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Proposal for a
COUNCIL DECISION (94/0012(SYN))
concerning the Rules for the participation of undertakings, research
centres and universities in the specific programmes of research,
technological development and demonstration
of the European Community

Proposal for a
COUNCIL DECISION (94/0025(CNS))
concerning the Rules for the participation of undertakings, research
centres and universities in the specific programmes of
research and training of the European
Atomic Energy Community

Proposal for a
COUNCIL DECISION (94/0013(SYN))
concerning the Rules for the dissemination of the research
results from the specific programmes of research,
technological development and demonstration
of the European Community

(presented by the Commission)

EXPLANATORY MEMORANDUM

Introduction

1. The proposal for the Fourth Framework Programme for research and technological development (1994-1998) and the Framework Programme for research and training for the European Atomic Energy Community (1994-1998) (COM(93)276) was submitted to the Council in June 1993 and has already been the subject of substantial constructive dialogue and scrutiny within the decision making authorities of the Council and the European Parliament. A common position on the proposal was adopted by the Council on 22 December 1993.
2. At the beginning of October 1993, a working document on the scientific and technical content of the specific programmes (COM(93)459) was published to further advance the discussions on the Framework Programmes and to enable the Commission to seek the views of interested partners prior to the preparation and submission of the formal proposals.
3. However, a trilogy of Council decisions is required to enable the Community RTD activities established in the Fourth Framework Programme and the relevant specific programmes to be implemented effectively. This need for a third level of decision stems from Article 130J of the EC Treaty which requires the Council to *"determine the Rules for the participation of undertakings, research centres and universities"* in the RTD programmes and to *"lay down the Rules governing the dissemination of research results"*.
4. Decisions on these three separate, but complementary, levels of proposals are, therefore, crucial for the effective continuation and development of the Community's RTD effort and policies. They are like three interlocking jigsaw pieces: the full picture only emerges if all the pieces are correctly and appropriately assembled.
5. But this need for a separate third level of decision also gives rise to added constraints necessitating effective planning. Firstly, under the legislative process, the "130J Rules" are subject to the cooperation procedure with the European Parliament provided for in Article 189C of the Treaty (i.e. two readings), whilst for the specific programmes themselves, a more rapid adoption is envisaged as consultation alone is required between the Council and the EP (i.e. a single reading); secondly, no similar requirement to Article 130J of the EC Treaty exists in the EAEC Treaty for the programmes relating to nuclear activities, although Chapter II of Title II of the Treaty includes provisions concerning the dissemination of information and research results from these programmes.
6. Against this background, and in particular to ensure the adoption of the specific programmes and the "130J Rules" within a similar timescale, the proposals for the "130J Rules" must, therefore, be developed and submitted before the final adoption of the Fourth Framework Programme. They must also be brought forward before the submission of the proposals for the

specific programmes, otherwise there is every risk that there will be a disruption in the proper continuity of Community RTD. The participation arrangements need to be in place at the outset for the launch of the specific programmes, and the principles for the dissemination of RTD results, including intellectual property rights, need to be decided before the start of the activities to be financed by the Community.

Separate, but broadly similar, participation Rules are also proposed under Article 7 of the EAEC Treaty for the nuclear activities (the only differences relate to the Treaty basis). Although Rules in this format are not essential for the EAEC Treaty, this will enable interested participants to see that a common approach is adopted for RTD activities irrespective of the legal basis of the activity.

Scope of Rules

7. The scope and content of the Rules concern horizontal issues affecting the implementation of all the RTD programmes irrespective of their detailed scientific and technical content. In general, the Rules do not deal with specific issues relevant to measures envisaged solely for a single or specific RTD activity. These more detailed issues will be addressed, if necessary, in the programme proposals. Such an approach is justified by the need to reflect the content of both the Fourth Framework Programme (not yet adopted) and the specific programmes (not yet proposed), as well as the breadth of Community RTD activities, ranging from those aimed primarily at industrial participants to those aimed at having an impact on the quality of society generally and with a greater involvement from public sector organisations such as universities.
8. Key features of the Rules are, therefore, the flexibility essential for implementing the different RTD activities (by giving derogation powers for effecting those measures linked to a specific programme) and full respect of the principles of openness, transparency and equality of opportunity to meet the needs of interested participants from all RTD sectors and all regions of the European Union.

The exploitation arrangements need to take account of legitimate industrial and commercial interests of the participants carrying out the RTD, as well as the interests of the Community, to ensure that the results are adequately made available to assist in the pursuit of strengthening the competitiveness of Community industry and to contribute to economic and social cohesion.

New Features in Rules

9. The changing nature and evolution of Community RTD are reflected in new features aimed primarily at the necessity to include "technology users" in networks having a European dimension, the increasing international cooperation, and cost efficient management, whilst building on the sound practices and procedures developed in the implementation of Community R&D. The principles relating to the ownership of intellectual property resulting from RTD carried out with Community financial support, and the

exploitation of the research results, stem from the Council Decision of 29 April 1992 extending the VALUE programme (Decision 92/272/EEC: OJ No. L141 of 23.05.92, p. 1) and the subsequent dialogue with MS on the detailed measures to be adopted by the Commission to implement the Decision.

Increasing International Collaboration

10. At the international level, account has been taken of the future emphasis on RTD cooperation and greater synergy with third countries and international organisations foreseen by Article 130M of the Treaty and the widening of the scope for tangible RTD cooperation emerging from recent changes. These include the European Economic Area Agreement, the political developments and moves to market economies in the countries of Central and Eastern Europe (CEEC) and the former Soviet Union (NIS), the greater focus on the role of science and technology for developing countries (DC) and increased cooperation with other European actions such as COST and EUREKA. Overall guidelines for such cooperation were set out in the working document for the S+T content of the specific programmes (COM(93)459).
11. Consequently, the approach in Article 2 of the Rules concerning participation, which sets out the territorial requirements for organisations seeking to participate in the Community RTD activities, particularly RTD projects, is wider than the arrangements adopted for the previous Framework Programmes.

However, the need for multipartner, transnational cooperation with Community based organisations has been maintained (Article 3 of the Rules). In addition, the Rules concerning participation preserve the distinction between collaboration with the possibility of a financial contribution from the Community, and cooperation without any financial contribution. The former is limited to associated states contributing to the Community budget on the basis of a ratio involving respective GDP, and in the case of other states, only in accordance with measures specifically foreseen in the programme decision for international cooperation on RTD (Activity 2 of the Fourth Framework Programme).

The new arrangements provide more flexible participation opportunities for organisations from states which have concluded scientific and technical cooperation agreements with the Community; they are intended to enable effective tangible collaboration between organisations based in the Community and the third state organisations to develop and reflect the evolution of the scientific and technical cooperation at the state level under the bilateral agreements.

Cost Efficiency

12. Another novel feature of the Rules concerning participation is linked to the cost efficient management of RTD activities and the streamlining and simplification of procedures. The overall aim is to accelerate the negotiation process, thus resulting in a more rapid commencement of those activities selected to receive Community support, and to simplify the bureaucracy and management of the activity itself. At the heart of this issue is the proposal in Article 6 of the Rules to enable a range of financial mechanisms to be used to assess the amount and payment of the Community financial contribution for individual activities. These mechanisms, already put forward in October 1992 in the working document concerning the Fourth Framework Programme (COM(92)406), are based on a three-fold approach: the relevant approach for each specific programme will be made known to potential participants, in advance, on the effective launch of the specific programme.
13. These financial management mechanisms would enable
- firstly, the use of fixed composite rates for some or most resources devoted to the RTD activity. Their use is aimed at eliminating contentious and protracted dialogue during the negotiation phase, the payment process and audits. Such rates or unit costs may, however, vary between programmes, categories of participants or MS. More effective use would be made of existing personnel resources of the Commission and an increased number of audits and controls could be performed directly by the Commission, thus contributing to the overall anti-fraud initiative. At the same time, greater certainty would be given to participants, particularly SMEs and research centres, for their costs; their manpower rates used would no longer be subject to detailed scrutiny, justification and rejection as at present, sometimes two years after the RTD projects have been completed. More emphasis would be placed on controlling the scientific and technical output of the RTD activity and the manpower time to achieve it.
 - secondly, in certain cases, the Community contribution would be directly linked to measurable and quantifiable results obtained. This financial mechanism is considered particularly appropriate for industrial or applied research demonstration projects;
 - thirdly, greater use would be made of all-inclusive fixed contributions for small-scale projects. Controls over scientific and technical outputs would be maintained, but the financial evaluation concerning the resources for the activity would essentially be made "a priori" rather than "a posteriori".

Structure of the Rules

14. The structure of the Rules takes account of features commonly found in the implementation arrangements set out in the specific RTD programmes under the Third Framework Programme (1990-1994). Measures envisaged for the implementation of the specific programme proposals under the Fourth Framework Programme were set out in the recent working document on their scientific and technical content (COM(93)459).

The specific RTD programme proposals, and their implementation, will take account of the arrangements envisaged in COM(93)203 concerning the synergy between RTD policy, and economic and social cohesion policy.

15. The Rules concerning the participation of undertakings, research centres and universities consist of nine Articles; those for the dissemination of the research results consist of three Articles.
16. The structure of the Rules concerning participation in the specific programmes under the EC Treaty is:

Article 1 states that the Rules apply to all the indirect action activities specified in Annex IV to the Fourth Framework Programme (namely shared cost RTD projects, including consortia integrated projects, thematic networks of excellence, training and mobility of researchers, preparatory, accompanying and support measures, and concerted actions). All forms of legal entities are covered by the Rules and the Article gives examples of some categories which commonly seek to participate in Community programmes.

The Rules do not apply to the direct actions implemented by the Joint Research Centre.

Article 2 sets out the territorial requirements for eligibility to participate in a Community RTD activity. New features linked to increasing international cooperation arrangements have been dealt with earlier in paragraphs 10 and 11.

Whilst the intention in Article 2.1 is to restrict participation primarily to organisations carrying out RTD themselves so as to ensure that the direct dialogue and contact is with participants motivated to achieve a successful outcome to the activity, two specific derogations are included in Article 2.3 to take account of past experiences. These are intended to enable technology users, as well as technology initiators or developers, to participate where appropriate (for example, in those activities where their input and direction is essential to ensure the targeting of resources to produce the technology needed, particularly by industry) and to extend the current CRAFT measures for SMEs (cooperative research carried out by technology developers such as research centres to specifically address common technical problems of SMEs).

Article 2.2 reinforces the principle that finance for activities carried out by non Community organisations will only be provided in accordance with, and through the measures envisaged for, Activity 2 of the Fourth Framework Programme.

Article 3 deals with selection procedures. Selection will normally be made on the basis of published calls for proposals. At present, such calls are normally published quarterly in the OJ on 15 March, 15 June, 15 September and 15 December with a closing date of 3 months after the publication. However, for some programmes, the call remains open throughout the year with selections at periodic intervals (for example, the Human Capital and Mobility programme). The need for open publication is dispensed with in those cases where the focusing and targetting of the scientific and technical activity limits the capability of potential participants to known research organisations.

The broad criteria to be taken into account in the selection process are also specified.

As the period expiring between the application for Community support and the project commencement is crucial for the market relevance of a research project and the efficient research and financial planning of applicants, especially SMEs, the Commission will speed up procedures so as to minimise that time interval.

Article 4 reiterates the principle of the need for Community research activities to be performed by at least two independent entities in separate MS to ensure transnational collaboration. The establishments of the JRC may constitute a network with one or more research institutes in MS. In practice, for most Community activities, the number of participants is now upwards of 5. The outcome of the European Economic Area Agreement is reflected by enabling one MS research entity and one entity from an associated state to collaborate (there is no requirement for collaboration to take the form of 2 MS + 1 EEA).

The specific programmes may, however, specify more detailed requirements concerning the number and characteristics of participants in RTD activities in order to meet the objectives of the relevant programme.

Particular arrangements are set out to deal with EEIGs and those SMEs receiving feasibility awards for the exploratory phase of an activity prior to a detailed RTD project (these awards are currently limited to 75% of the costs up to 30,000 ECU for a maximum period of 9 months).

- Article 5 indicates that the activities financially supported by the Community will be subject to contracts with third parties setting out the specific conditions relating to the support. These will reflect measures aimed at improving the management of research, particularly the need to accelerate financial transfers to the coordinator (the main contractor) and from the latter to the other participants in Community projects.
- Article 6 sets out the guidelines for the mechanisms to be used to assess the reimbursement and payment of the Community contribution in accordance with Annex IV of the Fourth Framework Programme (namely, up to 50% of the costs of RTD projects with progressively lower participation the nearer the project is to the market place; up to 100% of the additional costs or the costs of the measures for the other categories of indirect action activities). These mechanisms have been dealt with earlier in paragraphs 12 and 13.
- Article 7 modifies the Rules in their application to preparatory, accompanying and support measures. The arrangements relating to calls for proposals, as well as the criterion for multipartner cooperation will not apply to subventions for conferences, workshops and seminars, or to procurements or services already covered by specific procedures set out in the general Financial Regulation of the EC. The distinct nature of bursary awards is also reflected. The provision of finance to international organisations or non Community entities for the support measures is permitted.
- Article 8 enables the specific RTD programmes to complement the details of the Rules to the extent that the additions are essential for the proper implementation of the specific programme in question.

This flexibility is required for those measures which are linked to one or only a few programmes. For example, the procedure for the selection of feasibility awards will differ from those for other activities. For industrial programmes, participation from industry in carrying out activities may be a specific requirement, whilst for international cooperation involving developing countries, consortia may be required to include at least one research entity from a developing country.

- Article 9 provides that the Rules shall apply to those RTD decisions adopted after FP4 enters into force. The Rules will continue to apply until they are superseded by another decision having the same effect.

17. The Rules under Article 7 of the EAEC Treaty are similar to the "130J Rules" concerning the participation arrangements. The only adaptations or modifications relate to the different legal basis. In particular, account has been taken in Article 3.1 of the special arrangements relating to the performance of controlled thermonuclear fusion activities through NET, JET, ITER, etc.

18. The structure of the Rules concerning the dissemination of the research results from the specific programmes under the EC Treaty is:

- Article 1 sets out the main principles for the ownership of intellectual property rights from Community funded RTD activities and framework for the dissemination of the research results.

For cost shared RTD projects, the contractors carrying out the work remain the owners of the results. They must exploit or commercialise them in conformity with the interests of the Community, grant licences and user rights amongst themselves, and grant access rights to other interested parties who may need to use the results. The regime concerning licensing arrangements protects the owners' legitimate industrial and commercial interests linked to their intentions for the exploitation or commercialisation of the results. Access rights may be granted against payment or other conditions.

Steps must be taken to ensure that sufficient information is published on new developments to enable third parties to become aware of opportunities to license technology developed with the Community funding.

- Articles 2 and 3 are identical to Articles 8 and 9 of the Rules concerning participation.

No separate Rules are required for the dissemination of research results from the specific programmes under the EAEC Treaty, as these matters are already dealt with in Chapter II of Title II of the EAEC Treaty.

COUNCIL DECISION
of ...

(94/0012(SYN))

**on the rules for the participation of undertakings, research centres
and universities in the specific programmes of research
and technological development and demonstration of the European Community**

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 130O, paragraph 2, thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas Title XV of the Treaty foresees a coherent framework of provisions for a common policy on research and technological development;

Whereas Article 130F of the Treaty states that the Community shall encourage undertakings, including small or medium size undertakings, research centres and universities in research and technological development activities and shall support their efforts to cooperate with one another;

Whereas Article 130I of the Treaty lays down that a multiannual framework programme shall set out all the activities of the Community in the field of research, technological development and demonstration; whereas this framework programme shall specify the conditions for financial participation by the Community in activities in research, technological development and demonstration (hereinafter referred to as "RTD") implemented by third parties and by the Joint Research Centre (hereinafter referred to as "the JRC") on the same basis as third parties;

Whereas Article 130J of the Treaty states that in the implementation of the multiannual framework programme, the Council shall determine the rules for the participation of only undertakings, research centres and universities;

Whereas Article 130I of the Treaty states that this framework programme shall be implemented by specific RTD programmes adopted in accordance with the provisions of paragraph 4 of this Article;

Whereas Article 130M of the Treaty states that in implementing this framework programme the Community may cooperate in RTD with third countries and international organisations; whereas the framework programme for 1994 to 1998 foresees such cooperation;

Whereas such cooperation shall take account of the third states being parties to the Agreement on the European Economic Area, the countries of Central and Eastern Europe, the States which have emerged from the former Soviet Union, and developing countries;

Whereas such cooperation may include the association of certain States with all or part of RTD programmes through appropriate agreements;

Whereas it is necessary to enable certain RTD programmes to detail or complement the arrangements, foreseen by the present Decision, for the participation of undertakings, research centres and universities to the extent strictly essential for implementing objectives or measures specific to those programmes;

Whereas RTD activities shall be implemented in accordance with the principles of sound financial management and in particular those of economy and cost effectiveness as provided for in the Financial Regulation applicable to the general budget of the European Communities,

HAS ADOPTED THIS DECISION

Article 1

For the implementation of specific RTD programmes adopted in accordance with Article 130i(4) of the Treaty, the rules set out in the following articles shall apply to the participation in Community "indirect action" RTD activities specified in Annex IV to Decision⁽¹⁾, by undertakings, research centres and universities, whether public or private, and having a legal personality irrespective of its form (including, for example, natural persons, research organisations, higher education establishments, European Economic Interest Groupings (EEIG), or international organisations) (hereinafter referred to as "*legal entities*") and also to the participation by the JRC.

Article 2

2.1 RTD activities for each specific RTD programme shall be open:

(a) to all legal entities established and regularly carrying out RTD:

- in the Community, or
- in a non-Community state if the state is associated, wholly or in part, with the implementation of the relevant programme through an agreement concluded between the Community and the relevant non Community state;

(b) to the Joint Research Centre.

⁽¹⁾OJ No. of p ...

2.2 Legal entities from other states, including international organisations, may participate in RTD activities of a specific RTD programme to the extent of any limitations or conditions set out in the Council Decision adopting the relevant programme or measures adopted by the Council for the promotion of cooperation in RTD provided the participation is in the interests of Community policies and:

- (a) the legal entity is established in a European state, or
- (b) an objective of the relevant programme is the promotion of international cooperation in RTD with third countries, including that in which the legal entity is established, or
- (c) the legal entity is established in a state which has concluded a scientific and technical cooperation agreement with the Community relating to activities covered by the relevant programme, or a more general cooperation agreement which includes scientific and technical cooperation, provided the participation accords with the terms of the agreement.

The provisos specified in paragraphs (a), (b) and (c) above do not apply to international organisations.

No legal entity within the scope of this paragraph, or from an associated state within the meaning of paragraph 1, may benefit from Community financing except in accordance with the conditions set out in the Council Decision adopting the relevant programme, or with measures adopted by the Council for the promotion of international cooperation in RTD.

2.3 By way of derogation from paragraph 1, legal entities:

- having an interest in applying the results of Community RTD activities ("technology users"), or
- requiring RTD to be carried out on their behalf under measures for "cooperative research" intended to enable groups of undertakings not having adequate research facilities of their own, in particular, small and medium size enterprises, to resolve common technical problems

may also participate in these activities to the extent of any limitations or conditions set out in the relevant programme.

Article 3

3.1 As a general rule, proposals for RTD activities shall be selected on the basis of calls for proposals published in the Official Journal of the European Communities.

By way of derogation from this paragraph, where the scientific or technical capability to carry out the specific RTD activity is limited to particular legal entities or the JRC, the selection may be made on the basis of restricted invitations to those entities and the JRC to submit proposals.

Any other derogation from these rules may only be made, where applicable, in accordance with the conditions set out in the relevant specific programme.

3.2 The selection of proposals shall primarily take account of the criteria specified in the multiannual framework programme and the objectives of the specific programme concerned.

3.3 Additional criteria for the selection of proposals shall also include, having regard to the Community policies and without prejudice to other criteria relating to specific objectives of the relevant programme:

- innovativeness of the proposal,
- effective transnational collaboration, including synergy between categories of participants,
- management competence of the participants,
- scientific and technical competence of the participants,
- cost effectiveness of the proposal,
- objective exploitation potential of the research results,
- perspectives for participants exploiting the results within their overall activities.

3.4 Legal entities shall possess the basic infrastructure, means and human resources to carry out effectively the research activities attributed to them by the contract referred to in Article 5.

Article 4

4.1 Without prejudice to specific criteria relating to the objectives of the relevant programme, Community RTD activities shall normally be carried out:

- by at least two legal entities, independent of each other and established in different Member States or states associated, within the meaning of Article 2.1, with the implementation of the relevant specific programme, provided that, in the latter case, normally at least one of the contractors is established in a Member State;
- by a legal entity, as specified in Article 2.1(a), and the JRC.

4.2 By way of derogation from paragraph 1:

- an EEIG alone may carry out such activities provided its members include, at least, two legal entities independent of each other;
- a single small or medium size enterprise may carry out the exploratory phase of RTD work intended to assess its feasibility and potential for a future collaborative RTD project.

Article 5

Community RTD activities shall be the subject of contracts concluded between the Community and the legal entities and including, in particular, the administrative and financial arrangements for the action, as well as provisions concerning intellectual property rights.

With regard to the participation of the JRC in the actions foreseen by Article 1, the Commission will take all the legal, budgetary, financial and administrative measures necessary.

Article 6

6.1 The arrangements for the Community financial contribution to legal entities participating in RTD activities shall, in conformity with the relevant provisions of the multiannual framework programme and, where applicable, those of the relevant specific programme, be specified in the contract.

This participation shall consist of the reimbursement of a proportion of the costs of the activity. The reimbursement shall be determined by the Commission having regard in particular, as appropriate, to negotiated costs, scales or tariffs established in advance, amounts linked to measurable research results, or global fixed amounts for small-scale projects.

6.2 Where the notion of "additional costs" is used in the relevant provisions of the multiannual framework programme for the determination of shared costs with legal entities, these shall be limited, for the relevant RTD activity, to the costs incurred directly as a result of, and for, the activity and to which the legal entity is not otherwise committed. "Additional costs" shall be used by legal entities for RTD projects where, in the view of the Commission, the analytical budget accountancy used by the legal entity do not enable the full costs of the RTD activity to be substantiated with sufficient precision.

6.3 The main principles envisaged for the determination and payment of the Community participation shall be indicated in the call for proposals or the supporting documentation issued with the call.

Article 7

The preceding rules shall apply to preparatory, accompanying and support measures for indirect actions subject to the following provisions:

- for activities consisting of procurement and services which are subject to the relevant provisions, in particular Title IV, of the Financial Regulation applicable to the general budget of the European Communities and for subventions to the costs of conferences, workshops and seminars, Articles 3 and 4 of this Decision shall not apply;
- for bursary awards, the last two indents of Article 3.3 shall not apply;
- in all cases, the last paragraph of Article 2.2 shall not apply.

Article 8

These rules may only be set out in more detail or complemented within the specific RTD programmes to the extent strictly essential for fulfilling objectives or measures specific to the relevant programme and in accordance with the conditions set out in the decision adopting the programme.

Article 9

This Decision is addressed to the Member States. It shall apply to RTD actions adopted by the Council after the multiannual framework programme 1994-1998 enters into force and shall apply until it is replaced by another Decision of the Council based on Article 130J of the Treaty.

COUNCIL DECISION

of ...

(94/0025(CNS))

**on the rules for the participation of undertakings, research centres
and universities in the specific programmes of research
and training of the European Atomic Energy Community**

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,

Having regard to the opinion of the European Parliament,

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

Whereas Article 7 of the Treaty states that Community research and training actions in the field of nuclear activities shall be implemented by specific research and training programmes with the framework of multiannual programmes for a duration not exceeding five years;

Whereas, in order to form part of a coherent framework for the implementation of a common policy on research and technological development, specific programmes shall be adopted in conformity with a multiannual framework programme; whereas this framework shall specify the conditions for financial participation by the Community in activities in research and training implemented by third parties and by the Joint Research Centre (hereinafter referred to as "the JRC") on the same basis as third parties;

Whereas rules shall be determined for the participation of third parties, namely undertakings, research centres and universities in the implementation of this framework programme and the specific programmes;

Whereas by Articles 10 and 101 of the Treaty the Community may, in implementing this framework programme, cooperate in research and training with third countries and international organisations; whereas this framework programme for 1994 to 1998 foresees such cooperation;

Whereas such cooperation shall take account of the third states being parties to the Agreement on the European Economic Area, the countries of Central and Eastern Europe and the States which have emerged from the former Soviet Union, and developing countries;

Whereas such cooperation may include the association of certain States with all or part of research and training programmes through appropriate agreements;

Whereas it is necessary to enable certain research and training programmes to detail or complement arrangements, foreseen by the present decision, for the participation of undertakings, research centres and universities to the extent essential for implementing objectives or measures specific to those programmes;

Whereas by Article 130J of the Treaty establishing the European Community (hereinafter referred to as "the EC Treaty") the Council shall determine rules for the participation of undertakings, research centres and universities in activities in the field of research, technological development and demonstration (hereinafter referred to as "RTD") implementing a multiannual framework programme adopted in accordance with the EC Treaty;

Whereas it is expedient to maintain coherence between all Community RTD activities, and whereas this Decision and the Decision on the rules for participation in Community RTD activities⁽¹⁾ in accordance with Article 130J of the EC Treaty should, therefore, be adopted jointly;

Whereas RTD activities shall be implemented in accordance with the principles of sound financial management and in particular those of economy and cost effectiveness as provided for in the Financial Regulation applicable to the general budget of the European Communities,

HAS ADOPTED THIS DECISION

Article 1

For the implementation of specific programmes adopted in accordance with Article 7 of the Treaty, the rules set out in the following articles shall apply, whenever decided by the Commission in conformity with Article 10 of the Treaty, to the participation in Community "indirect action" activities specified in Annex IV to Decision⁽²⁾, by undertakings, research centres and universities, whether public or private, and having a legal personality irrespective of its form (including, for example, natural persons, research organisations, higher education establishments, European Economic Interest Groupings (EEIG), or international organisations), (hereinafter referred to as "*legal entities*") and also to the participation by the JRC.

Article 2

2.1 RTD activities for each specific programme shall be open:

- (a) to all legal entities established and regularly carrying out RTD:
 - in the Community, or
 - in a non-Community state if the state is associated, wholly or in part, with the implementation of the relevant programme through an agreement concluded between the Community and the relevant non Community state;
- (b) to the Joint Research Centre.

⁽¹⁾See p. of this Official Journal.

⁽²⁾OJ No. of p.

2.2 Legal entities from other states, including international organisations, may participate in RTD activities of a specific programme to the extent of any limitations or conditions set out in the Council Decision adopting the relevant programme or measures adopted by the Council for the promotion of cooperation in RTD provided the participation is in the interests of the Community and:

- (a) the legal entity is established in a European state, or
- (b) an objective of the relevant programme is the promotion of international cooperation in RTD with third countries, including that in which the legal entity is established, or
- (c) the legal entity is established in a state which has concluded a scientific and technical cooperation agreement with the Community relating to activities covered by the relevant programme, or a more general cooperation agreement which includes scientific and technical cooperation, provided the participation accords with the terms of the agreement.

The provisos specified in paragraphs (a), (b) and (c) above do not apply to international organisations.

No legal entity within the scope of this paragraph, or from an associated state within the meaning of paragraph 1, may benefit from Community financing except in accordance with the conditions set out in the Council Decision adopting the relevant programme, or with measures adopted by the Council for the promotion of international cooperation in RTD.

2.3 By way of derogation from paragraph 1, legal entities:

- having an interest in applying the results of Community RTD activities ("technology users"), or
- requiring RTD to be carried out on their behalf under measures for "cooperative research" intended to enable groups of undertakings not having adequate research facilities of their own, in particular, small and medium size enterprises, to resolve common technical problems

may also participate in these activities to the extent of any limitations or conditions set out in the relevant programme.

Article 3

3.1 As a general rule, proposals for RTD activities shall be selected on the basis of calls for proposals published in the Official Journal of the European Communities.

By way of derogation from this paragraph:

- the activities for controlled thermonuclear fusion shall be implemented primarily in the framework of Contracts of Association, the NET Agreement, the quadripartite agreement between the Community, Japan, the Russian

Federation and the United States of America on cooperation in the engineering design activities for the International Thermonuclear Experimental Reactor (ITER), the JET Joint Undertaking, and such other agreements concluded by the Community following the advice of the Consultative Committee for the Fusion Programme (CCFP), on the basis of the procedures established in any such arrangements;

- where the scientific or technical capability to carry out the specific RTD activity is limited to particular legal entities or the JRC, the selection may be made on the basis of restricted invitations to those entities and the JRC to submit proposals.

Any other derogation from these rules may only be made, where applicable, in accordance with the conditions set-out in the relevant specific programme.

3.2 The selection of proposals shall primarily take account of the criteria specified in the multiannual framework programme and the objectives of the specific programme concerned.

3.3 Additional criteria for the selection of proposals shall also include, having regard to the Community policies and without prejudice to other criteria relating to specific objectives of the relevant programme:

- innovativeness of the proposal,
- effective transnational collaboration, including synergy between categories of participants,
- management competence of the participants,
- scientific and technical competence of the participants,
- cost effectiveness of the proposal,
- objective exploitation potential of the research results,
- perspectives for participants exploiting the results within their overall activities.

3.4 Legal entities shall possess the basic infrastructure, means and human resources to carry out effectively the research activities attributed to them by the contract referred to in Article 5.

Article 4

4.1 Without prejudice to the specific criteria relating to the objectives of the relevant programme, Community RTD activities shall normally be carried out:

- by at least two legal entities, independent of each other and established in different Member States or states associated, within the meaning of Article 2.1, with the implementation of the relevant specific programme, provided that, in the latter case, normally at least one of the contractors is established in a Member State;
- by a legal entity, as specified in Article 2.1(a), and the JRC.

4.2 By way of derogation from paragraph 1:

- an EEIG alone may carry out such activities provided its members include, at least, two legal entities independent of each other;
- a single small or medium size enterprise may carry out the exploratory phase of RTD work intended to assess its feasibility and potential for a future collaborative RTD project.

Article 5

Contracts concluded between the Community and the legal entities shall include, in particular, the administrative and financial arrangements for the action, as well as provisions concerning intellectual property rights.

With regard to the participation of the JRC in the actions foreseen by Article 1, the Commission will take all the legal, budgetary, financial and administrative measures necessary.

Article 6

6.1 The arrangements for the Community financial contribution to legal entities participating in RTD activities shall, in conformity with the relevant provisions of the multiannual framework programme and, where applicable, those of the relevant specific programme, be specified in the contract.

This participation shall consist of the reimbursement of a proportion of the costs of the activity. The reimbursement shall be determined by the Commission having regard in particular, as appropriate, to negotiated costs, scales or tariffs established in advance, amounts linked to measurable research results, or global fixed amounts for small-scale projects.

6.2 Where the notion of "additional costs" is used in the relevant provisions of the multiannual framework programme for the determination of shared costs with legal entities, these shall be limited, for the relevant RTD activity, to the costs incurred directly as a result of, and for, the activity and to which the legal entity is not otherwise committed. "Additional costs" shall be used by legal entities for RTD projects where, in the view of the Commission, the accounting rules used by the legal entity do not enable the full costs of the RTD activity to be substantiated with sufficient precision.

6.3 The main principles envisaged for the determination and payment of the Community participation shall be indicated in the call for proposals or the supporting documentation issued with the call.

Article 7

The preceding rules shall apply to preparatory, accompanying and support measures for indirect actions subject to the following provisions :

- for activities consisting of procurement and services which are subject to the relevant provisions, in particular Title IV, of the Financial Regulation applicable to the general budget of the European Communities and for subventions to the costs of conferences, workshops and seminars, Articles 3 and 4 of this Decision shall not apply;
- for bursary awards, the last two indents of Article 3.3 shall not apply;
- in all cases, the last paragraph of Article 2.2 shall not apply.

Article 8

These rules may be set out in more detail or complemented within the specific programmes to the extent necessary for fulfilling objectives or measures specific to the relevant programme and in accordance with the conditions set out in the decision adopting the programme.

Article 9

This Decision is addressed to the Member States. It shall apply to research and training actions adopted by the Council after the multiannual framework programme 1994-1998 enters into force and shall apply until it is replaced by another Decision of the Council having the same effect as the present Decision.

COUNCIL DECISION
of ...

(94/0013(SYN))

**on the rules for the dissemination of the research results
from the specific programmes of research and technological development
and demonstration of the European Community**

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 130O, paragraph 2, thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas Title XV of the Treaty foresees a coherent framework of provisions for a common policy on research and technological development;

Whereas Article 130F of the Treaty states that the Community shall encourage undertakings, including small or medium size undertakings, research centres and universities in research and technological development activities and shall support their efforts to cooperate with one another;

Whereas Article 130I of the Treaty lays down that a multiannual framework programme shall set out all the activities of the Community in the field of research, technological development and demonstration (hereinafter referred to as "RTD");

Whereas Article 130J of the Treaty states that in the implementation of the multiannual framework programme, the Council shall lay down the rules governing the dissemination of research results;

Whereas Article 130I of the Treaty states that this framework programme shall be implemented by specific RTD programmes adopted in accordance with the provisions of paragraph 4 of this Article;

Whereas the activities for the dissemination of knowledge resulting from the specific programmes, shall be carried out in a coherent and coordinated manner;

Whereas such coherence must be based on general rules which guarantee the protection of legitimate interests of the public and private contracting parties and of rights linked to obtaining and exploiting the RTD results, as well as their exploitation in conformity with the interests of the Community, in particular, with respect to its economic and social cohesion;

Whereas Article 130M of the Treaty states that in implementing this framework programme the Community may cooperate in RTD with third countries and international organisations; whereas the framework programme for 1994 to 1998 foresees such cooperation;

Whereas such cooperation shall take account of the third states being parties to the Agreement on the European Economic Area, the countries of Central and Eastern Europe, the States which have emerged from the former Soviet Union, and developing countries;

Whereas such cooperation may include the association of certain States with all or part of RTD programmes through appropriate agreements;

Whereas it is necessary to enable certain RTD programmes to detail or complement the arrangements, foreseen by the present Decision, for the dissemination of RTD results to the extent strictly essential for implementing objectives or measures specific to those programmes;

Whereas RTD activities shall be implemented in accordance with the principles of sound financial management and in particular those of economy and cost effectiveness as provided for in the Financial Regulation applicable to the general budget of the European Communities,

HAS ADOPTED THIS DECISION

Article 1

1.1 For the implementation of specific RTD programmes adopted in accordance with Article 130I(4) of the Treaty, the following rules, whilst respecting pre-existing rights, shall apply to the dissemination and exploitation of knowledge (hereinafter referred to as "knowledge") resulting from the specific RTD programmes:

- (a) the knowledge resulting from work undertaken directly or the cost of which is wholly supported by the Community shall, in principle, be the property of the Community.

The knowledge resulting from work under a shared cost contract shall be the property of the contractors who carry out the work (hereinafter referred to as "the contractors"). They shall agree between themselves on particular arrangements for such ownership;

- (b) knowledge which could be used in an industrial or commercial application, shall be protected, if its nature justifies such a measure, in any appropriate form to the extent required in the light of the interests of the Community and the contractors and in accordance with any applicable legislation or convention;

- (c) the Community and the contractors shall be required to exploit the knowledge in their possession, or have it exploited, in conformity with the interests of the Community, in particular, taking account of:

- the objectives of strengthening the international competitiveness of Community industry and the economic and social cohesion in the Community, and

- the promotion of research activities deemed necessary for other Community policies, and
 - the existence of scientific and technical cooperation agreements between the Community and non-Community states, or international organisations.
- (d) knowledge belonging to the Community should be made available to the contractors and to interested third parties which are established in the Community or third states associated, wholly or in part, with the implementation of the relevant programme through an agreement concluded between the Community and the relevant non Community state, and which undertake to exploit it, or have it exploited in conformity with the interests of the Community. Such provisions and knowledge may be subject to appropriate conditions, particularly concerning the payment of fees.

The contractors shall make the knowledge in their possession, together with any information necessary for its use, available to each other and to interested third parties under contractually defined conditions, provided that the interests of the Community and the legitimate interests of the contractors are safeguarded;

- (e) the Commission shall ensure that knowledge suitable for dissemination according to the contractual terms is disseminated or published either by the Commission itself, or by the contractors, without any restriction other than those imposed by the need to safeguard intellectual and industrial property, confidentiality or legitimate commercial interests.

1.2 The Commission shall lay down the arrangements for implementing the rules laid down in the first paragraph.

Article 2

These rules may only be set out in more detail or complemented within the specific RTD programmes to the extent strictly essential for fulfilling objectives or measures specific to the relevant programme and in accordance with the conditions set out in the decision adopting the programme.

Article 3

This Decision is addressed to the Member States. It shall apply to RTD actions adopted by the Council after the multiannual framework programme 1994-1998 enters into force and shall apply until it is replaced by another Decision of the Council based on Article 130J of the Treaty.

BUSINESS IMPACT STATEMENT

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

Title of Proposal: Commission Proposal concerning the Rules for the participation of undertakings, research centres and universities in the specific programmes of Community activities in the field of research, technological development and demonstration, and for the dissemination of the research results.

The proposal

1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The objectives of the Community's RTD activities are to strengthen the scientific and technological bases of Community industry and to encourage it to become more competitive at the international level. The need for Community action is acknowledged by Title 15 of the EC Treaty which stipulates (Article 130J) that the Council shall determine the Rules for the participation of undertakings, research centres and universities in the specific RTD programmes implementing the Framework Programme. The current proposal complements the proposal of the Commission for the Fourth Framework Programme and the working document on the scientific and technical content of the specific RTD programmes.

The impact on business

2. *Who will be affected by the proposal?*
- *Which sectors of business?*

The Community's RTD activities set out in the Fourth Framework Programme Proposal concentrate more on generic technologies for widespread use in all sectors of economic activity in Europe. The joint research funded by the budget allocated to the Fourth Framework Programme will assist many sectors.

- *Which sizes of business (what is the proportion of small and medium-sized firms)?*

The Community encourages RTD and cooperation by businesses, including SMEs, research centres and universities. The complementarity between the comparative advantages of small firms and big companies has prompted the Commission successfully to encourage small firms to become involved in the Community's research programmes, notably with the aid of special incentives. SMEs have also benefited most from the improvements made to the management of Community research.

- *Are there particular geographical areas of the Community where these businesses are found?*

In principle, the Community's RTD activities serve no geographical or regional objective. Although the objectives of strengthening economic and social cohesion in the Community and of promoting harmonious development also apply to RTD policy, scientific and technical excellence is the overriding selection criterion applied for this particular policy. This criterion in itself is a factor encouraging cohesion in so far as it enables scientists from the least favoured regions to participate in the most advanced research activities in Europe.

3. *What will businesses have to do to comply with the proposal?*

The proposal imposes no formal obligations on businesses in the Community. On the contrary, together with the Fourth Framework Programme, it provides them with greater means to participate in joint research. The private sector will retain primarily responsibility for fully seizing the opportunities opened up and for applying the results of the research projects for the manufacture and successful marketing of innovatory products.

4. *What economic effects is the proposal likely to have?*
 - *on employment, on investment and the creation of new businesses and on the competitive position of businesses?*

By making European businesses more competitive at the international level, the Community's RTD activities will create jobs and encourage investment. The Fourth Framework Programme proposal, which this proposal complements, sets out the strategy for a greater selective allocation of the funds for individual activities to ensure that the activities have greater relevance and impact.

5. *Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?*

The Fourth Framework Programme proposal sets out arrangements specifically addressed to small firms and which will continue to be developed and, in certain cases, tested. The proposal contains specific measures aimed at facilitating the participation of SMEs in Community RTD, and improved management and simplification initiatives for Community RTD, such as simplified forms, publication of management manual, increased transparency in calls for proposals on fixed dates, and simplified cost arrangements, should particularly assist SMEs.

Consultation

6. *List the organisations which have been consulted about the proposal and outline their main views.*

The Fourth Framework Programme proposal and the working document on the scientific and technical content of the specific RTD programmes, which this proposal complements, have resulted from policy debates within the Commission which keeps in constant contact with advisory bodies responsible for RTD. The proposal builds upon the participation arrangements implemented in previous framework programmes and dialogue with, amongst others, MS, representative bodies and participants on the management of Community RTD.

DOCUMENTS

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