict the contract concluded with the Commission. The detailed form of the agreements shall otherwise be for the participants to determine.

2. The consortium contract shall in accordance with this Regulation govern at least the following points:

- appointment and duties of the coordinator**
- liability and compensation payments to one another and third parties**
- any supplementary agreements to the rules on dissemination and use, provided they are admissible under this Regulation and the contract**
- settlement of disputes and agreed place of jurisdiction and law applicable.**

3. The Commission shall also publish an instruction leaflet on other points that may be settled by the consortium contract.

To this end the Commission shall consult with interested parties from the Member States and the Associated States.

4. While a project is running, amendments to the consortium contract that affect the project's implementation must be notified to the Commission. The Commission may object to such amendments within 30 days of notification.

Justification

Many difficulties that come up in the course of a consortium's collaboration can be avoided if the questions of liability, intellectual property, access etc. are settled in a consortium contract between the participants from the outset. To this end the Commission should publish an instruction leaflet after consulting with interested parties from the Member States and the Associated applicant States.

Amendment 22
Article 13 b (new)

Article 13b

Coordinator

The coordinator shall have the following minimum duties, the details being set out in the consortium contract:

- contacts with the Commission**
- administration of the financial resources received from the**

Commission

- **submission of reports and implementation plans to the Commission.**

Justification

Introducing the coordinator creates a need to define the coordinator's duties.

Amendment 23

Article 14

1. In accordance with the ***terms of the contract, and with its own organisation arrangements, the consortium shall ensure the technical implementation of the indirect action, with the participants being jointly and severally liable.***

2. ***The Community financial contribution to an indirect action shall be paid, in accordance with the arrangements stipulated in the contract, to the participant designated by the consortium and approved by the Commission.***

That participant shall administer the Community financial contribution according to decisions taken by the consortium regarding its allocation to participants and activities.

3. ***Subject to the arrangements provided for in the contract based on the type of the instrument and the extent of the contribution made by participants:***

1. ***The Community financial contribution shall be paid to the coordinator, in accordance with the arrangements stipulated in the contract. He shall administer the Community financial contribution in accordance with the contract and any decisions taken by the participants on the basis of the consortium contract concerning the allocation of the financial contribution to participants and activities.***

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.***

3. ***In the event of the total or partial failure of a contribution from one or more participants the remaining participants shall as a priority ensure that the indirect action is continued, if necessary with such adjustment of the contract as is required, though adjustment his is by no means essential. If continuation is impossible or rejected by the participants, thus creating a financial disadvantage for the Community,***

the Commission may, without prejudice to any claim on failing participants, make a claim on the participants within the limits of paragraph 2, second sentence. When investigating the financial disadvantage the Commission shall take into account the work already undertaken and results obtained.

a) each participant shall bear unlimited joint and several liability for the use made of the Community financial contribution allocated in accordance with the second subparagraph of paragraph 2, except for the part allocated to the participants referred to in subparagraph (b);

b) a participant who cannot for legal reasons be held jointly and severally liable shall be liable only for that part of the Community financial contribution allocated specifically to it in accordance with paragraph 2.

4. The Commission shall have recourse to the liability referred to in paragraph 3(a) only if the damage incurred by the Community has not been rectified by either the participant at fault or the consortium, on its own initiative, within a reasonable period of time.

5. When several legal entities are grouped in a common legal entity acting as a single participant in accordance with Article 6(5), that legal entity shall take on the duties outlined in paragraphs 1 and 2 of this Article and shall be liable to the Community, notwithstanding the arrangements signed between the legal entities forming the common legal entity.

4. When determining the amount of the claim on a participant the Commission shall take into account the participant's respective contribution to the activities in an indirect action in connection with which the failure occurred, and any share by the participant concerned in the causing of the failure.

Justification

The principle of unlimited joint and several liability has been strongly criticised by the participants. So its extent is here curtailed.

Amendment 24
Article 15

In accordance with Annex III to the framework programme, the Community financial contribution *may take three distinct forms*, as follows:

a) For networks of excellence, it shall take the form of a grant for integration, *the amount of which is determined in relation to the value of the capacities and resources which all the participants propose to integrate*. It shall complement the resources deployed by the participants in order to carry out the joint *programme of activities*.

The contribution shall be paid with regard to the execution of the joint *programme of activities* and on the basis of those expenses relating to it which are in addition to those borne by the participants themselves and which are certified by an external auditor or, in the case of public legal entities, a competent public officer.

b) For some actions to promote human resources and mobility and some specific support actions, except for the indirect actions covered by Article 10(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 (a) and (b) and indirect actions covered by Article 10(2)(b), it shall take the form of a grant to the budget, calculated as a percentage of the budget allocated by the participants to carry out the indirect action, adapted according to the type of activity.

The contract shall specify the expenses

The Community financial contribution *shall be paid* as follows:

(a) For networks of excellence, it shall take the form of a grant for integration. *This shall include not only the cost for the new RTD activities initiated with the network of excellence but also the accompanying necessary integration of participants at European level. The grant shall be made for up to 100 % of the relevant expenditure*. It shall complement the resources deployed by the participants in order to carry out the joint *implementation plan*.

The contribution shall be paid with regard to the execution of the joint *implementation plan* and on the basis of those expenses relating to it which are in addition to those borne by the participants themselves and which are certified by an external auditor or, in the case of public legal entities, a competent public officer.

(b) For some actions to promote human resources and mobility and some specific support actions, except for the indirect actions covered by Article 10(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 (a) and (b) and indirect actions covered by Article 10(2)(b), it shall take the form of a grant to the budget, calculated as a percentage of the budget allocated by the participants to carry out the indirect action, adapted according to the type of activity *and guided by the cost model used by the participant concerned*.

The contract shall specify the expenses

needed to implement the indirect action, which have to be certified by an external auditor or, in the case of public legal entities, a competent public officer.

The contract may lay down average rates by type of expenditure or pre-set lump sums *as well as*, with the agreement of the participants, a value by activity which shall be closely approximate to the expenses incurred.

needed to implement the indirect action, which have to be certified by an external auditor or, in the case of public legal entities, a competent public officer.

(ca) Except in the cases governed by subparagraph (b) the contract may in exceptional, well-founded cases lay down average rates by type of expenditure or pre-set lump sums or, with the agreement of the participants, a value by activity which shall be closely approximate to the expenses incurred.

Justification

The Commission is proposing to pay a lump sum for networks of excellence calculated on the basis of the resources deployed. This is difficult for participants who have previously participated on the basis of the additional cost model, particularly universities, where deployed resources are hard to compute.

Amendment 25

Article 15 points (cb) and (cc) (new)

(cb) The Community contribution shall be paid in accordance with the requirements of the joint implementation plan and the contract in regular advance payments up to a maximum totalling 85 % of the full amount. The Commission shall pay the balance to the coordinator after approval of the project output within a period of no more than 60 days.

(cc) Costs for management of the consortium shall in addition to the costs of the indirect action 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

Justification

The Commission's proposal to dispense with the 'free distribution of funds' within the consortium raises a potential problem by devolving all responsibility on to the participants. But the risk to proper use of funds in cross-border payments comes under the Commission's responsibility, since unlike the participants it has the resources for efficient monitoring.

Amendment 26 Article 15, point (c d) (new)

(cd) A share of no more than 7% shall be reserved for administrative costs.

Justification

In the specific programmes the Commission itself is setting a ceiling, which in view of the other amendments will need adjusting.

Amendment 27 Article 16, paragraphs 1, 2 and 2a (new)

1. Within the limits of the Community financial contribution and regardless of the instrument, the membership of a consortium may, on its own initiative or in execution of the contract, be modified with the agreement of the Commission, and in particular be extended to include any legal entity contributing to the implementation of the indirect action.

With the exception of the changes described in paragraph 2, the consortium shall identify new legal entities on such terms as it deems appropriate, or in accordance with the contract.

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

1. The membership of a *consortium* may on its own initiative be modified and in particular extended to include any *legal entity* contributing to the implementation of the *indirect action*.

If the consortium proposes to incorporate new participants, after carrying out an evaluation on its own responsibility, the Commission may object within six weeks of notification of this modification.

New participants shall accede to the contract with the same rights and obligations as the other members.

2. The *consortium contract* shall specify which changes in the membership of the *consortium* shall require the prior publication of a competitive call.

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 2002-2006 framework programme, the specialist press and brochures.

The *consortium* shall ***where necessary*** publish the competitive call and advertise it widely using specific information support, particularly Internet sites on the ***sixth*** 2002-2006 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:

a) in the light of the criteria which governed the evaluation and selection of the indirect action, defined according to the terms of Article 18 11(3) and (4);

b) with the assistance of independent experts appointed by the consortium on the basis of the criteria described in Article 19 12(2)(b),

In accordance with paragraph 1, the Commission may object if and when the consortium proposes, following this evaluation, to extend its membership to new participants.

2a. Participants who withdraw shall by agreement with the remaining participants be replaced by a new participants or their tasks shall be redistributed among the remaining participants. A participant's withdrawal shall not jeopardise the right of access to implementation of an indirect action.

Justification

Arises partly from introduction of the consortium contract. On the Commission objection to new participants, it makes sense to set a time-limit here so that the consortium obtains legal certainty as soon as possible. Finally, rules need laying down for the withdrawal of participants as this is a frequent occurrence.

Amendment 28 Article 23, paragraph 1, second subparagraph

The base rate for the Community financial contribution shall not exceed **17.5%** over

The base rate for the Community financial contribution shall not exceed **24%** over the

the duration of the 2002-2006 Framework programme

duration of the 2002-2006 Framework programme

Justification

Under FP5, the Community is providing general support to the Associations within the integrated European fusion programme at a rate of 25%. Under FP6 the rate should be kept as close as possible to 25% in order to maintain an adequate level of fusion work in the Associations, as recommended by the European Parliament in its resolution on the Euratom FP6. The reduction in the fusion budget with respect to FP5 implies that a rate close to 25% (24% is a reasonable figure) can be guaranteed only if preferential support (45% under FP5) is concentrated on few actions of direct relevance to ITER, as recommended in amendment 2.

Amendment 29

Article 23, paragraph 2, indent (a)

a) the capital related expenditures of specifically defined projects ***to which priority status has been awarded by that committee***, at a uniform rate ***equal to 37.5%*** ;

a) the capital related expenditures of specifically defined projects ***of direct relevance to ITER***, at a rate ***higher than 23%***;

Justification

Under FP5, the Community is providing general support to the Associations within the integrated European fusion programme, at a rate of 25% and preferential support to specifically defined projects, at a rate of 45%. In order to maintain the general support as close as possible to 25% (23% as recommended in amendment 1) and thus allow an adequate level of fusion work in the Associations, in spite of the reduced fusion budget under FP6, preferential support should be concentrated on few actions of direct relevance to ITER.

EXPLANATORY STATEMENT

The same rules should apply to participation in Euratom activities as to participation in EC activities, which is why the amendments proposed here are the same as those drafted to the rules on participation in the Sixth European Community Framework Programme. The only new amendments are those relating to fusion research.

In Chapter III rules are set out which apply to RTDT activities under the priority thematic area 'Fusion Energy Research'. For the implementation of the activities a number of legal frameworks are foreseen, taking into account the strong integration of fusion research in the Member States and world-wide.

Concerning the Community financial contribution, concerns have been expressed to the rapporteur by the Consultative Committee for the Euratom specific research and training programme in the field of nuclear energy (Fusion), CCE-FU. According to CCE-FU, which represents all the Associations working on fusion at EU level, the Community should provide a general support to the Associations within the integrated European fusion programme, at a rate as close as possible to 25% (as it was under FP5), in order to maintain an adequate level of fusion work in the Associations, as recommended by the European Parliament in its resolution on the Euratom FP6. The reduction in the fusion budget in FP6 with respect to FP5 implies that a rate close to 25% (23% is a reasonable figure) can be guaranteed only if preferential support (45% under FP5) is concentrated on few actions of direct relevance to ITRE.