COMMISSION REGULATION (EURATOM) No 1605/1999

of 22 July 1999

on the implementation of Council Decision 1999/66/Euratom concerning the rules for the participation of undertakings, research centres and universities for the implementation of the fifth framework programme of the European Atomic Energy Community (1998-2002)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Decision 1999/66/Euratom 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) [1] and in particular Article 13 thereof,

(1) Whereas the fifth framework programme of the European Atomic Energy Community for research and training activities (1998-2002) (hereinafter referred to as the 'fifth framework programme') was adopted by Council Decision 1999/64/Euratom [2]; whereas, detailed rules must be laid down for the implementation of the rules regarding participation in the actions laid down by Decision 1999/66/Euratom;

(2) Whereas participation in indirect research and technological activities including demonstration activities and training activities (RTDT) requires the concept of participant to be defined taking into account, in particular, the capacity in which he takes part in a project and his rights and obligations;

(3) Whereas, in order to ensure that indirect RTDT actions to be undertaken under the fifth framework programme have a European dimension, the application of the rules for the participation of undertakings, research centres and universities should place the emphasis on the requirement for several participants and on the transnational nature of the projects;

(4) Whereas the particular nature of the indirect RTDT action or the RTDT activity to be undertaken may justify making exceptions to those principles;

(5) Whereas, in view of their essentially transnational and European dimension, European Economic Interest Groupings (EEIG) within the meaning of Council Regulation (EEC) No 2137/85 [3] should be able to take part on their own in indirect RTDT actions requiring several participants;

(6) Whereas the Commission must be able to ensure that the participants will have the necessary resources, of whatever kind, to carry out indirect RTDT actions; whereas, in order to safeguard the Community's financial interests and avoid obstacles to such actions being carried out, the Commission must also be informed of the importance and origin of such resources, and of the conditions of their availability;

(7) Whereas the Community's financial participation must be compatible with competition rules [4];

(8) Whereas, the Community's 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;

(9) Whereas, as regards indirect RTDT actions consisting of research and technological projects, demonstration projects and combined research/demonstration projects, the participants should charge total costs unless their accounting system allows only additional costs to be charged;

(10) Whereas, with a view to promoting innovation, reimbursement should be allowed with respect to certain costs of protecting knowledge and of measures to demonstrate its potential for use;

(11) Whereas the costs of coordinating a project can be significant and it should be possible to charge them where they are borne by the project coordinator;

(12) Whereas provision should be made for charging overheads on a flat-rate basis, particularly with a view to encouraging a transition towards the charging of total costs;

(13) Whereas contracts may provide for payment of the Community's financial contribution in instalments; whereas there may nevertheless be restrictions on the possibility of the payment of an initial advance;

(14) Whereas the Community's financial contribution should be paid without prejudice to financial controls carried out by or on behalf of the Commission or the Court of Auditors;

[1] OJ L 26, 1.2.1999, p. 56.
[2] OJ L 26, 1.2.1999, p. 34.
[3] OJ L 199, 31.7.1985, p. 1.
[4] OJ C 83, 11.4.1986, p. 2.

(15) Whereas the indirect RTDT actions relating to controlled thermonuclear fusion carried out in the context of association contracts, 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 for 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,

HAS ADOPTED THIS REGULATION:

PART I

GENERAL PROVISIONS

Article 1

This Regulation lays down the detailed rules for applying Articles 3, 7 and 10 of Decision 1999/66/Euratom.

Article 2

1. The definitions in Decision 1999/66/Euratom apply to this Regulation.

2. For the purposes of this Regulation, the following definitions shall apply:

(a) 'participant': a legal entity or international organisation, and the Joint Research Centre (JRC) under the conditions provided for in Article 6 of Decision 1999/66/Euratom, taking part in a project as principal contractor, assistant contractor, member, or grant holder;

(b) 'project': work to be carried out, under one or more contracts, as part of an RTDT action provided for in the fifth framework programme;

(c) 'contract': agreement between the Community and one or more principal contractors and, as relevant, assistant contractors, with the aim of carrying out or contributing to a project;

(d) 'principal contractor': a participant, other than an assistant contractor, taking part in a project by virtue of the conclusion of a contract and having the rights and obligations provided for in this Regulation and in the contract;

(e) 'assistant contractor': for indirect RTDT actions consisting of research and technology projects, demonstration projects and combined research/demonstration projects, a participant taking part in a project by virtue of the conclusion of a contract, acting under the technical supervision of one or more principal contractors and having the same rights and obligations as them, except as regards the scope of its responsibility for the execution of the project pursuant to the contract and intellectual and industrial property rights;

(f) 'member': for indirect RTDT actions consisting of research training networks, thematic networks and accompanying measures with similar objectives, and concerted actions, a participant taking part in a project under a membership contract signed with a principal contractor acting in agreement with the Community and in accordance with the contract, having the same rights and obligations pursuant to the membership contract *vis-à-vis* the Community as the principal contractor except where otherwise stipulated;

(g) 'grant holder': a natural person taking part in an indirect RTDT action consisting of a grant, who either concludes a contract with the Community or takes part, by virtue of an agreement with a host institute, in a contract concluded between the Community and that host institute;

(h) 'subcontract': an agreement to provide services, supplies or goods between a principal contractor, assistant contractor or member and one or more subcontractors for the specific needs of the project under the conditions provided for in the contract;

(i) 'subcontractor': a legal entity or international organisation, or the JRC, which is a party to a subcontract;

(j) 'complementary contract': an agreement with the Community covering work that is technically interdependent with one or more projects, including for the purpose of using knowledge, and accepted as such by the participants in each contract;

(k) 'complementary contractor': a legal entity or international organisation, or the JRC under the conditions provided for in Article 6 of Decision 1999/66/Euratom, which is a party to a complementary contract and is accepted as such by the participants in each contract;

(l) 'consortium agreement': one or more agreements between participants in a project which aims to specify or supplement as between them the provisions of a contract, but without coming into conflict with them;

(m) 'European Economic Interest Grouping (EEIG)': any legal entity formed under the conditions, by the procedures and with the effects laid down by Regulation (EEC) No 2137/85.

PART II

MODES OF PARTICIPATION OF UNDERTAKINGS, RESEARCH CENTRES AND UNIVERSITIES IN INDIRECT RTDT ACTIONS

CHAPTER I

Number of participants

Section 1

Indirect RTDT actions involving several participants

Article 3

1. The following indirect RTDT actions shall involve several participants, including at least two principal contractors required to satisfy the conditions laid down in Article 3(1) of Decision 1999/66/Euratom:

(a) research and technology projects;

(b) demonstration projects;

(c) combined research/demonstration projects.

2. An EEIG is, by its nature, regarded as satisfying the conditions of Article 3(1) of Decision 1999/66/Euratom and may therefore be a sole principal contractor in the indirect RTDT actions referred to in paragraph 1 of this Article.

Where an EEIG merely coordinates and organises the activities of its members, however, the conditions of Article 3(1) of Decision 1999/66/Euratom must be satisfied by those of its members which actually carry out the research on its behalf under the project.

Article 4

The following indirect RTDT actions shall involve several participants, including at least two principal contractors or one principal contractor and one member satisfying the conditions of Article 3(1) of Decision 1999/66/Euratom:

(a) research training networks;

(b) thematic networks;

(c) concerted actions.

Article 5

1. Two legal entities are independent of one another within the meaning of Article 3(1) of Decision 1999/66/Euratom where there is no controlling relationship between them.

A controlling relationship exists 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 a majority of share capital in a legal entity or a majority of voting rights of the shareholders or associates of that entity; or

(b) direct or indirect holding in fact or in law of decision-making powers in a legal entity.

2. Direct or indirect holding of a majority of share capital in a legal entity or a majority of voting rights of the shareholders or associates of such entity by public investment corporations, institutional investors or venture-capital companies and funds does not in itself constitute a controlling relationship.

3. Ownership or supervision of legal entities by the same public body does not in itself generate a controlling relationship between them.

Section 2

Indirect RTDT actions which may involve a single participant

Article 6

Indirect RTDT actions consisting of accompanying measures, grants and support for access to research infrastructures may be carried out by a single principal contractor or grant-holder who must satisfy the conditions laid down in Article 3(2) of Decision 1999/66/Euratom.

CHAPTER II

Conditions applicable to resources

Article 7

The resources referred to in Article 7(2) of Decision 1999/66/Euratom shall be assessed according to and as far as is necessary for the execution of the indirect RTDT action and with regard to the nature of the work to be carried out.

Article 8

The resources needed to carry out the indirect RTDT action include the participants' own resources and, without prejudice to Article 12(3), second subparagraph, resources made available to them by third parties by virtue of a prior commitment.

Article 9

1. Participants must be able to demonstrate, when submitting a proposal for an indirect RTDT action, that they have or will have the resources needed to carry out the indirect RTDT action, and in particular to specify the origin of those resources and the terms on which they will have access to them.

2. Participants must have at their disposal the resources needed to carry out the work as it progresses.

CHAPTER III

Community financial participation and eligible costs

Section 1

General principles

Article 10

1. The Community's financial participation under the fifth framework programme shall consist of a partial or full refund of the participants' eligible costs as defined by Article 10(2) of Decision 1999/66/Euratom.

Contracts shall stipulate that the Community's financial participation may not exceed a certain amount.

2. Where appropriate, contracts may provide for a Community financial participation under the fifth framework programme in the form of preset amounts, amounts calculated on the basis of flat rates, or an assessment of the estimated costs, notably in the following cases:

(a) projects for which the Community's financial contribution is less than or equal to EUR 100 000;

(b) projects involving payments linked to the demonstration of best efforts to complete contractually agreed objectives;

(c) projects consisting of grants and accompanying measures covered by invitations to apply as independent experts.

3. Where the participants have so agreed among themselves and with the Commission, and where appropriate, contracts may provide for payments based on composite and flat rates, provided that those rates do not significantly differ from the actual costs of each participant.

Section 2

Charging of total or additional eligible costs

Article 11

1. Without prejudice to Article 14(1), participants in indirect RTDT actions shall charge total eligible costs to the Commission in the case of the following actions:

(a) research and technology projects;

(b) demonstration projects;

(c) combined research/demonstration projects;

(d) accompanying measures.

Participants in indirect RTDT actions shall charge additional eligible costs to the Commission where, in the Commission's view, the participants do not have an accounting system that allows the share of their direct and indirect costs relating to the project to be distinguished.

2. Participants in indirect RTDT actions shall charge additional eligible costs to the Commission when Annex III to the fifth framework programme expressly provides for that principle, namely in the case of the following actions:

(a) support for access to research infrastructures;

(b) training grants;

(c) research training networks;

(d) thematic networks;

(e) concerted actions.

Section 3

ELIGIBLE COST CATEGORIES

Article 12

1. According to the indirect RTDT action, the eligible cost categories shall include the following generic costs:

(a) personnel;

(b) durable equipment;

(c) consumables;

(d) travel and subsistence;

(e) computing;

(f) subcontracting;

(g) protection of knowledge and measures to demonstrate the potential for use of knowledge;

(h) other specific costs;

(i) overheads.

2. The coordination costs of the principal contractor coordinating a project may be charged either under one or more of the cost categories mentioned in paragraph 1(a) to (e), (g) and (h), under the conditions laid down in the contracts, or as overheads as referred to in paragraph 1(i). They must appear as such in the cost statements.

3. One cost incurred by a participant may be charged to only one of the eligible cost categories set out in paragraph 1.

No cost shall be charged in connection with resources being made available to a participant free of charge.

Article 13

1. Without prejudice to any special provisions contained in the research and training programmes and in the contracts, eligible costs other than the overheads referred to in Article 14 shall be charged in accordance with the rules laid down in paragraphs 2 to 9 of this Article.

2. Personnel costs shall be charged on the basis of the time actually spent on the project by the personnel directly hired by a participant, within the limits and under the terms laid down in the contract. They shall include the participant's expenses for taking on the personnel, including their remuneration and related charges.

Contracts may allow a participant to charge average costs provided that they are established in accordance with its usual practices and do not differ significantly from actual costs.

For a participant charging additional eligible costs within the meaning of Article 11(1) second subparagraph, except in specific cases provided for in the research and training programme, personnel costs shall comprise the costs generated by the sole participation in the indirect RTDT action, and shall not include costs which have to be borne irrespective of whether the participant takes part.

3. The refundable amount of durable equipment costs shall depend, except in specific cases provided for in the research and training programme, on the life of the equipment and the extent to which it is used for the needs of the project, in accordance with the conditions laid down in the contract.

4. Consumables costs shall cover only materials purchased specifically for the needs of the project, including software licences, where justified by its purpose.

5. The refunding of travel and subsistence costs shall require the prior approval of the Community for any destination outside the territory of the Member States, the Associated States or a third country in which a participant in the same project is established, unless such a destination is provided for in the contract.

6. Computing costs shall comprise the costs arising out of the use of the participant's computer services and media.

7. The subcontracting costs of a participant in an indirect RTDT action shall comprise the price paid to the subcontractor or service provider, and must be in line with market prices.

8. The costs of protecting knowledge and of measures to demonstrate the potential for use of knowledge shall exclude the costs of creating and marketing a product or process and the costs of creating and providing a service. They shall be refundable only with the Commission's written consent.

9. The other specific costs are those necessary for an indirect RTDT action and different in nature from those set out in paragraphs 2 to 8 of this Article and in Article 14. They shall be refundable only with the Commission's written consent and may include, in particular, direct costs incurred in the setting-up of financial guarantees requested by the Commission with a view to the payment of an initial advance.

Article 14

1. Participants in an indirect RTDT action charging total eligible costs may charge overheads either on a actual-cost basis and in compliance with the contracts, provided that the supporting documents are acceptable to the Commission, or on a flat-rate basis.

Flat-rate overheads shall amount to 80 % of the costs of the participants' personnel for research and technology projects, demonstration projects, combined research/demonstration projects. For the other categories of indirect RTDT actions, contracts may provide for other percentages where applicable. For certain accompanying measures, the contract may provide that overheads may not be refunded.

2. Where the participants in an indirect RTDT action charge additional eligible costs within the meaning of Article 11, overheads shall, except where the contract provides otherwise, amount to 20 % of their costs, excluding subcontracting costs.

Section 4

Payment of the Community contribution

Article 15

1. The Community contribution shall be paid under the conditions provided for in the contracts and may include several provisional payments in accordance with the rules laid down in paragraphs 2 and 3.

2. To speed up or facilitate the start of the work, the Commission shall pay an initial advance. The advance shall amount to 40 % of the maximum contribution referred to in Article 10(1), second subparagraph.

The rate of the advance may, however, be reduced in accordance with the requirement of protecting the Community's financial interests.

It may also be reduced where there is a significant difference between the needs the advance would cover during the first year of the project and the real needs for the same period.

The cumulative amount of the initial advance and the successive provisional payments may not exceed 85 % of the maximum contribution referred to in the Article 10(1), second subparagraph.

3. In the framework of the indirect RTDT actions consisting of accompanying measures and grants, contracts may provide for the payment of an initial advance and specify its maximum amount and the maximum amount of all the provisional payments.

Section 5

Financial audits

Article 16

1. Without prejudice to the provisions of the contracts, the Commission and its authorised representatives are empowered to carry out financial controls with a view in particular to ensuring that the provisions of Chapter III are complied with. Such controls may be carried out, in accordance with the requirements of confidentiality, at any time during the contract and at the latest five years after each payment made by the Commission.

In order to carry out such controls and in conformity with the provisions of the contracts, the Commission and its authorised representatives shall have access to any data they consider relevant, on whatever medium, and may require that such data be handed over to them in an appropriate form.

2. The Court of Auditors may check on the use of the Community's financial contribution in the contracts on the basis of its own rules.

PART III

FINAL PROVISIONS

Article 17

This Regulation shall not affect the provisions contained in the decision adopting the research and training programme specifying or supplementing Decision 1999/66/Euratom.

Article 18

This Regulation shall enter into force on the third day following that of 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, 22 July 1999.

For the Commission
Édith CRESSON
Member of the Commission