

COUNCIL DECISION

of 21 November 1994

concerning the rules for the participation of undertakings, research centres and universities in research, technological development and demonstration activities of the European Community

(94/763/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130j in conjunction with the second paragraph of Article 130o thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure referred to in Article 189c of the Treaty ⁽³⁾,

Whereas Title XV of the Treaty sets out a coherent framework of provisions for Community actions in the field of research and technological development;

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

Whereas Article 130i of the Treaty provides for a multiannual framework programme setting out all the activities of the Community in the field of research, technological development and demonstration (hereinafter referred to as 'RTD');

Whereas the fourth framework programme of the European Community activities in the field of research and technological development and demonstration (1994 to 1998) was adopted by Decision No 1110/94/EC of the European Parliament and of the Council of 26 April 1994 ⁽⁴⁾;

Whereas this framework programme specifies the conditions for financial participation by the Community in RTD activities 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 for the implementation of the multiannual framework programme the Council shall determine the rules for the participation of undertakings, research centres and universities;

Whereas Article 130i of the Treaty states that the framework programme is to be implemented through specific programmes; whereas the specific programmes are to be adopted in accordance with the provisions of paragraph 4 of that Article ;

Whereas Article 130m of the Treaty states that in implementing the multiannual framework programme the Community may make provision for cooperation in Community research, technological development and demonstration with third countries or international organizations; whereas the framework programme for 1994 to 1998 provides for such cooperation; whereas it is necessary to take this into account in establishing the rules for participation of undertakings, research centres and universities;

Whereas the Community financial participation must normally be paid to participants on the basis of the justification of actual costs; whereas other methods, including fixed rates, may be agreed, where appropriate;

⁽¹⁾ OJ No C 81, 18. 3. 1994, p. 12.

⁽²⁾ OJ No C 295, 22. 10. 1994, p. 31.

⁽³⁾ Opinion of the European Parliament of 5 May 1994 (OJ No C 205, 25. 7. 1994, p. 313), Council common position of 18 July 1994 (OJ No C 244, 31. 8. 1994, p. 76) and Decision of the European Parliament of 27 October 1994 (OJ No C 323, 21. 11. 1994).

⁽⁴⁾ OJ No L 126, 18. 5. 1994, p. 1.

Whereas it is necessary that the specific RTD programme should be able to detail, supplement, or subject to conditions or limitations the rules laid down by this Decision as regards the participation of undertakings, research centres and universities to the extent necessary for implementing objectives or measures specific to those programmes;

Whereas RTD activities must 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,

(b) the activities proposed are to be carried out:

- normally by at least two legal entities. Such entities must not be affiliated and must be established in different Member States or in at least one Member State and one State associated with the programme, or
- by at least one legal entity and the JRC.

HAS DECIDED AS FOLLOWS:

Article 3

Article 1

For the implementation of the multiannual framework programme of European Community activities in the field of research, technological development and demonstration (RTD) and its specific programmes, adopted in accordance with Article 130i of the Treaty, the rules set out in the following articles shall apply to the participation of:

(a) natural persons, undertakings, research centres, universities and other forms of legal entities (hereinafter collectively referred to as 'legal entities'); and

(b) the Joint Research Centre (JRC);

in the Community 'indirect action' RTD activities specified in Annex IV, paragraph 1 (a) and the 'competitive support activities' specified in Annex IV paragraph 1 (c) of Decision No 1110/94/EC.

Article 2

Participation in RTD activities with a financial contribution from the Community shall be open to the Joint Research Centre and to any legal entity established in the Community or in a third country associated with and contributing financially to the implementation of the relevant specific programme through an agreement concluded with the Community in accordance with Article 130m of the Treaty, (hereinafter referred to as 'State associated with the programme') on condition that:

- (a) — it carries out, or is about to start carrying out, RTD in the Community or in a State associated with the programme and has the basic resources to enable it to carry out the activity concerned, or
- it is able to contribute to the RTD activity concerned as a potential user of RTD results or it can assist, for the programme relating to activities under paragraph (c) of Article 130g of the Treaty, in the dissemination and optimization of RTD results, including the transfer of RTD results for exploitation, in the Community or a State associated with the programme;

1. International organizations and legal entities from third countries, other than States associated with the programme, referred to in Article 2, may participate in Community RTD activities on a project by project basis on condition that:

- (a) such participation is in the interest of Community policies; and
- (b) such participation takes place together with the minimum number of legal entities from the Community and any States associated with the programme as required by Article 2; and
- (c) the legal entity concerned is established and carries out RTD activities in:
 - (i) a European third country; or
 - (ii) a third country which has concluded a scientific and technical cooperation agreement with the Community covering activities of the relevant programme; or
 - (iii) a third country covered by an objective of the programme for the promotion of international cooperation in RTD for the activities set out in that programme.

2. Subject to the conditions in paragraph 1 (a) and (b), the participation of legal entities not covered by paragraph 1 (c) may be provided for in the decision adopting the relevant specific programme, where such participation contributes effectively to the implementation of the programme and takes into account the principle of mutual benefit.

3. Unless otherwise provided in the relevant specific programme decision, participation by international organizations and legal entities from third countries under this Article shall not benefit from Community financing under the framework programme.

However, in duly specified cases, the participation of international research organizations situated in Europe may receive financial support from the Community.

4. Certain preparatory, accompanying and support measures for RTD indirect actions may exceptionally be

conducted, with financial support from the Community, by legal entities from any State or by international organizations, provided this is in the interest of Community policies.

Article 4

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*, to which any legal entity and the JRC may respond in accordance with Articles 2 and 3.

Where appropriate, the call for proposals may be preceded by a call for expressions of interest of an informative nature, to enable a focusing of the proposals on the priority areas of the programme.

2. The procedure used for the submission and selection of proposals shall keep the administrative costs of the applicants and of the Commission to the minimum level necessary.

3. Proposals shall be selected on the basis of the criteria specified in the multiannual framework programme and of the objectives of the specific programme concerned. The following other factors should be taken into account, unless not applicable to the activity concerned:

- innovativeness of the proposal,
- effective transnational collaboration,
- development of synergy between various categories of participants, including better integration of small and medium-sized enterprises (SMEs),
- cost effectiveness of the proposal,
- competence of the participants to carry out or contribute effectively to transnational RTD activities,
- perspectives for effective dissemination of the RTD results and their exploitation, including, where appropriate, by SMEs.

Article 5

The conditions set out in Article 2 (a) and (b), as well as the rules for selecting proposals laid down in Article 4, shall not apply to:

- activities consisting of procurement and services, including competitive support activities, which are subject to the relevant provisions, in particular Titles IV and VII of the Financial Regulation applicable to the general budget of the European Communities,

- subventions to the costs of conferences (excluding 'Euro-conferences') workshops and seminars.

Article 6

Proposals selected in accordance with the provisions of Article 4 shall be the subject of contracts concluded between the Community and the participants in the activity concerned. The contracts shall specify in particular the administrative, financial and technical monitoring arrangements for the action and shall include provisions concerning intellectual property rights.

Subject to budgetary and administrative measures necessary to enable the JRC to compete for Community 'indirect action' RTD activities in accordance with Article 2, the JRC shall be bound by the same conditions and have the same rights as other participants in the activities concerned.

Article 7

1. The Community financial participation shall consist of the reimbursement of a proportion of the cost of the activity determined in accordance with the provisions of Annex IV to the fourth framework programme.

2. The methods for determining and paying the Community's financial participation shall be indicated in the call for proposals and the supporting documentation issued with the call.

3. The usual method shall consist of timely payments against justification by the participant of the actual costs of the resources devoted to the activity, including indirect overhead costs.

Alternatively, if specifically agreed by the participants, payment may be made according to one of the following methods:

- (a) fixed composite rates to cover some or all of the usual resources for carrying out RTD. The definition of these rates shall take account of differences between types of legal entities and activities within Member States, and, where available and appropriate, of national rates applicable to similar activities;
- (b) fixed amounts linked to the achievement of contractually agreed objectives;
- (c) in the case of small-scale projects, fixed amounts determined on the basis of an assessment of the proposed costs of the work.

The choice of the appropriate method to be applied to the projects selected in accordance with Article 4 shall be agreed with each participant and specified in the contracts referred to in Article 6.

4. For shared cost actions with legal entities, 'additional costs' shall include only:

- (i) direct costs incurred for the activity and to which the legal entity is not otherwise committed;
- (ii) an appropriate contribution to indirect overhead costs.

'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 does not enable the full costs of the activity to be substantiated with sufficient precision.

Article 8

1. For technology stimulation purposes, small and medium-sized enterprises established in the Community or a State associated with the programme may:

- (a) where they have similar technical problems but do not have adequate own-research facilities, participate in 'cooperative research' activities enabling them to engage other legal entities to carry out RTD on their behalf;
- (b) be provided with support, including via networks for decentralized assistance, for the search for partners and for the preparation of outline proposals. They may also be provided with financial support to carry out, normally on a collaborative basis, the exploratory phase of a RTD project, with a view to assessing its feasibility and the subsequent submission of a full proposal for a Community activity, including 'cooperative research'.

2. Following an initial call, proposals for 'cooperative research' and outline proposals for such exploratory phase work may be submitted at any time.

Article 9

To the extent necessary for fulfilling objectives or measures specific to a programme, and in particular in the case of the activities referred to in paragraphs (b), (c) and (d) of Article 130g of the Treaty, the rules in this Decision may be set out in more detail, supplemented or be subjected to conditions or limitations in the decision adopting the specific programme.

Article 10

1. The annual report that the Commission submits to the European Parliament and the Council, in accordance with Article 4 (1) of Decision No 1110/94/EC, shall contain information on the implementation of this Decision.

2. This Decision shall apply to activities arising from the fourth multiannual framework programme (1994 to 1998).

3. Before the end of the fourth framework programme, the Commission shall present a report to the Council on the application of this Decision accompanied by appropriate proposals for its prorogation or adaptation.

Done at Brussels, 21 November 1994.

For the Council

The President

M. WISSMANN