COUNCIL DECISION

of 22 December 1998

concerning the rules for the participation of undertakings, research centres and universities in the implementation of the fifth framework programme of the European Atomic Energy Community (Euratom) (1998-2002)

(1999/66/Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

(1) Whereas the fifth framework programme of the European Atomic Energy Community (Euratom) for research and training activities (1998-2002) (hereinafter referred to as 'the fifth framework programme') was adopted by Council Decision 1999/64/Euratom [4]; whereas the detailed rules for financial participation by the Community, as set out in Annex III to that Decision, must be supplemented by other provisions relating to the participation of undertakings, research centres and universities in research and technological activities, including demonstration activities, and training activities, hereinafter referred to as 'indirect RTDT actions';

(2) Whereas the new provisions should be part of a complete, coherent and transparent framework;

(3) Whereas the rules for the participation of undertakings, research centres and universities must be adapted to the nature of the indirect RTDT actions; whereas moreover, they may vary depending on whether the participant is based in a Member State, an Associated State or a third State and on its legal structure;

(4) Whereas the participation of legal entities of third States should be envisaged, including on the basis of international agreements; whereas, however, the agreements concluded with the Community, in particular on the basis of Article 101 of the Treaty, must be implemented in accordance with the principle of reciprocity and the protection of intellectual and industrial property rights; whereas the Community's legal entities must accordingly enjoy genuine access to the research programmes of the third State concerned;

(5) Whereas the Joint Research Centre (JRC) takes part in indirect RTDT actions on the same basis as legal entities established in a Member State or in an Associated State;

(6) Whereas the rules should be applied in a simple and efficient manner so as to minimise the administrative and financial burden on participants and the Commission, particularly with respect to the time taken to prepare proposals, conclude contract negotiations and make reimbursements;

(7) Whereas the Community financial participation should be paid to the participants against justification of the eligible costs of the indirect RTDT action, although other more appropriate methods may be used;

(8) Whereas research and technological activities, including demonstration activities, and training activities should be carried out in accordance with the principles of sound financial management;

(9) Whereas, to the extent necessary for achieving its objectives, the research and training programme may set out in greater detail or supplement the rules for the participation of undertakings, research centres and universities;

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[1] OJ C 40, 7.2.1998, p. 14.
[2] OJ C 195, 22.6.1998, p. 27.
[3] OJ C 214, 10.7.1998, p. 51.
[4] See page 34 of this Official Journal.

(10) Whereas the provisions relating to dissemination of knowledge are laid down in Articles 12 to 29 of the Treaty;

(11) Whereas, in order to ensure coherence between the activities carried out under the fifth framework programme and those undertaken pursuant to Decision No 182/1999/EC of the European Parliament and the Council of 22 December 1998 concerning the fifth framework programme of the European Community for research, technological development and demonstration activities (1998-2002) [1], this Decision and Council Decision 1999/65/EC of 22 December 1998 concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the fifth framework programme [2], should be adopted simultaneously and for the same period,

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Decision:

(a) 'RTDT activities' means the research activities, including demonstration activities, and training activities described in Annex II to the fifth framework programme;

(b) 'indirect RTDT actions' means one of the two ways of implementing RTDT activities, as described in Annex III to the fifth framework programme. Such actions are carried out by third parties under contracts concluded with the Community; the JRC may take part in such actions under the conditions laid down in Article 6;

(c) 'Associated State' means a State which is party to an international agreement concluded with the Community, in particular on the basis of Article 101 of the Treaty, under which the State concerned makes a financial contribution to the fifth framework programme. The said agreement relates to cooperation in research and training;

(d) 'third State' means a State which is neither a Member State nor an Associated State;

(e) 'legal entity' means:

— any natural person, or

— any legal person, provided that it has been established under Community law or the applicable national law and has been given legal personality or has the capacity, in its own name, to hold rights and obligations of all kinds, to conclude contracts and to be a party to legal proceedings;

(f) 'international organisation' means any 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;

(g) 'potential user of RTD results' means any legal entity, any international organisation or the JRC which, by virtue of its needs and capabilities — whether scientific, technological, economic or social — has a specific contribution to make to the use or the ensuring of the use of the results of indirect RTDT actions.

CHAPTER II

RULES FOR THE PARTICIPATION AND UNDERTAKINGS, RESEARCH CENTRES AND UNIVERSITIES

Article 2

Scope

The rules laid down in this chapter shall apply, in conformity with Article 10 of the Treaty, to the participation of legal entities and international organisations and of the JRC in indirect RTDT actions.

Section 1

Conditions for participation and financing

Article 3

Number of participants in indirect RTDT actions

1. Indirect RTDT actions shall be carried out by:

[1] See page 1 of this Official Journal.
[2] See page 46 of this Official Journal.

(a) at least two mutually independent legal entities established in two different Member States or in a Member State and an Associated State; or

(b) at least one legal entity established in a Member State or in an Associated State and the JRC; or

(c) one or several legal entities established in a third State or international organisations, acting in cooperation with the minimum number of legal entities established in a Member State or Associated State and the JRC, as required in (a) or (b).

2. Exceptionally, where the nature of the indirect RTDT action or activity to be undertaken requires it to be carried out by a single participant, it must be carried out by:

(a) a legal entity established in a Member State, in an Associated State or in a third State; or

(b) an international organisation; or

(c) the JRC.

Article 4

Conditions for legal entities from the Member States and Associated States

1. Any legal entity established in a Member State or in an Associated State may take part in indirect RTD actions and receive funding from the fifth framework programme, provided that:

— it is carrying out or is about to carry out an RTDT activity, or

— it contributes to the dissemination and use of results of RTDT activities, or

— it is a potential user of RTDT results, or

— in the case of thematic networks and concerted actions, it is in a position to contribute substantial added value to the quality of work to be undertaken by virtue of its knowledge of the relevant area of research.

2. The conditions set out in paragraph 1 do not apply in case of accompanying measures, where the legal entity has the necessary technical know-how to carry out the indirect RTDT action in question.

3. Where the purpose of the indirect RTDT action concerned so permits, any legal entity referred to in paragraphs 1 and 2 must carry out the major part of the work within the Member States or Associated States.

Article 5

Conditions for legal entities from third States and for international organisations

1. Without prejudice to the conditions set out in paragraph 2, any legal entity established in a third State and any international organisation may take part in indirect RTDT actions in conformity with the interests of the Community and without financing from the fifth framework programme, provided that:

(a) the number of participations in the proposal for an indirect RTDT action is in accordance with Article 3; and

(b) it meets the conditions laid down in Article 4(1) and (2) for legal entities from the Member States and Associated States.

This shall not apply to training fellowships as defined in Annex III to the fifth framework programme.

2. Where necessary to provide access to high-quality programmes in a third State and/or to ensure suitable intellectual property rights (IPR) arrangements, participation of legal entities established in that third State is subject to the conclusion of an international agreement between the Community and the third State concerned. Where such an agreement exists, participation is additionally subject to the principles, conditions and limits laid down therein.

3. Any legal entity established in the central and eastern European States or the new independent States which meets the conditions laid down in paragraph 1 may participate with financing from the fifth framework programme in the area of nuclear fission, provided that the financing is duly justified on the grounds that the participation makes an essential contribution to the objectives of the programme which cannot be provided by other means.

Community financing will be provided only for the activities specified in the research and training programme and under the conditions laid down therein.

This shall not apply to training fellowships as defined in Annex III to the fifth framework programme.

4. Any international organisation may, exceptionally, receive financing from the fifth framework programme provided that:

(a) in the case of indirect RTDT actions other than accompanying measures,

— the financing is duly justified as being essential for achieving the objectives of the indirect RTD action in question, and

— where any basic facility is to be used which is located in a third State, it is essential for carrying out the proposed work;

(b) in the case of accompanying measures, it has the necessary technical skills and know-how, which are not readily accessible or are unavailable in the Member States or the Associated States.

Article 6

Conditions for the JRC

Subject to the internal budgetary and administrative measures necessary to enable the JRC to take part in indirect RTDT actions, the JRC shall be bound by the same conditions and have the same rights and obligations as the legal entities established in a Member State or an Associated State taking part in indirect RTDT actions.

Article 7

Conditions relating to resources

1. Any legal entity, international organisation and the JRC must:

— when filing its proposal for an indirect RTDT action, have at least the potential resources needed for carrying it out,

— when the contract is signed, demonstrate that it will have all the necessary resources as and when needed for carrying it out.

2. The resources needed for carrying out the indirect RTDT action shall comprise human resources, infrastructure, financial resources and, where appropriate, intangible property.

Section 2

Procedures

Article 8

Procedures to be applied

1. Indirect RTDT actions other than accompanying measures shall be the subject of calls for proposals. These may be preceded by a call for expressions of interest of an informative nature. All such calls shall be published in the *Official Journal of the European Communities* and should also be disseminated through other appropriate channels.

Indirect RTDT actions relating to controlled thermonuclear fusion and carried out under the contracts of the Association, the Net Agreement, the quadripartite cooperation agreement between the Community, Japan, the Russian Federation and the United States of America concerning the engineering design activities of the International Thermonuclear Experimental Reactor (ITER), The Joint European Torus (JET) Joint Undertaking and any other agreement concluded by the Community shall comply with the procedures laid down in those agreements.

2. Accompanying measures shall, as appropriate, be the subject of:

— calls for proposals, in accordance with procedures identical to those described in paragraph 1,

— public procurement procedures, where the indirect RTDT action consists of a purchase or a service, in accordance with the applicable provisions,

— invitations to apply for appointment as an independent expert where the measure concerned requires the Commission to take account in a balanced fashion of the various research players, without prejudice to other procedures designed to achieve the same result in the case of the independent highly qualified experts appointed for the five-year evaluation referred to in Article 5(2) of the fifth framework programme.

3. Indirect RTDT actions carried out as pilot schemes shall be governed by procedures appropriate to those actions as set out in the research and training programme decision.

4. Subject to legal constraints and the need to respect requirements of transparency and equal treatment, the Commission shall keep the procedures for the submission, selection and adoption of proposals as short as reasonably achievable and keep the administrative costs of the applicants and of the Commission to the minimum level necessary.

Article 9

Selection criteria and conditions applicable in accordance with the type of procedure

1. Proposals for indirect RTDT actions resulting from calls for proposals and pilot schemes shall be selected in conformity with Annex I to the fifth framework

programme on the basis of the conditions for participation set out in Articles 3 to 7 and the following criteria:

(a) scientific excellence;

(b) Community added value;

(c) the potential contribution to furthering the economic and social objectives of the Community;

(d) the innovative nature of the proposal for an indirect RTDT action;

(e) the prospects for disseminating/exploiting the results, as described in the plan for dissemination and use attached to the proposal for an indirect RTDT action;

(f) effective transnational cooperation;

(g) effective and efficient management;

(h) any additional criteria set out in the research and training programme.

These criteria shall be applied in accordance with the category of indirect RTDT action and with the nature of the RTDT activity.

Any project which contravenes the principles laid down in relevant international conventions and regulations shall not be selected.

Proposals for accompanying measures which are subject to a public procurement procedure shall be evaluated on the basis of selection and award criteria defined in accordance with the relevant provisions.

2. Applicants responding to an invitation to apply shall be selected on the basis of the criteria set out in the relevant Commission Decision and of the relevant conditions for participation set out in Articles 3, 4 and 5.

Section 3

Contracts

Article 10

Community financial participation and eligible costs

1. In compliance with the provisions of Annex III to the fifth framework programme, the Community financial participation shall consist of the reimbursement, in part or in whole, of the eligible costs of the indirect RTDT action.

2. A cost relating to an indirect RTDT action shall be eligible where it is necessary for the action in question and is provided for in the contract. It shall be reimbursable by payment within a reasonable period provided that the amount has actually been spent and has been recorded in the accounts or the tax documents.

In the appropriate circumstances, provisions should be made for advance payments.

3. In the case of the research projects, demonstration projects and combined research/demonstration projects, recourse shall be had to additional eligible costs where, in the view of the Commission, the system of accounting used by the participant in an indirect RTDT action does not enable the full costs of carrying out the indirect RTDT action to be established with sufficient precision.

4. Total eligible costs will be reimbursed by payments against justification of the actual costs of the indirect RTDT action concerned. The documents substantiating these costs must be satisfactory. However, at the request of those taking part in the proposal for an indirect RTDT action, general expenses may instead be calculated on a flat-rate basis by agreement with the Commission.

At the request of those taking part in the proposal for an indirect RTDT action and by agreement with the Commission, the contract can establish other conditions:

(a) in the case of small-scale projects, fixed amounts determined on the basis of an assessment of the estimated costs of the work;

(b) in other cases, fixed amounts linked to the demonstration of best efforts to complete contractually agreed objectives;

(c) other arrangements involving flat- and composite-rate payments appropriate to specific projects.

5. Additional eligible costs, as referred to in Annex III to the fifth framework programme, shall comprise the following:

— the additional eligible costs generated simply by taking part in the indirect RTDT action,

— a flat-rate contribution to the general expenses.

Article 11

Contracts

1. Proposals for indirect RTDT actions selected following any of the procedures set out in Article 8 shall be subject of a contract.

2. Contracts will be based on the relevant model contract drawn up by the Commission in consultation with Member States, taking account, where appropriate, of the different RTDT activities involved.

CHAPTER III

FINAL PROVISIONS

Article 12

Provisions which may be laid down in the research and training programme

1. The rules for the participation of undertakings, research centres and universities may be set out in greater detail or supplemented in the Council Decision adopting the research and training programme implementing the fifth framework programme.

2. Paragraph 1 shall not apply in the case of the definitions set out in Article 1 or the training fellowships referred to in Article 5(1), second subparagraph, and Article 5(3), third subparagraph.

Article 13

Detailed rules of application

The Commission shall lay down the detailed rules for applying Articles 3, 7 and 10.

Article 14

Reports

1. The annual report which the Commission sends to the European Parliament and the Council in accordance with Article 5(4) of the fifth framework programme shall contain information on the implementation of this Decision.

2. Before the end of the fifth framework programme the Commission shall present a report to the Council on the application of this Decision.

Article 15

Duration

This Decision shall apply to indirect RTDT actions implementing the fifth framework programme.

Done at Brussels, 22 December 1998.

For the Council

The President

C.EINEM