COMMISSION REGULATION (EC) No 1990/94

of 26 July 1994

adopting the implementing provisions for the rules laid down in the first paragraph of Article 8 of Council Decision 92/272/EEC on the dissemination and exploitation of knowledge resulting from the specific programmes of research aid technological development of the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision No 92/272/EEC of 29 April 1992 on the dissemination and exploitation of knowledge resulting from the specific programme of research and technological development of the Community [1], and particularly the second paragraph of Article 8 thereof,

Whereas, by its Decision 90/221/Euratom, EEC [2], the Council has adopted a third Framework Programme for Community activities in the field of research and technological development for the period 1990-1994, which states that the measures for the dissemination and exploitation of knowledge, and in particular the definition and implementation of centralised action, shall be the subject of a decision by the Council;

Whereas such has been adopted under the form of Decision 92/272/EEC; and whereas Article 8 of that Decision sets out the rules applicable to the execution of the centralized action;

Whereas the Euratom Treaty contains detailed provisions for the dissemination of information which apply, *inter alia,* to nuclear research programmes;

Whereas, under the terms of the first paragraph of Article 8 of Decision 92/272/EEC, the rules set out are applicable while respecting pre-existing rights;

Whereas it is necessary to ensure the coherence of schemes for disseminating the knowledge resulting from specific programmes in the Framework Programme and that such coherence must be based on general rules which guarantee the protection of the legitimate interests of the public and private contracting parties and of the rights linked to the obtaining and exploitation of the results, as well as their exploitation in conformity with the Community's interests, particular with respect to its economic and social cohesion;

Whereas Article 130 f of the Treaty states that Community activities in the field of research and technological development are particularly aimed at strengthening the scientific and technological bases of European industry and encouraging it to become more competitive at international level;

Whereas shared-cost contracts have become the predominant means of implementing the Community's specific programmes of research and technological development and account for the greatest portion of the total financing allocated for the entire Framework Programme;

Whereas under these contracts work is often carried out by several partners from both industry and the specific world working in cooperation to implement one or more research and technological development projects and having ownership of the results, since the Community does not generally involve itself directly in the work carried out under contracts of this kind;

Whereas the increasing number of these multi-partner projects and the industrial component in various programmes has necessitated the adoption of harmonized contractual clauses concerning the dissemination and exploitation of knowledge in connection with research and development contracts concluded by the Commission and whereas account must be taken of the results of this contractual practice, particularly in view of the large number of contracts and partners involved and the rights which they have established;

Whereas the solutions adopted through this contractual practice are basically compatible with the rules set out in Article 8 of Decision 92/272/EEC;

Whereas on 11 May 1992 the Council and the Commission adopted a Joint Declaration on the negotiating approach in respect of the intellectual property aspects of scientific and technical agreements between the Community and non-member countries, which underlines in particular the need to safeguard the mutual interests of the parties to such agreements and to encourage the adoption of international standards;

Whereas the provisions set out in this Regulation are in conformity with the opinion issued by the committee set up by Decision 92/272/EEC,

[1] OJ No L 141, 23. 5. 1992, p. 1.
[2] OJ No L 117, 8. 5. 1990, p. 28.

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation adopts the arrangements for implementing the rules laid down in the first paragraph of Article 8 of Decision 92/272/EEC. It shall apply to knowledge resulting from the implementation of the programmes adopted to implement the third Framework Programme for Community activities in the field of research and technological development (1990 to 1994) through work undertaken directly or the cost of which is wholly supported by the Community (direct actions) or work undertaken under a shared-cost contract (shared-cost actions). It shall also apply to the information concerning and relevant to such knowledge.

2. For the purposes of this Regulation:

(1) 'knowledge' means results and inventions, whether patentable or not, obtained either directly by the Community through its own research means, or in the execution of a research and technological development contract concluded between the Community and third parties;

(2) 'background information' means information, excluding knowledge, and any rights related to such information, held by any contractor in the same or related fields to the research under his or her shared-cost contract;

(3) 'shared-cost contract' means a research and technological development contract concluded between the Community and third parties under a shared-cost action;

(4) 'contractor' means each party which has concluded a shared-cost contract with the Community, and any affiliated company of each party as defined in that contract;

(5) 'co-contractors' means the parties having concluded the same shared-cost contract with the Community;

(6) 'project' means one or several shared-cost contracts where the work covered has technical interdependence, and which the parties to those contracts agree to consider as such;

(7) 'programme' means each of the programmes referred to in paragraph 1;

(8) 'commercial conditions' means open market payment and other conditions;

(9) 'favourable conditions' means conditions that have a value lower than commercial conditions;

(10) 'transfer conditions' means conditions that have a value lower than favourable conditions, normally the cost of making licences and user rights available.

Article 2

1. Knowledge resulting from work under a shared-cost contract shall be owned by the contractor who carry out the work.

2. When two or more contractors undertake work under a shared-cost contract, they shall come to an agreement between themselves on the allocation of ownership rights over the knowledge concerned.

3. If, under the rules applicable, the persons employed or engaged by the contractors may claim rights over the knowledge, the contractors shall take appropriate steps or reach appropriate agreements to ensure that such rights may be exercised in a manner compatible with the proper fulfilment of their obligations under such shared-cost contract pursuant to this Regulation.

Article 3

1. Contractors shall ensure that knowledge belonging to them which could be used in an industrial or commercial application and whose nature justifies such a measure is protected to the extent required in the interests of the Community and the contractors concerned and in accordance with any applicable legal or contractual obligation.

2. At the request or with the agreement of the contractors the Commission may, to the extent required in the interests of the Community and of the said contractors, take adequate steps to protect the knowledge in a country of its choice, if the contractors are unable or unwilling to secure such protection on their own behalf of the knowledge belonging to them. In such an event the Commission shall take upon itself such obligations regarding the granting of licences for the use or exploitation of the knowledge in the country concerned as would have been assumed by the contractors had they protected the knowledge on their own behalf, and the contractors concerned shall be granted a non-exclusive licence in that country, under such conditions as may be set out in the shared-cost contract.

Article 4

1. Contractors participating in the same project shall, on a royalty-free basis, make available and grant licences and user rights to each other, in respect of knowledge, to the extent necessary for the proper implementation of the work carried out under their respective shared-cost contracts.

2. The knowledge generated by any contractor shall be made available to other contractors participating in the same programme and necessary user rights and licences granted on transfer conditions, to the extent required for the execution of such other contractor's own research and technological development work under their shared-cost contracts, provided that suitable arrangements required by the contractor are concluded to ensure that the knowledge will not be used for any other purpose than that for which it was supplied.

3. The same conditions as specified in paragraph 2 shall apply to contractors who are taking part in other programmes in associated fields or with related objectives and are established in the Community and engaged in research and technological development activities there, provided that their shared-cost contracts place the contractors under the obligation to provide equivalent access to their own knowledge.

4. Any person established in the Community engaged in research and technological development activities there shall be entitled to request, on favourable conditions, any licences or user rights concerning the knowledge which are necessary for the conduct of his or her research and technological development activities in fields identical or related to that covered by the shared-cost contract through which the knowledge is obtained.

There shall be no refusal to grant such licences and user rights other than for reasons stipulated in the shared-cost contracts and primarily concerned with both the major business interests of the owner of the knowledge and his or her co-contractors and the interests of the Community. The granting of such licences and user rights may however be refused if the owner of the knowledge or any of his licencees has taken or is taking adequate steps to exploit or commercialize the knowledge in the Community.

5. The Community shall, on its request and for the purposes of research by its Joint Research Centre, joint undertakings or any other structure set up on the basis of Article 130n of the Treaty, receive, free of charge, a non-exclusive and irrevocable licence for the use of the knowledge for research purposes, but shall keep this confidential and shall not be entitled to grant sub-licences.

Article 5

1. The contractors shall be required to develop, exploit or commercialize the knowledge which they own, or have it developed, exploited or commercialized within a contractually agreed period, in accordance with the Community's interests and taking account of the objective of strengthening the international competitiveness of European industry and the economic and social cohesion of the Community.

The Commission may, with the agreement of the contractors concerned, take steps to encourage the use or exploitation of this knowledge in accordance with the interests of the Community.

2. All contractors taking part in the same project shall be entitled to exploit or commercialize knowledge resulting from that project and to have granted to them any licences and user rights regarding such knowledge which are necessary for the purposes of exploitation or commercialization. Such licences and user rights shall not confer the right to grant sub-licences except with the formal agreement of the owner of the knowledge, and no fee shall be payable for them, unless the shared-cost contracts stipulate other appropriate terms and exploitation arrangements based on the nature of the project and on the specific requirements of products generated by it, the commercial or non-commercial role of each contractor and his or her contribution to the project.

3. Each shared-cost contract shall specify the circumstances under which other contractors taking part in the same programme may have granted to them licences and user rights covering the knowledge resulting from that contract which is necessary for the exploitation or commercialization of the knowledge obtained under their project in the same programme on favourable conditions.

The same conditions shall apply to contractors who are taking part in other programmes in associated fields or with related aims and are established in the Community and engaged in research and development activities there, provided that their shared-cost contracts place the contractors under the obligation to provide equivalent access to their own knowledge on favourable conditions.

4. Any person established in the Community who has a legitimate interest in obtaining licences or rights to exploit or commercialize the knowledge shall be entitled to request that such licences or rights be granted to him or her on commercial conditions unless the owner of the knowledge or his or her licensees have taken adequate steps to exploit or commercialize the knowledge, or to have it exploited or commercialized, within the agreed period.

There shall be no refusal to grant the licences or user rights referred to in paragraph 3 and in this paragraph other than for reasons stipulated in the shared-cost contract and connected with the major business interests of the owner of the knowledge and his or her co-contractors and with the interests of the Community, subject to such business interests not abusively restricting the exploitation and commercialization of the knowledge in the Community. The granting of such licences and user rights may, in particular, be refused when they relate to products, or the manufacture thereof, or to services, which are or are about to become commercially available.

Article 6

1. The specific arrangements for implementing the rights and obligations under Articles 4 and 5, particularly regarding duration, shall be laid down in the shared-cost contracts.

2. When concluding subcontracts or associated contracts as defined in their shared-cost contract, contractors shall ensure, through the inclusion of appropriate clauses, that both the provisions, of this Regulation and their contractual obligations towards the Community are respected.

Article 7

All contractors shall use reasonable care and diligence to determine the extent to which the knowledge is or may be subject to contractual or legal limitations, obligations or restrictions that might limit or affect the dissemination of the knowledge and background information and thus substantially impede the smooth running of the project or the exploitation and commercialization of the knowledge obtained in the project.

They shall inform their co-contractors and other parties to the project of such contractual or legal limitations, obligations or restrictions before signing the shared-cost contract or without delay after work on the project has commenced, to enable the latter to assess the impact of those limitations, obligations and restrictions in accordance with a procedure to be set out in the shared-cost contracts.

Article 8

1. Knowledge resulting from work undertaken directly or the cost of which is wholly supported by the Community shall be owned by the Community except if otherwise provided in the relevant programme decision or contractual agreement.

2. The Commission shall ensure that knowledge belonging to the Community which could be used in an industrial or commercial application and whose nature justifies such a measure is protected to the extent required by the interests of the Community and in accordance with any applicable legal or contractual obligation.

3. Knowledge belonging to the Community shall be made available to the contractors and to interested third parties established in the Community who need the knowledge for their research and technological development work or who undertake to exploit it in conformity with the Community's interests. Such provision of knowledge may be subject to appropriate conditions, particularly concerning the payment of fees.

Article 9

1. Each shared-cost contract shall specify conditions under which, upon request of the parties concerned and on payment of an appropriate fee, the background information held by a contractor may be made available to other contractors participating in the same project.

Within the same project, background information shall be made available and related user rights granted where and to the extent that such are necessary for the performance of the requesting party's research and technological development work under that project and the contractor holding the background information is free to disclose it and to grant the related user rights.

2. The shared-cost contracts shall also specify the conditions for making available against payment and upon request of other contractors participating in the same programme or in programmes in associated fields or with related aims, background information which is necessary for the use of the knowledge made available in accordance with Article 4 (2) and (3). Such conditions shall in particular take into account any restrictions to the diffusion or the availability of background information, as well as the legitimate interests of its holder.

Article 10

1. The Commission shall publish general information particularly concerning the aims, total estimated cost and financial contribution from the Community, duration of research and technological development work undertaken, together with general information on the progress to date and the results achieved by projects carried out under the programmes. The official designation of the bodies carrying out the work defined in the shared-cost contract shall also be published together with the names of the laboratories involved, unless the contractors forbid this on justified industrial or commercial grounds when that contract is signed.

When providing for such publication, the Commission shall respect the confidentiality of commercially sensitive information.

2. The contractors shall agree with the Commission on the specific procedures for the publication of knowledge or any information of a quality and interest which warrant wide dissemination, provided that there are no objections to publication on the grounds of legitimate commercial interests, protection of intellecutal property rights or the confidential nature of the knowledge and information. They are required to provide the Commission with the information for publication as specified in paragraph 1.

Article 11

1. The contractors shall inform the Commission of the results of research and technological development work, indicate whether and to what extent they intend to have their intellectual property rights protected, and subsequently report on the action taken in this respect.

2. On completion of the research and technological development work undertaken under the shared-cost contracts, the contractors shall inform the Commission within a contractually agreed period of their intentions regarding dissemination and exploitation of the results and subsequently report on the action taken in this respect.

3. The Commission and the contractors concerned shall define a policy for the restricted and confidential dissemination of the reports concerning knowledge obtained in the execution of the shared-cost contracts to the governments of the Member States, taking account of the major commercial interests of both the said contractors and of the interests of the Community.

4. With the explicit agreement of the contractors concerned, the Commission may communicate the reports referred to in paragraphs 1, 2 and 3, confidentially to a non-member country or international organisation under a convention or agreement concerning the exchange of information concluded between the Community and the country or organisation in question.

Article 12

1. At the request of persons or bodies established in the Community and having a legitimate interest in conformity with the principles of this Regulation, the contractors shall provide them with all appropriate information on the existence of knowledge and the intellectual property rights related to such knowledge.

The Commission may inform these persons and bodies of the existence of this knowledge and these rights, to the extent that such knowledge and rights are explicitly mentioned in the information provided pursuant to Article 10 (2).

2. The Commission may communicate confidentially to other Community institutions the reports referred to in Article 11 (3), to the extent properly required by them.

Article 13

1. Without prejudice to Article 10 and subject to conditions to be specified in the shared-cost contracts, the Commission and the contractors shall respect the confidential nature of the facts, information, knowledge, documents and other elements communicated to them confidentially, where disclosure could be prejudicial to one or the other of the parties.

2. When disclosing confidential information, under the provisions of this Regulation, the Commission and the contractors shall require the recipient to hold the information in confidence and to use it only for the purpose for which it was disclosed.

Article 14

For the entire duration of their shared-cost contract, and for a further two years following its expiry or termination, contractors shall, subject to Article 13, give reasonable and appropriate notification to standardization bodies on knowledge obtained under that shared-cost contract which may contribute to the development of European or international standards. The Commission shall inform the contractors as far as possible of any standardization work under way or planned.

Article 15

All communications or publications concerning progress to date or the results of work carried out under a shared-cost contract, including such communications or publications made in connection with seminars or conferences, must make appropriate mention of the programme under which the work was done or the results were obtained and the aid provided by the Community.

Article 16

1. If persons established in a non-member country are entitled to take part in work under a programme, the shared-cost contracts shall specify the terms of access to knowledge for these persons, on the basis of mutual advantage, taking account of the relevant provisions of the applicable agreements, the nature of the project and the scale of their participation in the programme in question.

2. Specific contractual arrangements shall implement the principles applicable to the participation of States having concluded with the Community an agreement associating them with a programme or part of a programme, in particular to ensure the compliance with the provisions of such agreement concerning dissemination, evaluation and exploitation of knowledge in the framework of the relevant programme or part of a programme.

3. In specific cases involving certain programmes centred on geographically-restricted areas of cooperation or economic development aid, provisions may be included in the programmes and contracts concerned authorising the dissemination of appropriate information or the communication of certain knowledge to recipients not covered by agreements with the Community on scientific and technological cooperation. The specific arrangements for such dissemination shall be laid down in agreement with those possessing the knowledge concerned.

Article 17

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 July 1994.

For the Commission
Martin BANGEMANN
Member of the Commission