

II

(Acts whose publication is obligatory)

COUNCIL

COUNCIL DECISION

of 21 November 1994

concerning the rules for the participation of undertakings, research centres and universities in research and training activities of the European Atomic Energy Community

(94/761/Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

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

Whereas Article 7 of the Treaty provides for Community research and training actions in the field of nuclear activities to be implemented by specific research and training programmes to be drawn up for a period of not more than five years;

Whereas, in order to form part of a coherent framework of provisions for Community actions in the field of research and training, specific programmes must be adopted in conformity with a multiannual framework programme;

Whereas the framework programme of Community activities in the field of research and training for the

European Atomic Energy Community (EAEC) (1994 to 1998) was adopted by Decision 94/268/Euratom ⁽³⁾;

Whereas this framework programme specifies the conditions for financial participation by the Community in research and training 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 rules should be determined for the participation of undertakings, research centres and universities in the implementation of this framework programme and the specific programmes;

Whereas by virtue of 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 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 shall normally be reimbursed to participants on the basis of the justification of actual costs; whereas other methods, including fixed rates, may be agreed, where appropriate;

Whereas it is necessary to enable the specific research and training programmes to detail, supplement, or subject to

⁽¹⁾ OJ No C 205, 25. 7. 1994, p. 314.

⁽²⁾ OJ No C 295, 22. 10. 1994, p. 31.

⁽³⁾ OJ No L 115, 6. 5. 1994, p. 31.

conditions or limitations the rules laid down by the present decision, for the participation of undertakings, research centres and universities to the extent necessary for implementing objectives or measures specific to those programmes;

Whereas by virtue of 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') in implementation of the multiannual framework programme adopted in accordance with the EC Treaty;

Whereas in order to ensure coherence between activities undertaken within the EAEC framework programme and those undertaken within the EC framework programme, this Decision and the Decision on the rules for participation in Community RTD activities in accordance with Article 130j of the EC Treaty should, therefore, be adopted simultaneously and for the same period;

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,

HAS DECIDED AS FOLLOWS:

Article 1

For the implementation of the multiannual framework programme of European Atomic Energy Community activities in the field of research and training and its 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 of:

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

in the Community 'indirect action' RTD activities specified in paragraph 1 (a) of Annex IV to Decision No 94/268/Euroatom.

Article 2

Participation in RTD activities with a financial contribution from the Community shall be open to any

legal entity established in the Community, or in a non-Community State associated with and contributing financially to the implementation of the relevant specific programme through an agreement concluded with the Community in accordance with the second paragraph of Article 101 of the Treaty (hereinafter referred to as 'State associated with the programme') and to the Joint Research Centre, on condition that:

- (a) the legal entity for the Joint Research Centre:
 - 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,
 - is able to contribute to the RTD activity concerned as a potential user of RTD results or it can assist in the dissemination and optimization, including the transfer of RTD results for exploitation, in the Community or a State associated with the programme;
- (b) the activities proposed are to be carried out by:
 - normally 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
 - at least one legal entity and the JRC.

Article 3

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 research and training 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 carrying out RTD activities in:
 - (i) a European third country; or
 - (ii) a third country having 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 provided for in that programme.

2. Subject to the conditions of paragraph 1 (a) and (b), 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 taking into account the principle of mutual benefit.

3. Unless otherwise provided in the relevant specific programme decision, participation of international organizations and of 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 in the field of nuclear fission safety shall be selected on the basis of calls for proposals published in the *Official Journal of the European Communities*, and to which any legal entity and the JRC may respond in accordance with Articles 2 and 3.

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.

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 SMEs,
- cost effectiveness of the proposal,
- competence of the participants to carry out and manage, 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, subparagraphs (a) and (b), as well as rules for selection of 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, workshops and seminars.

Article 6

Contracts concluded between the Community and the participants in the activity concerned shall specify in particular the administrative, financial and technical monitoring arrangements for the action and 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 Council Decision No 94/268/Euratom adopting the framework programme.

2. The methods for the determination and payment of the financial participation of the Community 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 against one method from amongst the following:

- (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 work.

The choice of the appropriate method to be applied for 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 only include:

- (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) having similar technical problems, but not having 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, the rules in this Decision may be set out in more detail, supplemented or 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 94/268/Euratom, shall contain information on the implementation of this Decision.

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

3. Before the end of the 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