

Proposal for a Decision of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community framework programme 2002-2006

(2001/C 332 E/12)

COM(2001) 500 final — 2001/0202(COD)

(Submitted by the Commission on 10 September 2001)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

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

Whereas:

- (1) The framework programme of the European Community for research, technological development and demonstration activities, aimed at contributing towards the creation of the European Research Area (2002-2006) (hereinafter referred to as 'the 2002-2006 framework programme'), was adopted by Decision No .../.../EC of the European Parliament and Council. The rules for financial participation by the Community, as set out in Annex III to that Decision, need to be supplemented by other provisions.
- (2) Those provisions should fit into a coherent and transparent framework which takes full account of the objectives and characteristics of the instruments defined in Annex III to the 2002-2006 framework programme in order to guarantee the most efficient implementation possible.
- (3) The rules for the participation of undertakings, research centres and universities should take account of the nature of the research and technological development activities, including demonstration activities. They may, moreover, vary depending on whether the participant is based in a Member State, in an Associated State — whether a candidate country or not — or in a third country, and on its legal structure, namely whether it is a national organisation, an international organisation — of European interest or not — a small or medium-sized enterprise, a European Economic Interest Grouping, or an association formed by participants.
- (4) In conformity with the 2002-2006 framework programme, the participation of legal entities from third countries should be envisaged, in line with the objectives of international cooperation, particularly as enshrined in Articles 164 and 170 of the Treaty.
- (5) International organisations which are dedicated to developing cooperation in the field of research in Europe and which are largely made up of Member States or Associated States contribute to the creation of the European Research Area. They should therefore be encouraged to participate in the 2002-2006 framework programme.
- (6) The Joint Research Centre (hereinafter referred to as the 'JRC') takes part in indirect research and technological development actions on the same basis as legal entities established in a Member State.
- (7) Activities under the framework programme should comply with the financial interests of the Community and should safeguard those interests.
- (8) The rules governing the dissemination of research results should promote the protection of the intellectual property and the use and dissemination of those results. They should ensure that participants have mutual access to pre-existing know-how and to knowledge arising from research work to the extent necessary to conduct the research work or to use the resulting knowledge. At the same time, they should guarantee the protection of the participants' intellectual assets. They should also take account of the features of the integrated projects and networks of excellence, in particular by offering a high degree of flexibility to the participants, and allowing them to agree among themselves on the most suitable arrangements for their collaboration and for the exploitation of the resulting knowledge.
- (9) Activities under the framework programme should be conducted in compliance with ethical principles, including those set out in the Charter of Fundamental Rights of the European Union, should strive both to increase the role of women in research and to improve information for, and dialogue with, society,

HAVE DECIDED AS FOLLOWS:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject

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

Article 2

Definitions

For the purposes of this Decision:

- (a) RTD activity means one of the research and technological development activities, including demonstration activities, described in Annexes I and III to the 2002-2006 framework programme;
- (b) direct action means an RTD activity undertaken by the JRC in the execution of the tasks assigned to it under the 2002-2006 framework programme;
- (c) indirect action means an RTD activity undertaken by one or more participants by means of an instrument of the 2002-2006 framework programme;
- (d) instruments means the mechanisms for indirect Community intervention as laid down in Annex III to the 2002-2006 framework programme, with the exception of Community financial participation pursuant to Article 169 of the Treaty;
- (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;
- (f) participant means a legal entity contributing to an indirect action and having rights and obligations with regard to the Community under the terms of this Decision or according to the contract;

- (g) legal entity means any natural person, or any legal person created under the national law of its place of establishment, under Community law, or international law, having legal personality and being entitled to have rights and obligations of any kind in its own name;
- (h) consortium means all the participants in the same indirect action;
- (i) international organisation means any legal entity arising from an association of States, other than the Community, established on the basis of a treaty or similar act, having common institutions and an international legal personality distinct from that of its Member States;
- (j) international European interest organisation means an international organisation, the majority of whose members are European Community Member States or Associated States, and whose principal objective is to promote scientific and technological cooperation in Europe;
- (k) associated candidate country means an associated State acknowledged by the Community as a candidate for accession to the European Union;
- (l) associated State means a State which is party to an international agreement with the Community, under the terms or on the basis of which it makes a financial contribution to all or part of the 2002-2006 framework programme;
- (m) third country means a State that is neither a Member State nor an Associated State;
- (n) European Economic Interest Grouping (EEIG) means any legal entity established in accordance with Council Regulation (EEC) No 2137/85 ⁽¹⁾;
- (o) small and medium-sized enterprises (hereinafter referred to as 'SMEs') means enterprises which meet the criteria set out in Commission Recommendation 96/280/EC ⁽²⁾;
- (p) enterprise grouping means any legal entity made up for the most part of SMEs and representing their interests;
- (q) budget means a financial plan estimating all the resources and expenditure needed to carry out an indirect action;
- (r) irregularity means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a legal entity which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them through unjustified expenditure;

⁽¹⁾ OJ L 199, 31.7.1985, p. 1.

⁽²⁾ OJ L 107, 30.4.1996, p. 1.

- (s) pre-existing know-how means the information which is held by participants prior to the conclusion of the contract or acquired in parallel with it, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection;
- (t) knowledge means the results, including information, whether or not they can be protected, which are yielded by direct actions and indirect actions, as well as copyrights or rights pertaining to such information following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection;
- (u) dissemination means the disclosure of knowledge by any appropriate means other than publication resulting from the formalities for protecting knowledge;
- (v) use means the direct or indirect utilisation of knowledge in research activities or for creating and marketing a product or process or for creating and providing a service.

Article 3

Independence

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

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

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

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

CHAPTER II

INSTRUMENTS

Article 4

Networks of excellence

1. The purpose of networks of excellence is to strengthen Community scientific and technological excellence by means of a progressive and permanent integration of existing or emerging research capacities at both national and regional level. Each network shall aim at advancing knowledge in a particular area by assembling a critical mass of skills. The activities concerned shall be generally targeted towards long-term, multidisciplinary objectives, not at precise, predefined results in terms of products, processes or services.

2. To create a virtual centre of excellence, the participants shall implement a joint programme of activities involving a considerable part or even all of their research capacities and activities in the relevant area. Where necessary, the legal entity to which the institute, department, laboratory or team that is the network member belongs shall allow the member sufficient autonomy for this purpose.

The joint programme of activities shall focus on research activities and shall necessarily include integration activities as well as activities related to the spreading of excellence outside the network, as described in Annex III to Council Decision .../.../EC [laying down the specific programme 'Integrating and strengthening the European Research Area']. With the Commission's agreement, the focus of specific activities may be changed or new activities launched in the annual update of the joint programme of activities.

Article 5

Integrated projects

1. Integrated projects are designed to boost the Community's competitiveness or help solve major societal problems by mobilising a critical mass of research and technological development resources and competences. In this context, each integrated project shall be assigned clearly defined objectives in terms of scientific and technological knowledge and shall be directed at obtaining specific, applicable results in terms of products, processes or services.

2. In principle, integrated projects shall comprise a set of specific components, varying in size and structure according to the task to be carried out, each dealing with different aspects of the research needed to achieve common overall objectives, and integrated to form a coherent whole and implemented in close coordination.

The activities carried out as part of an integrated project shall include research, technological development and even demonstration activities, activities for the management and use of knowledge in order to promote innovation, and any other type of activity directly related to the objectives of Decision .../.../EC [laying down the specific programme 'Integrating and strengthening the European Research Area'], as described in Annex III to that Decision. All these activities shall be set out in an implementation plan, which shall be updated annually with the agreement of the Commission. The focus of specific activities may be changed or new activities launched in the update.

Article 6

Specific targeted research or innovation projects

1. Specific targeted research projects may take either of the following two forms, or a combination of the two:

- (a) a research and technological development project designed to gain new knowledge either to considerably improve or to develop new products, processes or services or to meet other needs of society and Community policies;
- (b) a demonstration project designed to prove the viability of new technologies offering potential economic advantage but which cannot be commercialised directly.

2. Specific targeted innovation projects are designed to test, validate and disseminate new innovation concepts and methods at the European level.

Article 7

Specific research projects for SMEs

Specific research projects for SMEs may take either of the following forms:

- (a) cooperative research projects enabling SMEs to approach legal entities possessing appropriate research capabilities with a view to carrying out specific research activities;
- (b) collective research projects undertaken by legal entities possessing appropriate research capabilities for the benefit of enterprise groupings, in fields and on subjects of interest to a large number of SMEs facing common problems.

Article 8

Integrated infrastructure initiatives

Integrated infrastructure initiatives shall incorporate a range of activities essential to reinforce and develop research infrastructures in order to provide services at the European level. To this end, they shall combine networking activities with a

support activity or research activities needed to improve infrastructure performance. They shall include a component of dissemination of knowledge to potential users, including industry and in particular to SMEs.

Article 9

Actions to promote human resources and mobility

Actions to promote human resources and mobility shall be targeted at training, development of skills or transfer of knowledge. They shall involve support to actions carried out by natural persons, host structures, including training networks, and also by teams of excellence.

Article 10

Coordination actions

Coordination actions shall be intended to promote and support the coordinated initiatives of a range of research and innovation operators. They shall cover a range of activities such as the organisation of conferences, meetings, the performance of studies, exchanges of personnel, the exchange and propagation of good practices, setting up information systems and expert groups, and may, if necessary, include support for the definition, organisation and management of joint or common initiatives.

Article 11

Specific support actions

Specific support actions shall be aimed at implementing the objectives identified in the 2002-2006 framework programme or may assist preparations for future Community research and technological development policy activities or may include monitoring and assessment activities. In particular, they shall involve conferences, seminars, studies and analyses, high level scientific awards and competitions, working groups and expert groups, operational support and dissemination, information and communication activities, or a combination of these, as appropriate in each case.

CHAPTER III

PARTICIPATION IN INDIRECT ACTIONS AND FINANCING

Article 12

General principles

1. Any legal entity taking part in an indirect action may receive a Community financial contribution subject to the provisions of Articles 14 and 15.

2. Any legal entity established in an Associated State may take part in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State, subject to the provisions of Article 13.

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

4. Any international European interest organisation may take part in indirect actions on the same footing and shall be entitled to the same rights and bound by the same obligations as a legal entity established in a Member State in accordance with its Statute of Establishment.

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

Article 13

Minimum numbers of participants and their place of establishment

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

2. 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.

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

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

4. For instruments other than those covered in paragraphs 2 and 3, the minimum number of participants shall not be 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 paragraphs 1 to 4.

Article 14

Participation by legal entities from third countries

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 13, in RTD activities under the objective 'Integrating research' of Decision . . . /EC [laying down the specific programme 'Integrating and strengthening the European Research Area'].

Any legal entity established in a third country targeted by the specific international cooperation activities under the specific programme 'Integrating and strengthening the European Research Area', and taking part in the RTD activities mentioned in the first subparagraph, may receive a Community financial contribution within the limits of the budget allocated in Annex II to the 2002-2006 framework programme for the action referred to in point (b) of Article 164 of the Treaty.

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

2. Any legal entity established in a third country which has concluded a scientific and technological cooperation agreement with the Community may take part in RTD activities other than those covered by paragraph 1, over and above the minimum number of participants fixed in accordance with the terms of Article 13, in accordance with the conditions stipulated in that agreement.

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

3. Any legal entity established in a third country other than those covered by paragraph 2 may take part in RTD activities other than those covered by paragraph 1, over and above the minimum number of participants fixed in accordance with the terms of Article 13, if such participation is provided for under an RTD activity or if it is necessary for carrying out the indirect action.

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

Article 15

Participation by international organisations

Any international organisation other than international European interest organisations may take part in RTD activities under the objective 'Integrating research' of Decision . . . /EC laying down the specific programme 'Integrating and strengthening the European Research Area', subject to the conditions set out in the first and third subparagraphs of Article 14(1), and in other RTD activities subject to the conditions set out in Article 14(3).

Article 16

Conditions relating to technical competence and resources

1. Participants shall have the knowledge and technical competence needed to carry out the indirect action.
2. At the time when they present their proposal, participants shall have at least the potential resources needed to carry out the indirect action, and shall specify the relevant source.

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

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

Article 17

Submission of proposals for indirect actions

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.
2. Paragraph 1 shall not apply to:
 - (a) specific support actions for the activities of legal entities identified in the work programmes;
 - (b) specific support actions consisting of a purchase or service governed by the terms applicable to public procurement procedures;
 - (c) specific support actions with particular characteristics and value to the objectives and the scientific and technological content of specific programmes, for which grant

applications may be submitted to the Commission if so provided for in the work programme of the relevant specific programme and where such a request does not fall within the scope of an open call for proposals.

- (d) specific support actions covered by Article 19.

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.

Article 18

Evaluation and selection of proposals for indirect actions

1. The proposals for indirect actions covered in Article 17(1) and Article 17(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) 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 shall also be taken into account:
 - (a) for networks of excellence, the scope and degree of the effort to achieve integration and the network's capacity to promote excellence beyond its membership, as well as the prospects of the long-term integration of their research capabilities and resources after the end of the period covered by the Community's financial contribution;
 - (b) for integrated projects, the scale of ambition of the objectives and the capacity of the resources to make a significant contribution to reinforcing competitiveness or solving societal problems;
 - (c) for integrated initiatives relating to infrastructure, the prospects of the initiative's continuing long term after the end of the period covered by the Community's financial contribution.

3. The work programmes of the specific 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, shall 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 19. For some specific support actions, particularly those covered by Article 17(2), independent experts shall be appointed only if the Commission deems it appropriate.

Article 19

Appointment of independent experts

1. The Commission shall designate independent experts to assist with the evaluation required under the 2002-2006 framework programme and the specific programmes, and also for the assistance referred to in Article 18(6) and the second subparagraph of Article 26(1).

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

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

(a) The independent experts appointed by the Commission for the evaluations provided for in Article 5 of the 2002-2006 framework programme and Article 7(2) of the specific programmes shall be very high-ranking individuals from the fields of science, industry or politics with significant experience in research, research policy or research programme management at national or international level.

(b) The independent experts appointed by the Commission to assist in the evaluation of proposals for networks of

excellence and integrated projects and in monitoring the projects selected and carried out shall be individuals from the fields of science or industry with the highest level of knowledge and who are internationally recognised authorities in the relevant specialist area.

(c) The independent experts appointed by the Commission to form the groups referred to in the second subparagraph of paragraph 1 shall be professionals renowned for their knowledge, skills and top-level experience in the field or regarding the issues to be dealt with by the group.

(d) For cases other than those covered by points (a), (b) and (c), and in order to take the various operators in the research sector into consideration in a balanced manner, the Commission shall appoint independent experts with skills and knowledge appropriate to the tasks assigned to them. To this end, it shall rely on calls for applications from individuals or calls addressed to research institutions with a view to establishing lists of suitable candidates, or may, if it deems appropriate, select any individual with the appropriate skills from outside the lists.

3. When appointing an independent expert, the Commission 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.

Article 20

Contracts

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, as well as rules for dissemination and use.

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

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

Article 21

Execution of indirect actions

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.

The latter 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:

(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 13(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.

Article 22

Community financial contribution

In accordance with Annex III to the 2002-2006 framework programme and with the Annex to this Decision, and within

the limits of the Community framework for State aid for research and development⁽¹⁾, 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 17(2)(b), it may take the form of a lump sum payment.

(c) For integrated projects and the other instruments, except for those covered by points (a) and (b) and indirect actions covered by Article 17(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 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.

Article 23

Changes in consortium membership

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.

⁽¹⁾ OJ C 45, 17.2.1996, p. 5.

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

The consortium shall publish the competitive call and advertise it widely using specific information support, particularly Internet sites on the 2002-2006 framework programme, the specialist press and brochures.

The consortium shall evaluate offers in the light of the criteria which governed the evaluation and selection of the indirect action, defined according to the terms of Article 18(3) and (4), and with the assistance of independent experts appointed by the consortium on the basis of the criteria described in Article 19(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.

Article 24

Additional financial contribution

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

It shall do so by way of a call for proposals, restricted, if necessary, to indirect actions under way, after the termination of an evaluation conducted in accordance Article 18.

Article 25

Consortium activities in favour of third parties

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

The consortium shall evaluate and select the applications received in accordance with the principles of transparency, fairness and impartiality and also with the terms stipulated in the contract.

Article 26

Technical, technological and financial monitoring and audits

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

submitted by the participants in accordance with the terms of the contract.

In monitoring the networks of excellence, the integrated projects and, where necessary, other indirect actions, the Commission shall be assisted by independent experts appointed in accordance with Article 19(2).

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

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

4. Pursuant to Article 248(2) of the Treaty, the Court of Auditors may check on the use of the Community's financial contribution, on the basis of its own rules.

Article 27

Protection of the financial interests of the Community

The Commission shall ensure that, when indirect actions are implemented, the financial interests of the Community are protected by effective checks and by deterrent measures and, if irregularities are detected, by penalties which are effective, proportionate and dissuasive, in accordance with Council Regulations (EC, Euratom) Nos 2988/95 ⁽¹⁾ and 2185/96 ⁽²⁾, and with European Parliament and Council Regulation (EC) No 1073/99 ⁽³⁾.

CHAPTER IV

RULES FOR DISSEMINATION AND USE

Article 28

Ownership of knowledge

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

2. Knowledge arising from work carried out under indirect actions fully funded by the Community shall in principle be the property of the Community. Knowledge arising from work carried out under indirect actions partly funded by the Community shall be the property of the participants carrying out the work leading to that knowledge.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.

⁽²⁾ OJ L 292, 15.11.1996, p. 1.

⁽³⁾ OJ L 136, 31.5.1999, p. 1.

3. Where several participants have jointly carried out work generating knowledge, they shall have joint ownership of such knowledge and shall agree among themselves on the allocation and the terms of exercising the ownership of the knowledge in accordance with the provisions of this Decision and of the contract.

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

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

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

The Commission may object to any transfer of ownership to third parties, in particular to those not established in a Member State or an Associated State, if such a transfer is not in accordance with the interests of developing the competitiveness of Community industry, or is inconsistent with ethical principles, in particular those described in the Charter of Fundamental Rights of the European Union.

Article 29

Protection of knowledge

1. Where appropriate, the owner of knowledge shall provide adequate and effective protection for knowledge that is capable of industrial or commercial application, with particular regard to the legitimate interests of the participants concerned and in accordance with the contract and any applicable legislation.

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

3. A participant may publish or allow the publication of data, on whatever medium, concerning knowledge it owns

provided that this does not affect the protection of that knowledge. The Commission and the other participants in the same indirect action shall be given prior notice of any planned publication, and may object to it if this would adversely affect the protection of knowledge.

Article 30

Use and dissemination of knowledge

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

2. If knowledge is suitable for dissemination or if it is not used in accordance with paragraph 1, the participants shall ensure that it is disseminated within a period laid down by the Community. Should the participants fail to do so, the Commission may disseminate the knowledge. Particular account shall be taken of the following factors:

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

Article 31

Making available knowledge arising from direct actions

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

Article 32

Principles for access rights in indirect actions

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

The Commission may object to any grant of access rights to third parties, in particular to those not established in a Member State or an Associated State, if such grant is not in accordance with the interests of developing the competitiveness of European industry, or ethical principles, in particular those described in the Charter of Fundamental Rights of the European Union.

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

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

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

Article 33

Access rights for the execution of indirect actions

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

2. Subject to its legitimate interests, the termination of the participation of a participant shall in no way affect the obli-

gation to grant access rights pursuant to paragraph 1 to the other participants in the same indirect action until its end.

Article 34

Access rights for use

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

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

Article 35

Incompatible or restrictive commitments

1. Participants shall take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this Decision.

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

ANNEX

RTD ACTIVITIES AND COMMUNITY FINANCIAL CONTRIBUTION ACCORDING TO TYPE OF INSTRUMENT

Type of instrument ⁽¹⁾	RTD Activities	Community contribution ⁽²⁾
Networks of Excellence	<ul style="list-style-type: none"> — Priority thematic areas — Scientific and technological needs of the policies of the Community and new or emerging scientific and technological needs 	Grant for integration: as a general rule up to 25 % of the value of the capacity and resources proposed for integration by participants ⁽³⁾
Integrated Projects	<ul style="list-style-type: none"> — Priority thematic areas — Scientific and technological needs of the policies of the Community and new or emerging scientific and technological needs 	Grant to the budget of up to 50 % of the budget ⁽⁴⁾ ⁽⁵⁾

Type of instrument ⁽¹⁾	RTD Activities	Community contribution ⁽²⁾
Specific targeted research or innovation projects	<ul style="list-style-type: none"> — Scientific and technological needs of the policies of the Community and new or emerging scientific and technological requirements — Specific international cooperation activities — Promoting interaction between research and innovation — Developing harmonious relations between science and society 	Grant to the budget of up to 50 % of the budget ⁽⁴⁾ ⁽⁵⁾
Actions to promote human resources and mobility	<ul style="list-style-type: none"> — Promotion of human resources and mobility 	Grant to the budget of up to 100 % of the budget ⁽⁴⁾ , if necessary as a lump sum
Integrated initiatives relating to infrastructure	<ul style="list-style-type: none"> — Support for research infrastructures 	Grant to the budget: depending on the type of activity, of 50 to 100 % of the budget ⁽⁴⁾ ⁽⁵⁾ ⁽⁶⁾
Specific research projects for SMEs	<ul style="list-style-type: none"> — Specific research activities for SMEs 	Grant to the budget of up to 50 % of the budget ⁽⁴⁾ ⁽⁷⁾
Coordination actions	<p>In all the activities of the 2002-2006 framework programme, except for:</p> <ul style="list-style-type: none"> — Priority thematic areas — Specific research activities for SMEs 	Grant to the budget of up to 100 % of the budget ⁽⁴⁾ ⁽⁷⁾
Specific support actions	<p>In all the activities of the 2002-2006 framework programme</p>	Grant to the budget of up to 100 % of the budget ⁽⁴⁾ ⁽⁷⁾ ⁽⁸⁾ , if necessary as a lump sum

⁽¹⁾ Networks of excellence and integrated projects shall be carried out only in the scientific and technical areas covered by the priority thematic areas and, in duly justified cases, in areas covered by scientific and technological needs of the policies of the Community and new or emerging scientific and technological needs.

The other instruments shall be used in all scientific and technical areas, including those corresponding to the priority thematic areas, in accordance with Annex I to the 2002-2006 framework programme and Annex I to the specific programmes.

⁽²⁾ The Community financial contribution shall relate to a budget made up of expenditure additional to that otherwise borne by the participants, with the exception of proposals covered by Article 17(2)(b), when it covers a purchase price or takes the form of a pre-defined lump sum pre-set by the Commission.

The Community may bear up to 100 % of the costs of such proposals. Also, in the specific case of coordination actions, it covers up to 100 % of the budget necessary for the coordination of activities funded by the participants themselves.

⁽³⁾ This rate varies for different areas and is established in the work programme. The Community contribution additionally covers the expenditure of the joint programme of activities.

⁽⁴⁾ The model contract will specify the conditions according to which specific legal entities, particularly public bodies, will receive funding of up to 100 % of their marginal cost.

⁽⁵⁾ The rates of assistance may be differentiated in accordance with the rules of the Community framework for State aid for research and development depending on whether activities relate to research or demonstration or to other activities implemented, such as training of researchers or the management of the consortium.

⁽⁶⁾ The activities of an integrated initiative relating to infrastructure must include one networking activity (coordination action: up to 100 % of the budget) and at least one of the following activities: research activities (up to 50 % of the budget) or specific service activities (for example, transnational access to research infrastructures: up to 100 % of the budget).

⁽⁷⁾ For indirect actions making preparations to meet future scientific and technological needs including specific international cooperation activities, the Community contribution is limited to 50 % of the budget of the various types of activities implemented.

⁽⁸⁾ For actions in support of research infrastructure relating to preparatory technical work (including feasibility studies) and the development of new infrastructure, 2002-2006 framework programme participation is restricted to 50 % and 10 % of the budget respectively.