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Price: 18 EUR

⁽¹⁾ Text with EEA relevance

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 71/2007

of 20 December 2007

setting up the Clean Sky Joint Undertaking

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

should combine private sector investment and European public funding, including funding from the Seventh Framework Programme.

Having regard to the Treaty establishing the European Community, and in particular Articles 171 and 172 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 European Economic and Social Committee,

Whereas:

(2) Council Decision 2006/971/EC of 19 December 2006 concerning the Specific Programme 'Cooperation' implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ⁽²⁾ (hereinafter referred to as the Specific Programme Cooperation), underlines the need for ambitious pan-European public-private partnerships to accelerate the development of major technologies by large research actions at Community level including, in particular, JTIs.

(3) The Lisbon Growth and Jobs Agenda underscores the need to develop favourable conditions for investment in knowledge and innovation in Europe with a view to boosting competitiveness, growth and jobs in the European Union.

(1) Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) ⁽¹⁾ (hereinafter referred to as the Seventh Framework Programme), provides for a Community contribution to the establishment of long term public private partnerships in the form of Joint Technology Initiatives (hereinafter referred to as JTIs), which could be implemented through Joint Undertakings within the meaning of Article 171 of the Treaty. These JTIs result from the work of European Technology Platforms, already set up under the Sixth Framework Programme, and cover selected aspects of research in their respective fields. They

(4) In its conclusions of 13 May 2003, of 22 September 2003 and of 24 September 2004, the Council highlighted the importance of further developing actions following the 3 % Action Plan for research and the innovation policy, including the development of new initiatives aimed at intensifying cooperation between industry and the public sector in funding research to enhance transnational public-private links.

(5) In its conclusions of 4 December 2006 and of 19 February 2007, the Council and, its conclusions of 8-9 March 2007 the European Council, invited the Commission to submit proposals for the setting up of JTIs for initiatives that have reached an appropriate stage of preparedness.

⁽¹⁾ OJ L 412, 30.12.2006, p. 1.

⁽²⁾ OJ L 400, 30.12.2006, p. 86, corrected by OJ L 54, 22.2.2007, p. 30.

- (6) The Aeronautics European Technology Platform Advisory Council for Aeronautics Research in Europe (ACARE) developed a Strategic Research Agenda, which identified as one of its high priorities the reduction of aviation's impact on the environment. It also concluded that technological changes are needed in order to achieve by 2020 the goals of cutting CO₂ emissions by 50 %, reducing NO_x emissions by 80 %, reducing perceived external noise by 50 %, and making substantial progress in reducing the impact of manufacture, maintenance and disposal of aircrafts and related products on the environment.
- (7) The extent of the effort required to address the environmental challenges to the air transport system as defined in the Strategic Research Agenda of ACARE justified the setting up of a Joint Undertaking as the appropriate instrument to coordinate the relevant research activities.
- (8) The Clean Sky JTI should mitigate the various risks of market failure which discourage private investment in aeronautics research in general, and in clean Air Transport technologies in particular. It should provide integration and demonstration at the level of the system as a whole, thus decreasing the risk for private investment in developing new environmentally friendly aeronautics products. It should stimulate private R & D investment in environmentally friendly technologies in the European Union, thus addressing the existing R & D and environmental externalities.
- (9) The Clean Sky JTI should accelerate the development in the European Union of clean Air Transport technologies for earliest possible deployment which will contribute to achieving Europe's strategic environmental and social priorities, in combination with sustainable economic growth.
- (10) The Clean Sky JTI should be a public-private partnership associating all key stakeholders. Taking into account the long-term nature of this partnership, the necessary pooling and availability of financial resources, the high scientific and technical expertise required, including the management of a vast amount of knowledge, and appropriate intellectual property rules, it is vital to set up a legal entity capable of ensuring the coordinated use and efficient management of the funds assigned to the Clean Sky JTI. It is therefore appropriate to set up a Joint Undertaking under Article 171 of the Treaty (hereinafter referred to as the Clean Sky Joint Undertaking).
- (11) The Clean Sky Joint Undertaking aims at addressing the implementation of innovative, environmentally-friendly technologies in all segments of civil air transport, including large commercial aircraft, regional aircraft and rotorcraft, and in all supporting technologies such as engines, systems and materials life cycle. The Clean Sky Joint Undertaking will deliver full scale demonstrators in all areas of research activities, which should be tested either in flight or on the ground, as a result of a fully integrated approach and monitoring of the technological progress and impact.
- (12) The Clean Sky Joint Undertaking should be set up for the period up to 31 December 2017 to ensure the appropriate management of research activities, including exploitation of the results by the members of the Clean Sky Joint Undertaking and the participants initiated but not concluded during the Seventh Framework Programme. However, exploitation of results will not be funded by the Joint Undertaking.
- (13) The members of the Clean Sky Joint Undertaking should be the European Community represented by the Commission as public representative, the leaders of Integrated Technology Demonstrators (hereinafter referred to as 'ITDs') and the Associate members of the individual ITDs.
- (14) The Clean Sky Joint Undertaking should be open to new members.
- (15) The Clean Sky Joint Undertaking should be a body set up by the Communities, and discharge for the implementation of its budget should be given by the European Parliament, on a recommendation from the Council, taking however into account the particular characteristics resulting from the nature of JTIs as public-private partnerships and in particular from the private sector contribution to the budget.
- (16) The leaders of ITDs have signed a Memorandum of Understanding committing their respective companies to technical, managerial and financial participation in the Clean Sky Joint Undertaking for its full duration. All Associate members have committed themselves to a threshold financial participation for the whole duration of Clean Sky Joint Undertaking.
- (17) The research activities should be funded by the Community and funded at least equally by the other members' resources. Further financing options may be available, inter alia, from the European Investment Bank (EIB), in particular through the Risk-Sharing Finance Facility developed jointly with the EIB and the Commission, pursuant to Annex III of Decision 2006/971/EC.
- (18) The running costs of the Clean Sky Joint Undertaking should be covered equally by the Community and the other members.
- (19) The leaders of ITDs and the Associate Members of the individual ITDs should receive support from the Clean Sky Joint Undertaking when carrying out the research activities of which they are in charge.

- (20) The Clean Sky Joint Undertaking should be capable of organising competitive calls for proposals for supporting research activities, where appropriate.
- (21) Research activities carried out under the Clean Sky Joint Undertaking should respect the fundamental ethical principles applicable in the Seventh Framework programme.
- (22) The Clean Sky Joint Undertaking should adopt, in accordance with Article 185(1) of Council Regulation (EC, Euratom) No 1605/2002 ⁽¹⁾ of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (hereinafter referred to as 'Financial Regulation') and subject to prior consent of the Commission, specific financial rules which take into account its specific operating needs arising, in particular, from the need to combine Community and private funding to support research and development activities in an efficient and timely manner. In order to ensure a harmonised treatment of the participants of the Joint Undertaking research activities and those of the indirect actions of the Seventh Framework Programme, it is appropriate that value added tax should not be an eligible cost for Community funding, in line with Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) ⁽²⁾.
- (23) In order to ensure stable employment conditions and equal treatment of staff, and to attract specialised scientific and technical staff of the highest calibre, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, laid down in Regulation (EEC, Euratom, ECSC) No 259/68 of the Council ⁽³⁾ (the Staff Regulations) should be applied to all staff recruited by the Clean Sky Joint Undertaking.
- (24) The rules for the organisation and operation of the Clean Sky Joint Undertaking should be laid down in the Statutes of the Clean Sky Joint Undertaking annexed to this Regulation.
- (25) The Commission should be entrusted with specific tasks associated with the monitoring of public funds and safeguarding Community interests in the Joint Undertaking.
- (26) The Clean Sky Joint Undertaking should regularly report to the European Parliament and to the Council on its progress.
- (27) The Clean Sky Joint Undertaking should rely on a number of external advisory bodies, involving National States and the ACARE European Technology Platform for Aeronautics, and should maintain regular contacts with National States.
- (28) As a body possessing legal personality, the Clean Sky Joint Undertaking should be accountable for its actions. As regards the resolution of disputes in contractual matters, any grant agreements or contracts concluded by the Clean Sky Joint Undertaking could provide for the jurisdiction of the Court of Justice.
- (29) The intellectual property rights policy of the Clean Sky Joint Undertaking should promote the creation and exploitation of knowledge.
- (30) Appropriate measures should be taken to prevent irregularities and fraud, and necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used, in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ⁽⁴⁾, and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning the spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽⁵⁾, and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations concluded by the European Anti-Fraud Office (OLAF) ⁽⁶⁾.
- (31) In order to facilitate the setting up of the Clean Sky Joint Undertaking, the Commission should be responsible for the establishment and initial operation of the Clean Sky Joint Undertaking until it has the operational capacity to implement its own budget.
- (32) The Clean Sky Joint Undertaking should be established in Brussels, Belgium. A host agreement should be concluded between the Clean Sky Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the Clean Sky Joint Undertaking.
- (33) Since the objective of this Regulation, namely the setting up of the Clean Sky Joint Undertaking, cannot be sufficiently achieved by the Member States due to the transnational nature of the great research challenge identified; which

⁽¹⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽²⁾ OJ L 391, 30.12.2006, p. 1.

⁽³⁾ OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 337/2007 (OJ L 90, 30.3.2007, p. 1).

⁽⁴⁾ OJ L 312, 23.12.1995, p. 1.

⁽⁵⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁶⁾ OJ L 136, 31.5.1999, p. 1.

requires the pooling of complementary knowledge and financial resources across sectors and borders, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS REGULATION:

Article 1

Setting up of a Joint Undertaking

1. For the implementation of the Joint Technology Initiative on Clean Sky, a Joint Undertaking within the meaning of Article 171 of the Treaty is hereby set up for the period up to 31 December 2017 (hereinafter referred to as the Clean Sky Joint Undertaking).

2. Its seat shall be located in Brussels, Belgium.

Article 2

Objectives of the Joint Undertaking

1. The Clean Sky Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and in particular Theme 7, Transport (including Aeronautics) of the Specific Programme Cooperation.

2. The objectives of the Clean Sky Joint Undertaking shall be the following:

- (a) accelerating in the EU the development, validation and demonstration of clean Air Transport technologies for earliest possible deployment;
- (b) ensuring coherent implementation of European research efforts aiming at environmental improvements in the field of Air Transport;
- (c) creating a radically innovative Air Transport System based on the integration of advanced technologies and full scale demonstrators, with the target of reducing the environmental impact of air transport through significant reduction of noise and gaseous emissions, and improvement of the fuel economy of aircrafts;
- (d) accelerating the generation of new knowledge, innovation and the uptake of research proving the relevant technologies and fully integrated system of systems, in the appropriate operational environment, leading to strengthened industrial competitiveness.

Article 3

Legal status

The Clean Sky Joint Undertaking shall be a Community body with legal personality. In all the Member States of the Community, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.

Article 4

Statutes

The Statutes of the Clean Sky Joint Undertaking, as set out in Annex I hereto, constitute an integral part of this Regulation and are hereby adopted.

Article 5

Community contribution

1. The maximum Community contribution to the Clean Sky Joint Undertaking covering running costs and research activities shall be EUR 800 million paid from the budget appropriation allocated to the Theme 'Transport' of the Specific Programme Cooperation, according to Article 54(2)(b) of the Financial Regulation.

2. Where appropriate, the Community contribution to the Clean Sky Joint Undertaking for the funding of the research activities shall include funding of proposals selected by way of open and competitive calls for proposals.

The evaluation and selection process shall ensure that allocation of the Clean Sky Joint Undertaking public funding for competitive calls for proposals follow the principles of excellence and competition, and shall be carried out with the assistance of independent experts.

Any public or private entity established in a Member State or in a country associated to the Seventh Framework Programme, shall be eligible for such funding.

3. The arrangements for the Community financial contribution shall be established by means of a general agreement and annual financial implementation agreements to be concluded between the Commission, on behalf of the Community, and the Clean Sky Joint Undertaking.

4. Other Members of the Joint Undertaking shall contribute resources at least equal to the Community contribution, excluding those allocated through calls for proposals in order to carry out the research activities of the Clean Sky Joint Undertaking.

*Article 6***Financial rules**

1. The Clean Sky Joint Undertaking shall adopt specific financial rules in accordance with Article 185(1) of Regulation (EC, Euratom) No 1605/2002. They may depart from the rules laid down in Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the budget of the European Communities ⁽¹⁾ where the specific operating needs of the Clean Sky Joint Undertaking so require, subject to the prior consent of the Commission.

2. The Clean Sky Joint Undertaking shall have its own internal audit capability.

*Article 7***Staff**

1. The Staff Regulations and the rules adopted jointly by the institutions of the Communities for the purpose of applying them shall apply to the staff of the Clean Sky Joint Undertaking and its Executive Director.

2. Without prejudice to paragraph 3 of this Article and Article 7(3) of the Statutes, the Clean Sky Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority empowered to conclude contracts by the Conditions of Employment of Other Servants of the European Communities in respect of its staff.

3. The Governing Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations.

4. The staff resources shall be determined in the establishment plan of the Clean Sky Joint Undertaking that shall be set out in its annual budget.

5. The staff of the Clean Sky Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed no more than once for another fixed period. The total period of engagement shall not exceed seven years and shall not in any case exceed the period during which the Joint Undertaking shall exist.

6. All costs related to the staff shall be borne by the Clean Sky Joint Undertaking.

*Article 8***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Clean Sky Joint Undertaking and its staff.

*Article 9***Liability**

1. The contractual liability of the Clean Sky Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement or contract in question.

2. In the case of non-contractual liability, the Clean Sky Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.

3. Any payment by the Clean Sky Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the Clean Sky Joint Undertaking and shall be covered by the resources of the Clean Sky Joint Undertaking.

4. The Clean Sky Joint Undertaking shall be solely responsible for meeting its obligations.

*Article 10***Jurisdiction of the Court of Justice and applicable law**

1. The Court of Justice shall have jurisdiction:

- (a) in any dispute between the Members which relates to the subject matter of this Regulation and/or the Statutes referred to in Article 4;
- (b) pursuant to any arbitration clause contained in agreements and contracts concluded by the Clean Sky Joint Undertaking;
- (c) in actions brought against the Clean Sky Joint Undertaking, including decisions of its Bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;
- (d) in disputes related to compensation for damage caused by the staff of the Clean Sky Joint Undertaking in the performance of their duties.

2. For any matter not covered by this Regulation or by other acts of Community law, the law of the State where the seat of the Clean Sky Joint Undertaking is located shall apply.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

*Article 11***Report, evaluation and discharge**

1. The Commission shall present to the European Parliament and to the Council an annual report on the progress achieved by the Clean Sky Joint Undertaking. This report shall contain details of implementation including the number of proposals submitted, the number of those selected for funding, the type of participants, including SMEs, and statistics broken down by country. In particular this annual report will include assessment results of the Technology Evaluator referred to in Article 8(1) of the Statutes, as appropriate.

2. Three years after the adoption of this Regulation (but in any case no later than 31 December 2010), and subsequently by 31 December 2013, the Commission shall carry out an evaluation with the assistance of independent experts on the basis of terms of reference established after consultation with the Joint Undertaking. These evaluations shall cover the quality and efficiency of the Clean Sky Joint Undertaking, and progress towards the objectives set. The Commission shall communicate to the Council the conclusions thereof, accompanied by its observations and, where appropriate, by its proposals to amend this Regulation, including the possible early termination of the Joint Undertaking.

3. Not later than six months after the end of the Joint Undertaking, the Commission shall conduct a final evaluation of the Clean Sky Joint Undertaking with the assistance of independent experts. The results of the final evaluation shall be presented to the European Parliament and to the Council.

4. Discharge for the implementation of the budget of the Clean Sky Joint Undertaking shall be given by the European Parliament, upon recommendation from the Council, in accordance with a procedure provided for by the financial rules of the Clean Sky Joint Undertaking.

*Article 12***Protection of the financial interests of the Members and anti-fraud measures**

1. The Clean Sky Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or by allowing the carrying out of appropriate internal and external controls.

2. Should the Members discover any irregularities, they shall reserve the right to reduce or suspend any subsequent contribution to the Clean Sky Joint Undertaking, or to recover amounts unduly spent.

3. For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 shall apply.

4. The Clean Sky Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the Clean Sky Joint Undertaking's public funding.

5. The Commission and/or the Court of Auditors may, if necessary, carry out on-the-spot checks among the recipients of the Clean Sky Joint Undertaking's funding and the agents responsible for allocating it. To that end, the Clean Sky Joint Undertaking shall ensure that grant agreements and contracts provide for the right of the Commission and/or the Court of Auditors to carry out the appropriate controls and, in the event of the detection of irregularities, to impose dissuasive and proportionate penalties.

6. The European Anti-Fraud Office (OLAF) ⁽¹⁾ shall enjoy the same powers in respect of the Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the Joint Undertaking is established, it shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF. The Clean Sky Joint Undertaking shall adopt the measures necessary to facilitate internal investigations conducted by OLAF.

*Article 13***Confidentiality**

Without prejudice to Article 14, the Clean Sky Joint Undertaking shall ensure the protection of sensitive information, disclosure of which could damage the interests of its Members or of participants in the activities of the Clean Sky Joint Undertaking.

*Article 14***Transparency**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents ⁽²⁾ shall apply to documents held by the Clean Sky Joint Undertaking.

2. The Clean Sky Joint Undertaking shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001 by 7 August 2008.

3. Decisions taken by the Clean Sky Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

4. The Clean Sky Joint Undertaking shall adopt practical arrangements for implementing Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies ⁽³⁾ before 7 August 2008.

⁽¹⁾ Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 20).

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

⁽³⁾ OJ L 264, 25.9.2006, p. 13.

*Article 15***Intellectual property**

The Clean Sky Joint Undertaking shall adopt distinct rules governing the protection, use and dissemination of research results, based on the principles of Regulation (EC) No 1906/2006 as set out in Article 23 of the Statutes, which ensure that, where appropriate, intellectual property generated in research activities under this Regulation is protected, and that research results are used and disseminated.

*Article 16***Preparatory actions**

1. The Commission shall be responsible for the establishment and initial operation of the Clean Sky Joint Undertaking until the Joint Undertaking has the operational capacity to implement its own budget. It shall carry out, in accordance with Community law, all necessary actions in collaboration with other Founding Members and the involvement of the Governing Board.

2. For that purpose, until such time as the Executive Director takes up his duties following his appointment by the Governing Board in accordance with Article 7(3)(a) of the Statutes, the

Commission may assign a limited number of its officials, including one to fulfil the functions of the Executive Director, on an interim basis.

3. The interim Executive Director may authorise all payments covered by the credits provided in the budget of the Clean Sky Joint Undertaking once approved by the Governing Board and may conclude contracts, including staff contracts following the adoption of the Clean Sky Joint Undertaking establishment plan. The Commission authorising officer may authorise all payments covered by the credits provided in the general budget of the Clean Sky Joint Undertaking.

*Article 17***Support from the host State**

A host agreement shall be concluded between the Clean Sky Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the Clean Sky Joint Undertaking.

*Article 18***Entry into force**

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 20 December 2007.

For the Council

The President

F. NUNES CORREIA

ANNEX I

STATUTES OF THE CLEAN SKY JOINT UNDERTAKING

Article 1

Definitions

For the purposes of these Statutes, the following definitions shall apply:

- (a) 'associate' means a single legal entity selected following call for membership and which commits for the full duration of the Joint Undertaking and for a minimum fixed share of the ITD budget.
- (b) 'calls for proposals' means open calls for specific tasks, resulting in the selection of Partners on a competitive basis.
- (c) 'calls for tender' means calls for subcontracting specific tasks issued by ITD Leaders or Associates.
- (d) 'Integrated Technology Demonstrator (ITD)' means one of the six technological areas to be covered by the Clean Sky Joint Undertaking.
- (e) 'ITD Leader' means Co-leader of one of the six ITDs.
- (f) 'National States' means Member States and countries associated to the Seventh Framework Programme.
- (g) 'Partner' means a legal entity selected in the course of JTI to perform specific tasks and is not necessarily committed for the full duration of the Joint Undertaking.
- (h) 'subcontractor' means a legal entity which performs tasks under contract to ITD Leader or Associate.
- (i) 'Technology Evaluator (TE)' means the central activity established in accordance with Article 8(1).

Article 2

Tasks and activities

In order to achieve the objectives of the Clean Sky Joint Undertaking its main tasks and activities shall be the following:

- (a) bringing together a range of ITDs with the emphasis on innovative technologies and development of full scale demonstrators;
- (b) focusing efforts within ITDs on key deliverables that can help meet Europe's environmental and competitiveness goals;
- (c) enhancing the technology verification process in order to identify and remove obstacles to future market penetration;
- (d) pooling user requirements to guide investment in research and development towards operational and marketable solutions;

- (e) implementing the research and development activities needed, where appropriate by awarding grants following calls for proposals;
- (f) awarding grants to support research performed by its Members and by other entities selected following calls for proposals in accordance with open criteria agreed by the Governing Board;
- (g) publishing information on the projects, including the name of the recipients and the amount of the financial contribution of the Clean Sky Joint Undertaking per recipient;
- (h) ensuring the provision of services and supply contracts, where appropriate, through calls for tender;
- (i) mobilising the public and private sector funds needed;
- (j) liaising with national and international activities in the Joint Undertaking technical domain, in particular with the SESAR Joint Undertaking ⁽¹⁾;
- (k) informing, by way of periodic meetings, the National States Representative Group and involving ACARE;
- (l) notifying legal entities that have concluded a grant agreement with the Clean Sky Joint Undertaking of the potential borrowing opportunities from the European Investment Bank, in particular the Risk Sharing Finance Facility set up under the Seventh Framework Programme;
- (m) stimulating the involvement of SMEs in its activities, in line with the objectives of the Seventh Research Framework Programme; in this respect the Clean Sky Joint Undertaking shall establish relevant quantitative targets in line with those set in the Seventh Framework Programme;
- (n) developing close cooperation and ensure coordination with related European (in particular the Framework Programme), national and trans-national activities.

Article 3

Members

1. The following shall be Founding Members of the Clean Sky Joint Undertaking:

- (a) the European Community, represented by the Commission; and,
- (b) upon acceptance of the Statutes of the Clean Sky Joint Undertaking, 12 ITD leaders and the Associates.

⁽¹⁾ OJ L 64, 2.3.2007, p. 1.

The Commission and the ITD Leaders shall have overall visibility of the activities of the JTI, and shall be responsible for taking overall strategic decisions.

The Associates shall participate in one or more ITDs, will co-determine technical decisions to be taken regarding these ITDs, and contribute a fair share of the total work programme of these ITDs.

The founding ITD Leaders and Associates are listed in Annex II, subject to the first subparagraph.

2. Any public or private entity established in a Member State or in a country associated to the Seventh Framework Programme may apply to become a member of the Clean Sky Joint Undertaking, provided that:

- (a) as ITD Leaders, they commit themselves to contribute resources proportional to and consistent with the overall JTI activities;
- (b) as Associates, their commitment is proportional to the budget of the ITD they participate in and consistent with the ITD requirements.

3. The Founding Members as referred to in paragraph 1 and new members as referred to in paragraph 2 shall be hereinafter referred to as 'Members'.

Article 4

Accession and changes to membership

1. Accession Rules

Any public or private legal entity established in a Member State or in a country associated to the Seventh Framework Programme may apply to become a Member of the Clean Sky Joint Undertaking, under conditions below:

- the legal entities applying to become ITD Leaders or Associates shall accept the Statutes of the Clean Sky Joint Undertaking,
- the legal entities applying to become ITD Leaders shall commit themselves to the exploitation of its results afterwards, to contribute financially to the running costs of the Clean Sky Joint Undertaking with a commitment proportional to its overall budget, and to contribute to the ITDs they lead,
- the legal entities applying to become Associates shall commit themselves to contribute financially to the Clean Sky Joint Undertaking in one or more ITDs according to a predefined threshold of commitment proportional to the budget of that ITD, and to contribute financially to the running costs of the Clean Sky Joint Undertaking.

Calls for Associates shall be driven by the need for key capabilities within the various ITDs. Vacancies shall be publicised via the Clean Sky website, communicated through the National States Representative Group and other channels where appropriate.

2. Governing Board decision

Any application of new membership to the Clean Sky Joint Undertaking shall be addressed to the Governing Board for its approval according to the procedure set out in Article 5 and transmitted to the National States Representatives Group for information.

Decisions of the Governing Board on accession of any other legal entity shall be made taking into account the relevance and potential added value of the applicant for the achievement of the objectives of the Clean Sky Joint Undertaking, as well as their capacity to exploit the technologies developed. For any application for new membership, the Commission shall provide timely information to the Council on the assessment and, where applicable, on the decision of the Governing Board.

3. Membership of the Clean Sky Joint Undertaking may not be transferred to a third party without the prior written consent of the Governing Board.

Any Member may, in exceptional circumstances and subject to the consent of the Governing Board and the Steering Committee of any relevant ITDs, withdraw from the Clean Sky Joint Undertaking. Following withdrawal, the former Member shall be discharged from any obligation other than those already undertaken through contracts entered into with the Clean Sky Joint Undertaking and with other Members in accordance with these Statutes prior to the Member's withdrawal.

Article 5

Bodies of the Clean Sky Joint Undertaking

1. The bodies of the Clean Sky Joint Undertaking shall be:

- the Governing Board,
- the Executive Director,
- the ITD Steering Committees,
- the Technology Evaluator Steering Committee, and
- the General Forum.

A National States Representative Group shall be an external advisory body to the Clean Sky Joint Undertaking.

2. In case a specific task is not assigned to one of the bodies, the Governing Board shall be the competent one.

3. An Advisory Board shall be established as appropriate by the Joint Undertaking to advise, and issue recommendations to, the Clean Sky Joint Undertaking on managerial, financial and technical topics.

Article 6

Governing Board

1. The Governing Board is the governing body of the Clean Sky Joint Undertaking.

2. Composition

The Governing Board shall be composed of named representatives of the following parties:

- (a) the European Community represented by the Commission;
- (b) the ITD Leaders;
- (c) one Associate per ITD, as laid out in Article 8, 4(f) of these Statutes.

3. *Decision making*

Each individual member of the Governing Board shall have one equal vote.

The Governing Board shall make decisions by a two-thirds majority of all eligible votes. Eligible votes include those of members that are not present at the meeting.

The consent of all affected ITD Leaders is required in order to modify the budget allocation to and within ITDs.

4. *Chairmanship*

(a) The Governing Board shall appoint among its representatives a chairman and a vice-chairman. The Commission representative shall not be eligible for either function.

(b) The chairman and the vice-chairman of the Governing Board shall be elected for a period of one year and may be re-elected for one further year.

5. *Meetings*

The Governing Board shall meet at least twice a year.

Extraordinary meetings shall be convened at the request of the chairman of the Governing Board or the Commission or the Executive Director.

The meetings shall normally take place at the seat of the Clean Sky Joint Undertaking.

Unless otherwise decided, the Executive Director shall participate in the meetings.

The chairman of the National States Representatives Group shall have the right to attend meetings of the Governing Board as an observer.

6. *Role and tasks*

The Governing Board shall be responsible in particular for:

- (a) definition or change of the strategic orientation;
- (b) conclusion, release and/or amendment of contracts;
- (c) adoption of the financial rules of the Clean Sky Joint Undertaking in accordance with Article 6 of this Regulation;
- (d) adoption of the budget and the annual accounts of the Clean Sky Joint Undertaking;
- (e) adoption of changes of budget allocation to ITDs;
- (f) adoption of the annual ITD work programmes;
- (g) approval of annual reports from ITD Leaders and the Executive Director and reviewing progress of research;

(h) actions against defaulting ITD Leaders and Associates and/or reaching terms of compromise in disputes between the Clean Sky Joint Undertaking and any of its Members;

(i) third instance settlement of disputes within ITDs;

(j) second instance settlement of disputes across ITDs;

(k) admission of new ITD leaders and Associates as well as setting their minimum level of commitment;

(l) selection procedures by way of calls for proposals/tenders;

(m) transfer of Membership;

(n) second instance review and re-opening of contested partners' selection decisions;

(o) adoption of changes in the major deliverables;

(p) appointment, extension of the mandate or removal of the Executive Director;

(q) approval of Executive Director's proposals for changes on Directorate staffing levels;

(r) specification of the duties and responsibilities of the Executive Director set out in Article 7(4);

(s) approval of the Clean Sky Joint Undertaking Communication and Dissemination strategy;

(t) approval of principles for public consultation and dialogue;

(u) promotion of a policy of human resource diversity and gender equality;

(v) development of an external relations strategy in an international perspective;

(w) rules for assessing in-kind contributions;

(x) adoption of the practical arrangements for implementing Regulation (EC) No 1049/2001 referred to in Article 14(2) of this Regulation.

7. The Community shall hold veto rights on all decisions related to the use of its financial contribution, decisions concerning the liquidation and winding-up of the Joint Undertaking, adoption of major changes in budget allocations to and within ITDs, and decisions related to points (a), (b), (c), (h), (k) to (o), (p), (w) and (x). A major change in budget shall be a change in the order of 10 % of the budget of the ITD affected (or the Technology Evaluator).

8. Rules

The Governing Board shall adopt its detailed rules of procedure.

Article 7

Executive Director

1. The Executive Director shall be responsible for the day-to-day management of the Clean Sky Joint Undertaking and is its legal representative. He shall be accountable to the Governing Board.

The Executive Director shall perform his duties with complete independence.

The Executive Director shall exercise, in respect of the staff, the powers laid down in Article 7(2) of this Regulation.

2. The Executive Director shall be aided in the performance of his duties by the Directorate staff. The Directorate staff shall perform all necessary supporting functions.

The Executive Director of the Joint Undertaking shall select and appoint the Directorate staff.

3. Appointment of the Executive Director

(a) The Executive Director shall be appointed by the Governing Board for a period of three years, following a call for expression of interest published in the *Official Journal of the European Union* and in other periodicals or Internet sites. After an evaluation of the Executive Director's performance, the Governing Board may extend the term of office once for a further period of no more than four years.

(b) The Executive Director may be removed from office by the Governing Board.

4. Role and tasks of the Executive Director

The Executive Director shall in particular:

- (a) report to the Governing Board;
- (b) coordinate and follow-up the ITD activities (through ITD coordination meetings), prepare technical and financial reports;
- (c) supervise integration and interface activities and call and chair reviews as required;
- (d) chair the Steering Committee of the Technology Evaluator, participate as active observer to the ITD Steering Committees;
- (e) monitor the progress of the ITDs towards achieving the environmental goals, based on the assessments of the Technology Evaluator;
- (f) monitor the participation of SMEs to ensure target levels of participation are met;

- (g) implement calls for proposal and calls for tender processes based on the content defined by the relevant ITD Steering Committee;
- (h) implement first instance reviewing process in case of contested Partner selection decisions;
- (i) handle second instance settlement of disputes within ITDs;
- (j) handle first instance settlement of disputes across ITDs;
- (k) verify financial contributions from ITD leaders and Associates, check expenditures against plans and carry out reviews of financial contributions on a yearly basis;
- (l) prepare yearly budgets, implement them, and represent the Clean Sky Joint Undertaking in the annual budget discharge procedure;
- (m) provide the Governing Board and the Commission with the technical and financial reports;
- (n) prepare, together with Governing Board chairman, the Agenda of Governing Board meetings;
- (o) attend National States Representative Group and ACARE meetings alongside the Commission and report on status of Clean Sky activities, including SME issues;
- (p) run the communication and public relations aspects of the Clean Sky Joint Undertaking, including the organisation of presentation and dissemination events;
- (q) organise dialogue with users and relevant interest groups;
- (r) oversee the evaluation and selection process of the calls for proposals;
- (s) report on the results of the calls for proposals and calls for tender.

Article 8

ITD Steering Committees

1. Establishment

ITD Steering Committees shall be established by the Governing Board for each of the six ITDs. The following ITDs shall be established:

- (a) Smart Fixed-Wing Aircraft
- (b) Green Regional Aircraft
- (c) Green Rotorcraft
- (d) Systems for Green Operations
- (e) Green and Sustainable Engine
- (f) Eco-Design.

An independent Technology Evaluator shall be established for the entire duration of Clean Sky. His tasks are:

- (a) assess the environmental impact of the technology results arising from individual ITDs;
- (b) provide recommendations to ITDs to optimise environment performance across Clean Sky activities;
- (c) regularly inform, through the Executive Director, the Commission and the National States Representative Group about the environmental impact of the technology results of the ITDs.

The Governing Board shall decide on the composition and setting up of the Technology Evaluator Steering Committee.

2. Composition

Each ITD Steering Committee shall be composed of:

- (a) a chairman — a senior representative of the ITD Leader(s);
- (b) representatives of each Associate within the ITD and other participating ITD leaders;
- (c) executive Director and ITD Responsible Officer;
- (d) Commission representative as appropriate/if requested by the Executive Director of the Clean Sky Joint Undertaking, as observer;
- (e) other ITD Leaders with an interest in the results of the ITD upon invitation.

3. Meetings

Each ITD Steering Committee shall meet at least every three months.

Extraordinary meetings shall be convened at the request of the chairman of the relevant ITD Steering Committee or the Executive Director.

4. Responsibility

Each ITD Steering Committee shall be responsible for:

- (a) guiding and monitoring the technical functions of its ITD and taking decisions on behalf of the Clean Sky Joint Undertaking on all technical matters specific to the relevant ITD;
- (b) establishing the detailed annual work programmes for the ITD;
- (c) defining the contents of the calls for proposals;
- (d) selecting external partners with the assistance of independent experts;
- (e) defining the contents of the calls for tender in conjunction and cooperation with the Member concerned;

- (f) establishing the order of rotation for the Associate representation in the Governing Board; the decision on this item being taken by the Associates only, ITD Leaders shall not have the right to vote;

- (g) handling disputes within the ITD;

- (h) modifications of the budget allocation within its ITD subject to Article 6(3).

5. Voting

Each ITD Steering Committee shall make decisions by a simple majority with votes weighted according to the financial commitment to the ITD of each member of the Steering Committee. The ITD Leaders will have a right to veto any resolution of the Steering Committee of the ITD of which they are leaders.

6. Rules

Each ITD Steering Committee shall adopt its rules of procedure, based on a model common to all ITDs and including detailed provisions governing the exercise of the ITD leaders' rights and obligations, including veto rights.

Article 9

General Forum

1. The General Forum is a consultative body to the Clean Sky Joint Undertaking.

The General Forum shall be composed of one representative from:

- (a) each Member of the Clean Sky Joint Undertaking;
- (b) each Partner.

2. Meetings

The General Forum shall meet at least once a year.

Extraordinary meetings shall be convened at the request of at least 30 % of the General Forum members.

The meetings shall normally take place in Brussels.

3. Roles

The General Forum shall:

- (a) be informed about the Clean Sky Joint Undertaking state of play;
- (b) be informed of the annual budget and receive annual reports and accounts;

- (c) make recommendations and raise issues, by two-thirds majority voting, to the Governing Board and the Executive Director on matters of a technical, managerial or financial nature.

4. Rules

The General Forum shall adopt its rules of procedure.

Article 10

National States Representative Group

1. Composition

The National States Representative Group shall consist of one representative of each Member State and of each other country associated to the Framework Programme. It shall elect a chairman from among its members.

2. Role and tasks

The National States Representative Group shall have an advisory role for the Joint Undertaking. It shall, in particular, review information and provide opinions on the following topics:

- (a) programme progress in the Clean Sky Joint Undertaking;
- (b) compliance and the meeting of targets;
- (c) updating of strategic orientation;
- (d) links to Framework Programme Collaborative Research;
- (e) the outcome and planning of calls for proposals and tenders;
- (f) involvement of SMEs;
- (g) new applications, accessions and changes to the Membership.

It shall also provide input to the Joint Undertaking on the following:

- (a) status of and interface to Joint Undertaking activities to relevant national research programmes and identification of potential areas of cooperation;
- (b) specific measures taken at national level with regard to dissemination events, dedicated technical workshops and communication activities.

The National States Representative Group may issue, on its own initiative, recommendations to the Clean Sky Joint Undertaking on technical, managerial and financial matters, in particular when these affect national interests. The Clean Sky Joint Undertaking shall inform the National States Representatives Group of the action it has taken in respect of such recommendations.

3. The National States Representative Group shall meet at least twice a year and shall be convened by the Joint Undertaking. Extraordinary meetings can be convened to deal with specific matters of major

relevance to Clean Sky Joint Undertaking activities. These meetings shall be called by the Joint Undertaking either on its own initiative or upon request from the National States Representatives Group.

The Executive Director and the chairman of the Governing Board and/or their representatives shall attend the meetings.

The National States Representative Group shall adopt its rules of procedure.

Article 11

Internal auditing function

The functions entrusted by Article 185(3) of Regulation (EC, Euratom) No 1605/2002 to the Commission's internal auditor shall be carried out under the responsibility of the Governing Board, which shall make appropriate provision taking into account the size and scope of the Clean Sky Joint Undertaking.

Article 12

Sources of financing

1. All the resources of the Clean Sky Joint Undertaking shall be devoted to the objectives of the Clean Sky Joint Undertaking.

2. The resources of the Clean Sky Joint Undertaking shall be made up of contributions brought in by its Members and their participating affiliates. A participating affiliate shall be defined as a legal entity that:

- (a) is directly or indirectly owned or controlled by, or owns and controls, or is under the same ownership or control, as the relevant ITD leader or Associate; and
- (b) is incorporated and resident in, and subject to the law of, a Member State of the Community, or an Associated country to the Seventh Framework Programme; and
- (c) participates in the activities of the relevant ITD Leader or Associate in the Clean Sky work programme.

3. The running costs of the Clean Sky Joint Undertaking shall be shared equally between on the one hand the Community, which shall contribute with 50 % of total cost, and on the other hand the rest of the Members, that shall contribute in cash the remaining 50 %. The running costs of the Clean Sky Joint Undertaking shall not exceed 3 % of the overall cash contribution and of the contributions in kind of the Members and Partners referred to in Article 13. If part of the contribution from the Community is not used it may be available for Research Activities referred to in Article 13.

4. All the resources shall be entered into the annual budget.

5. The annual financial contribution of the Community to the Clean Sky Joint Undertaking shall be subject to the verification of the activities carried out by the other Members.

6. Should any Member of the Clean Sky Joint Undertaking, or any participating affiliate, fail to meet its commitments concerning its agreed contributions, the Governing Board shall decide:

- in the case of a defaulting Member, whether the remaining Members should repeal the defaulting Member's membership or if any other measures should be taken until its obligation has been met; or
- in case of a defaulting participating affiliate, whether the remaining Members should repeal the defaulting affiliate's participation or if any other measures should be taken until its obligation has been met.

7. The Clean Sky Joint Undertaking shall own all the tangible assets created by it or transferred to it. ITDs and other tangible and intangible outputs of the Clean Sky research and development programme shall be the property of the Members and/or Partners creating them.

Article 13

Contributions to the activities carried out within the Clean Sky Joint Undertaking

1. In order to support the activities to be developed within the Clean Sky Joint Undertaking, the other Members of the Clean Sky Joint Undertaking shall provide resources equal to the Community contribution. This includes their contribution to the running cost of the Clean Sky Joint Undertaking.

2. The Community contribution will be distributed as follows:

- (a) An amount of up to EUR 400 million shall be allocated to the ITD leaders and an amount of up to EUR 200 million to Associates ⁽¹⁾. ITD leaders and Associates will contribute resources at least matching the Community contribution.
- (b) An amount of at least EUR 200 million shall be allocated to Partners selected by way of competitive calls for proposals. Particular attention shall be paid to ensuring adequate participation of SMEs. The Community financial contribution shall comply with the upper funding limits of the total eligible costs, laid down by the Rules of Participation of the Seventh Framework Programme.

To the extent that a call for proposals remains unanswered or unallocated, the Members shall fulfil the corresponding tasks themselves.

In order to be considered eligible for Community funding, costs incurred in the implementation of the research activities shall be exclusive of value added tax.

3. A preliminary distribution of the Community contribution across the various research activities has been set forward as follows ⁽²⁾:

- (a) 24 % to the Smart Fixed Wing ITD;

⁽¹⁾ This breakdown of cost distribution is in line with normal practice in aeronautical R & D projects, where the biggest share of the work and investment risk is taken on board by the major integrators.

⁽²⁾ This distribution was obtained using a bottom-up approach, where the budgetary requirements of individual ITDs and the Technology Evaluator were mapped against their technical objectives.

- (b) 11 % to the Green Regional Aircraft ITD;
- (c) 10 % to the Green Rotorcraft ITD;
- (d) 27 % to the Sustainable and Green Engines ITD;
- (e) 19 % to the Systems for Green Operations ITD;
- (f) 7 % to the Eco-Design ITD;
- (g) 2 % to the Technology Evaluator.

A detailed breakdown of the resource allocations across the various work packages and Clean Sky Joint Undertaking Members will be established. The detailed breakdown will be adopted by the Governing Board. This process will be supervised by Commission, and will follow the principle of equal treatment between the members.

4. In order to implement the Clean Sky programme, the Clean Sky Joint Undertaking may award grants to its Members, and, in accordance with open criteria agreed by the Governing Board, to partners and other entities for the performance of their research activities.

5. Except for the running costs of the Clean Sky Joint Undertaking, contributions in kind are possible. They shall be subject to an evaluation of their value and relevance to the carrying-out of the activities of the Clean Sky Joint Undertaking, and to acceptance by the Governing Board. The procedure for valuing contributions in-kind will be determined in detail and will be adopted by the Governing Board. It will be based on the following principles:

- (a) the overall approach shall be based on FP7 principles, where contributions in-kind in projects are assessed at review level;
- (b) the financial rules of the Clean Sky Joint Undertaking shall apply;
- (c) verification by an independent auditor will take place.

6. The contributions of the other Members shall be registered by the Clean Sky Joint Undertaking.

Article 14

Financial commitments

The financial commitments of the Clean Sky Joint Undertaking shall not exceed the amount of financial resources at its disposal or committed to its budget.

Article 15

Financial revenues

Except when the Clean Sky Joint Undertaking is wound up pursuant to Article 25, any excess of revenue over expenditure shall not be paid to the Members of the Clean Sky Joint Undertaking.

*Article 16***Financial year**

The financial year shall correspond to the calendar year.

*Article 17***Financial implementation**

The Executive Director shall implement the budget of the Clean Sky Joint Undertaking.

*Article 18***Financial reporting**

1. Every year, the Executive Director shall present to the Governing Board a preliminary draft Annual Budget Plan containing a forecast of annual expenditure for the following two years and including the staff establishment plan. Within this forecast, the estimates of revenue and expenditure for the first of those two years shall be drawn up in such detail as is necessary for the internal budgetary procedure of each Member regarding its financial contributions to the Clean Sky Joint Undertaking. The Executive Director shall supply the Governing Board with all supplementary information needed for this purpose.

2. The members of the Governing Board shall communicate to the Executive Director their comments on the preliminary draft Annual Budget Plan and in particular on the estimates of revenues and expenditure for the following year.

3. Taking into account the comments received from the members of the Governing Board, the Executive Director shall prepare the draft Annual Budget Plan for the following year and submit it to the Governing Board for approval.

4. The Annual Budget Plan and the Annual Implementation Plan for a particular year shall be adopted by the Governing Board of the Clean Sky Joint Undertaking by the end of the previous year.

5. Within two months of the closure of each financial year, the Annual Accounts and balance sheets for the preceding year shall be submitted by the Executive Director to the Governing Board for approval. The Annual Accounts and balance sheets for the preceding year shall be submitted to the Court of Auditors and the Commission.

*Article 19***Planning and reporting**

1. An Annual Report shall present the progress made by the Clean Sky Joint Undertaking every calendar year, in particular in relation to the Annual Implementation Plan for that year. The Annual Report shall be presented by the Executive Director together with the annual accounts and balance sheets. This Annual Report shall include the participation of SMEs in the R & D activities of the Clean Sky Joint Undertaking.

2. The Annual Implementation Plan shall specify the plan for the execution of all the activities of the Clean Sky Joint Undertaking for a particular year, including planned calls for proposals and actions which should be implemented through calls for tenders. The Annual Implementation Plan shall be presented by the Executive Director to the Governing Board together with the Annual Budget Plan. Once approved by the Governing Board, a publishable version of the Annual Implementation Plan shall be made publicly available.

3. The Annual Work Programme shall describe the scope and the budget of calls for proposals needed to implement the research agenda for a particular year.

*Article 20***Service and supply contracts**

The Clean Sky Joint Undertaking shall set up all the appropriate procedures and mechanisms for the implementation, supervision and control of service and supply contracts concluded where necessary for the operations of the Clean Sky Joint Undertaking.

*Article 21***Liability of Members, Insurance**

1. The Members shall have no liability for the debts of the Clean Sky Joint Undertaking.

2. The Clean Sky Joint Undertaking shall take out and maintain appropriate insurance.

*Article 22***Conflict of interests**

The Clean Sky Joint Undertaking shall avoid any conflict of interest in the implementation of its activities.

Members involved in defining work that is subject to a call for proposals or a call for tender, cannot take part in carrying out that work.

*Article 23***Intellectual property policy**

1. The intellectual property (IP) policy of the Clean Sky Joint Undertaking shall be incorporated in the grant agreements concluded by the Clean Sky Joint Undertaking.

2. Its objective is to promote knowledge creation and its exploitation, to achieve fair allocation of rights, to reward innovation, and to achieve a broad participation of private and public entities responding to calls for proposals, subject to signature of a grant agreement with the Clean Sky Joint Undertaking.

3. The IP policy shall be governed by the principles, that each legal entity having concluded a grant agreement with the Clean Sky Joint Undertaking shall remain the owner of:

- (a) information which is held by participants prior to their accession to the grant agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to the grant agreement, and which is needed for carrying out the project or for using the Foreground of the project (hereafter called Background);
- (b) the results, including information, whether or not they can be protected, which are generated by the project concerned; such results include rights related to copyright, design rights, patent rights or similar forms of protection (hereafter called 'Foreground'). Jointly developed Foreground shall belong to all participants developing it if their respective contributions cannot be ascer-

tained. Unless otherwise agreed each joint owner shall be entitled to use such jointly developed Foreground free of charge in its own business and for future research.

Creators of Foreground shall take reasonable steps to protect it, in particular by filing patents. Where such steps are not taken by the creator or by other participants in the ITD with the creator's consent the Joint Undertaking itself, acting through the relevant ITD Steering Committee, may apply for protection.

4. The terms and conditions of access rights and licenses between legal entities having concluded a grant agreement with the Clean Sky Joint Undertaking shall be defined in the grant agreement with regards to Background and Foreground for the purposes of completing the projects, Foreground for research use, and Background necessary to use Foreground for research use.

5. Subject to appropriate undertakings of confidentiality, the legal entities having concluded a grant agreement with the Clean Sky Joint Undertaking shall disclose information relating to Foreground and disseminate Foreground under terms and conditions defined in the grant agreement.

Article 24

Amendments to the Statutes

1. Any Member of the Clean Sky Joint Undertaking may take an initiative to the Governing Board for the amendment of these Statutes.
2. The initiatives referred to in paragraph 1 as approved by the Governing Board shall be submitted as draft amendments to the Commission who shall adopt them, as appropriate.
3. However, any amendment affecting the essential elements of these Statutes and in particular amendments to Articles 3, 4, 6, 7, 12, 13, 21,

24, and 25, shall be adopted in accordance with Article 172 of the Treaty.

Article 25

Liquidation and winding-up

1. At the end of the period provided for in Article 1(1) of this Regulation, or following an amendment of this Regulation pursuant to Article 11(2) of this Regulation, the Clean Sky Joint Undertaking shall be wound up.
2. For the purpose of conducting the proceedings in winding up of the Clean Sky Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.
3. When the Clean Sky Joint Undertaking is being wound up, it shall return to the host state any physical support item made available by the host state in accordance with the host agreement.
4. When any physical support item has been dealt with as provided in paragraph 3, any further assets shall be used to cover the liabilities of the Clean Sky Joint Undertaking and the expenditures relating to its winding up. Any surplus shall be distributed among the Members existing at the time of the winding up in proportion of their actual contribution to the Clean Sky Joint Undertaking. Any surplus distributed to the Community shall be returned to the Commission budget.
5. Remaining assets shall be distributed to the Members existing at the time of the winding up in proportion to their actual contribution to the Clean Sky Joint Undertaking.
6. An ad hoc procedure shall be set up to ensure the appropriate management of any grant agreement and service and supply contract with duration longer than the duration of the Clean Sky Joint Undertaking.

ANNEX II

Founding Members of Clean Sky Joint Undertaking ⁽¹⁾

A. ITD LEADERS:

AgustaWestland

Airbus

Affiliates: Airbus France SAS, Airbus Deutschland GmbH, Airbus España SL, Airbus UK Limited

Alenia

Affiliates: Alenia Aermacchi SpA, Alenia SIA SpA

Dassault Aviation

EADS-CASA

Eurocopter

Affiliates: Eurocopter Deutschland GmbH

Fraunhofer Gesellschaft

Liebherr

Affiliates: Liebherr-Aerospace Toulouse S.A.S., Liebherr-Elektronik GmbH

Thales

Affiliates: Thales ATM, Thales Systèmes Aéroportés, Thales Avionics Electrical System, Thales Communication, Thales Air Systems Division UK

Rolls-Royce

Affiliates: Rolls-Royce Deutschland GmbH

SAAB

Safran

Affiliates: Snecma, Turbomeca, Hispano Suiza, Aircelle, Techspace Aero, Snecma Propulsion Solide, Microturbo, Technofan, Sofrance, Messier Dowty, Messier Bugatti, Labinal, Sagem Sécurité Défense, Snecma Services, SMA

B. ASSOCIATES

Membership of Clean Sky — Founding Members

Organisation	National State	Cluster(s)	Role	Type
Fiber Optic Sensors & Sensing Syst.	Belgium	IGOR		SME
KU Leuven	Belgium	IGOR		Uni
LMS International	Belgium	IGOR		Ind
Micromega Dynamics	Belgium	IGOR		SME

⁽¹⁾ In addition to the Community and subject to Article 3(1) of the Statutes.

Organisation	National State	Cluster(s)	Role	Type
ReFiber ApS	Denmark	RUAG		SME
Dassault Aviation	France		ITD leader	Ind
EADS-CCR	France			Res Cen
InterAC	France	IGOR		SME
ONERA	France			Res Cen
Safran	France		ITD leader	Ind
Thales avionics	France		ITD leader	Ind
Zodiac-ECE/IN	France			Ind
Airbus	France/Ger- many		ITD leader	Ind
EADS IW	France/Ger- many			Ind
Eurocopter	France/Ger- many		ITD leader	Ind
Akustik Technologie Göttingen	Germany	IGOR		SME
DIEHL Aerospace	Germany			Ind
DLR	Germany			Res Cen
EADS-CRC	Germany			Res Cen
Fraunhofer GhF	Germany		ITD leader	Res Cen
HADEG Recycling GmbH	Germany	RUAG		SME
Liebherr Aerospace	Germany		ITD leader	Ind
MTU Aero Engines	Germany			Ind
TU Hamburg-Harburg	Germany	RUAG		Uni
HAI	Greece			Ind
IAI	Israel			Ind
AEROSOFT	Italy			SME
Alenia Aeronautica	Italy		ITD leader	Ind
Avio S.p.A.	Italy			Ind
CIRA	Italy	CIRA		Res Cen
CNR	Italy	Airgreen		Res Cen
CSM	Italy	Airgreen		Res Cen
DEMA	Italy	CIRA		SME
FOXBIT	Italy	Airgreen		SME
Galileo Avionica	Italy			Ind
IMAST	Italy	Airgreen		Res Cen
PIAGGIO	Italy	Airgreen		Ind
Politech. Torino	Italy	Airgreen		Uni
POLO DELLE S.& T. NAPOLI	Italy	Airgreen		Uni
SELEX S.I.	Italy			Ind

Organisation	National State	Cluster(s)	Role	Type
SICAMB	Italy	Airgreen		SME
Univ. Bologna/Forlì	Italy	Airgreen		Uni
Univ. Piemonte	Italy	Airgreen		Uni
Univ. Pisa	Italy	Airgreen		Uni
Univ. Torino	Italy	Airgreen		Uni
ATR	Italy/France			Ind
Agusta Westland	Italy/UK		ITD leader	Ind
ELSYS	Lithuania	CIRA		SME
University of Malta	Malta	GSAF		Uni
ADSE	Netherlands			SME
Aeronamic	Netherlands	GSAF		SME
Airborne Composite	Netherlands	IGOR		SME
Axxiflex	Netherlands			SME
CCM	Netherlands	GSAF		Ind
DNW	Netherlands	IGOR		Res Cen
Eurocarbon	Netherlands	IGOR		Ind
HAN University	Netherlands	IGOR		Uni
MicroFlown Technologies	Netherlands	IGOR, NL		SME
NLR	Netherlands	IGOR, NL, GSAF		Res Cen
Sergem	Netherlands			SME
STORK aerospace	Netherlands	NL		Ind
Ten Cate Advances Composites	Netherlands	IGOR		Ind
TNO	Netherlands	NL		Res Cen
TU Delft	Netherlands	IGOR, NL, GSAF		Uni
Uni. Twente	Netherlands	IGOR, NL		Uni
PZL-Świdnik	Poland			Ind
INCAS	Romania	CIRA		Res Cen
Aerostar	Rumania	CIRA		Ind
Avioane Craiova	Rumania	CIRA		Ind
STRAERO	Rumania	CIRA		Res Cen
ANOTEC	Spain	IGOR		SME
EADS Casa	Spain		ITD leader	Ind
ITP	Spain			Ind
Saab	Sweden		ITD leader	Ind
Volvo Aero Corporation	Sweden			Ind
EPFL Ecole Polytechnique Lausanne	Switzerland	RUAG		Uni
ETH Zurich	Switzerland	RUAG		Uni

Organisation	National State	Cluster(s)	Role	Type
Huntsman Advanced Materials	Switzerland	RUAG		Ind
Icotec AG	Switzerland	RUAG		SME
RUAG Aerospace	Switzerland	RUAG		Ind
University of Applied Sciences NW Switzerland	Switzerland	RUAG		Uni
Advanced Composites Group (ACG)	UK	RUAG		SME
Nottingham University	UK			Uni
QinetiQ	UK			Res Cen
Rolls-Royce	UK		ITD leader	Ind
University of Cranfield	UK	GSAF		Uni

COUNCIL REGULATION (EC) No 72/2008
of 20 December 2007
setting up the ENIAC Joint Undertaking

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 171 and 172 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 European Economic and Social Committee ⁽²⁾,

Whereas:

(1) Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) ⁽³⁾ (hereinafter referred to as the Seventh Framework Programme), provides for a Community contribution for the establishment of long term public-private partnerships in the form of Joint Technology Initiatives (hereinafter referred to as JTIs) which could be implemented through Joint Undertakings within the meaning of Article 171 of the Treaty. These JTIs stem from the work of European Technology Platforms, already set up under the Sixth Framework Programme, and cover selected aspects of research in their field. They should combine private-sector investment and European public funding, including funding from the Seventh Framework Programme.

(2) Council Decision 2006/971/EC of 19 December 2006 concerning the specific programme 'Cooperation' implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ⁽⁴⁾ underlines the need for ambitious pan-European public-private partnerships to speed up the development of major technologies by large research actions at Community level including, in particular, JTIs.

(3) The Lisbon Growth and Jobs Agenda underscores the need to develop favourable conditions for investment in knowledge and innovation in the Community to boost competitiveness, growth and jobs.

(4) In its conclusions of 25 and 26 November 2004, the Council encouraged the Commission to further elaborate the concepts of Technology Platforms and JTIs. It underlined that such initiatives could contribute to coordinating overall Community research efforts with a view to achieving synergies with the activities of existing schemes such as Eureka taking into account their important contribution to Research and Development (hereinafter referred to as R & D).

(5) European companies and other R & D organisations active in the field of nanoelectronics took the lead in establishing the European Technology Platform on Nanoelectronics (hereinafter referred to as the ENIAC Technology Platform) under the Sixth Framework Programme. The ENIAC Technology Platform developed a Strategic Research Agenda based on an extensive consultation with public and private stakeholders. The Strategic Research Agenda identified the priorities in the nanoelectronics domain and recommended directions for a JTI in this field.

(6) The JTI on nanoelectronics responds to the Commission Communications of 6 April 2005 on 'Building the ERA of knowledge for growth' and of 20 July 2005 on 'Common Actions for Growth and Employment: The Community Lisbon Programme', which call for a new and more ambitious approach to large-scale public-private partnerships in fields of major interest for European competitiveness identified through dialogue with industry.

(7) The JTI on nanoelectronics responds to the need for support for pervasive Information and Communication Technologies as identified in the report 'Creating an Innovative Europe' of January 2006. This report also commends the ENIAC Joint Technology model for combining national and Community funding within a clear legal structure and in a harmonised and synchronous manner.

(8) The JTI on nanoelectronics should create a sustainable public-private partnership and increase and leverage private and public investment in the sector of nanoelectronics in Europe, which for the purpose of this Regulation includes the Member States of the European Union (hereinafter referred to as Member States) and countries associated with the Seventh Framework Programme (hereinafter referred to as the associated countries). The JTI on nanoelectronics should also achieve effective coordination and synergy of resources and funding from the Framework Programme,

⁽¹⁾ Opinion of 12 December 2007 (not yet published in the Official Journal).

⁽²⁾ Opinion of 25 October 2007 (not yet published in the Official Journal).

⁽³⁾ OJ L 412, 30.12.2006, p. 1.

⁽⁴⁾ OJ L 400, 30.12.2006, p. 86, corrected by OJ L 54, 22.2.2007, p. 30.

- industry, national R & D programmes and intergovernmental R & D schemes, thus contributing to strengthening Europe's future growth, competitiveness and sustainable development. Finally, its objective should be to foster collaboration between all stakeholders such as industry, including small and medium-sized enterprises (SMEs), national authorities, academic and research centres pulling together and focusing the research effort.
- (9) The JTI on nanoelectronics should define a commonly agreed research agenda (hereinafter referred to as the Research Agenda), closely following the recommendations of the Strategic Research Agenda developed by the ENIAC Technology Platform. This Research Agenda should identify and regularly review research priorities for the development and adoption of key competences for nanoelectronics across different application areas in order to strengthen European competitiveness and allow the emergence of new markets and societal applications.
- (10) The JTI on nanoelectronics should address two objectives which are a substantial part of the Strategic Research Agenda of the ENIAC Technology Platform: enhancing the further integration and miniaturisation of devices, and increasing their functionalities. It should deliver new materials, equipment and processes, new architectures, innovative manufacturing processes, disruptive design methodologies and new packaging and 'systemising' methods. It should drive and be driven by innovative high-tech applications in the area of communication and computing, transport, health care and wellness, energy and environmental management, security and safety, and entertainment.
- (11) The ambition and scope of the stated objectives of the JTI on nanoelectronics, the scale of the financial and technical resources that need to be mobilised, and the need to achieve effective coordination and synergy of resources and funding, call for action to be taken by the Community. Therefore, it is necessary to set up a Joint Undertaking (hereinafter referred to as the ENIAC Joint Undertaking) under Article 171 of the Treaty as a legal entity responsible for the implementation of the JTI on nanoelectronics. To ensure the appropriate management of R & D activities initiated under the Seventh Framework Programme, the ENIAC Joint Undertaking should be set up for a period up to 31 December 2017.
- (12) The ENIAC Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament, on the recommendation of the Council. However, account should be taken of the specificities resulting from the nature of JTIs as public-private partnerships and in particular from the private sector contribution to the budget.
- (13) The objectives of the ENIAC Joint Undertaking should be pursued by pooling resources from the public and private sectors to support R & D activities in the form of projects. To that end, the ENIAC Joint Undertaking should be able to organise competitive calls for proposals for projects to implement parts of the Research Agenda. The R & D activities should respect fundamental ethical principles applicable in the Seventh Framework Programme.
- (14) The ENIAC Joint Undertaking will ensure and promote a safe, integrated, and responsible approach to nanoelectronics in keeping with the high safety standards already established in the nanoelectronics industry and in accordance with public health, safety, environmental and consumer Community policies and the European Action 'Nanosciences and nanotechnologies: An action plan for Europe 2005-2009'.
- (15) The founding members of the ENIAC Joint Undertaking should be the Community, Belgium, Germany, Estonia, Ireland, Greece, Spain, France, Italy, the Netherlands, Poland, Portugal, Sweden, the United Kingdom, and AENEAS, an association representing companies and other R & D organisations active in the field of nanoelectronics in Europe. The ENIAC Joint Undertaking should be open to new members.
- (16) The rules for the organisation and operation of the ENIAC Joint Undertaking should be laid down in the statutes of the ENIAC Joint Undertaking as part of this Regulation.
- (17) A letter of commitment to contribute to the establishment and implementation of the ENIAC Joint Undertaking has been signed by AENEAS.
- (18) The projects should be supported both by the Community's and ENIAC Member States' financial contribution as well as by contributions in kind from the R & D organisations participating in the projects of the ENIAC Joint Undertaking. Further financing options may be available, inter alia, from the European Investment Bank (EIB), in particular through the Risk-Sharing Finance Facility developed jointly with the EIB and the Commission pursuant to Annex III of Decision 2006/971/EC.
- (19) Public funding for the R & D activities following open and competitive calls for proposals published by the ENIAC Joint Undertaking should consist of national financial contributions from the ENIAC Member States and a financial contribution from the ENIAC Joint Undertaking. The financial contribution of the ENIAC Joint Undertaking should be provided at a percentage of the R & D costs

incurred by participants in projects. This percentage should be equal for all participants in projects in any given call for proposals.

- (20) Over the duration of the ENIAC Joint Undertaking, the R & D organisations participating in projects should provide resources that equal or exceed the total public funding for the R & D activities.
- (21) Since there is a need to ensure stable employment conditions and equal treatment of staff, and in order to attract specialised scientific and technical staff of the highest calibre, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾ should be applied to all staff recruited by the ENIAC Joint Undertaking.
- (22) As a body endowed with legal personality, the ENIAC Joint Undertaking should be accountable for its actions. Where relevant, the Court of Justice should be competent to resolve any disputes arising from the activities of the Joint Undertaking.
- (23) The Commission should regularly report on the progress by the ENIAC Joint Undertaking to the European Parliament and the Council.
- (24) The ENIAC Joint Undertaking should adopt, in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾ (hereinafter referred to as the Financial Regulation) and subject to prior consent from the Commission, specific financial rules which take into account its specific operating needs arising, in particular, from the need to combine Community and national funding to support R & D activities in an efficient and timely manner. In order to ensure a harmonised treatment between the participants of the ENIAC Joint Undertaking research activities and those of the indirect actions of the Seventh Framework Programme, it is appropriate that value added tax should not be an eligible cost for Community funding, in line with Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) ⁽³⁾.
- (25) Appropriate measures should be taken to prevent irregularities and fraud, and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ⁽⁴⁾, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽⁵⁾, and Regulation (EC) No 1073/1999 of 25 May 1999 of the European Parliament and of the Council concerning investigations concluded by the European Anti-Fraud Office (OLAF) ⁽⁶⁾.
- (26) The Intellectual Property Rights Policy of the ENIAC Joint Undertaking should promote knowledge creation and exploitation.
- (27) In order to facilitate the setting up of the ENIAC Joint Undertaking, the Commission should be responsible for the establishment and initial operation of the ENIAC Joint Undertaking until it has the operational capacity to implement its own budget.
- (28) Since the objective of this Regulation, namely the establishment of the ENIAC Joint Undertaking, cannot be sufficiently achieved by the Member States due to the trans-national nature of the great research challenges identified, which requires the pooling of complementary knowledge and financial resources across the sectors and borders and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS REGULATION:

Article 1

Establishment of a Joint Undertaking

1. For the implementation of the Joint Technology Initiative (hereinafter JTI) on nanoelectronics, a Joint Undertaking within the meaning of Article 171 of the Treaty (hereinafter the ENIAC Joint Undertaking) is hereby set up for a period up to 31 December 2017.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1. Regulation as amended by Regulation (EC, Euratom) No 337/2007 (OJ L 90, 30.3.2007, p. 1).

⁽²⁾ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽³⁾ OJ L 391, 30.12.2006, p. 1.

⁽⁴⁾ OJ L 312, 23.12.1995, p. 1.

⁽⁵⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁶⁾ OJ L 136, 31.5.1999, p. 1.

2. The seat of the ENIAC Joint Undertaking shall be located in Brussels, Belgium.

Article 2

Objectives

The ENIAC Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and the theme 'Information and Communication Technologies' of the Specific Programme 'Cooperation'. It shall, in particular:

- (a) define and implement a Research Agenda for the development of key competences for nanoelectronics across different application areas in order to strengthen European competitiveness and sustainability and allow for the emergence of new markets and societal applications;
- (b) support the activities required for the implementation of the Research Agenda (hereinafter R & D activities), notably by awarding funding to participants in selected projects following competitive calls for proposals;
- (c) promote a public-private partnership aiming at mobilising and pooling Community, national and private efforts, increasing overall R & D investments in the field of nanoelectronics, and fostering collaboration between the public and private sectors;
- (d) achieve synergy and coordination of European R & D efforts in the field of nanoelectronics including, when added value can be created, the progressive integration into the ENIAC Joint Undertaking of the related activities in this field currently implemented through intergovernmental R & D schemes (Eureka);
- (e) promote the involvement of SMEs in its activities in line with the objectives of the Seventh Framework Programme.

Article 3

Legal status

The ENIAC Joint Undertaking shall be a Community body and shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

Article 4

Statutes

The statutes of the ENIAC Joint Undertaking, as set out in the Annex hereto, constitute an integral part of this Regulation and are hereby adopted.

Article 5

Community contribution

1. The maximum Community contribution to the ENIAC Joint Undertaking covering running costs and R & D activities shall be EUR 450 million paid from the appropriations in the general budget of the European Union allocated to the theme 'Information and Communication Technologies' of the Specific Programme 'Cooperation'.
2. The arrangements for the Community financial contribution shall be established by means of a general agreement and annual financial agreements to be concluded between the Commission, on behalf of the Community, and the ENIAC Joint Undertaking.
3. The Community contribution to the ENIAC Joint Undertaking used to fund projects shall be allocated following open and competitive calls for proposals.

Article 6

Financial rules

1. The ENIAC Joint Undertaking shall adopt specific financial rules in accordance with Article 185(1) of the Financial Regulation. They may depart from the rules laid down in Commission Regulation (EC, Euratom) No 2343/2002 ⁽¹⁾ on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation where the specific operating needs of the ENIAC Joint Undertaking so require and subject to prior consent from the Commission.
2. The ENIAC Joint Undertaking shall have its own internal audit capability.

Article 7

Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the ENIAC Joint Undertaking and its executive director.
2. Without prejudice to paragraph 3 of this Article and Article 7(2) of the statutes, the ENIAC Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority empowered to conclude contracts by the Conditions of Employment of Other Servants of the European Communities in respect of its staff.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

3. The governing board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations of Officials of the European Communities, and the Conditions of Employment of Other Servants of the European Communities.

4. The staff resources shall be determined in the establishment plan of the ENIAC Joint Undertaking that shall be set out in its annual budget.

5. The staff of the ENIAC Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed no more than once for a fixed period. The total period of engagement shall not exceed seven years and shall not in any case exceed the lifetime of the Joint Undertaking.

6. All cost related to the staff shall be borne by the ENIAC Joint Undertaking.

7. The ENIAC Joint Undertaking may adopt provisions to allow experts to be seconded to it.

Article 8

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the ENIAC Joint Undertaking and its staff.

Article 9

Liability

1. The contractual liability of the ENIAC Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement or contract in question.

2. In the case of non-contractual liability, the ENIAC Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.

3. Any payment by the ENIAC Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the ENIAC Joint Undertaking and shall be covered by the resources of the ENIAC Joint Undertaking.

4. The ENIAC Joint Undertaking shall be solely responsible for meeting its obligations.

Article 10

Jurisdiction of the Court of Justice and applicable law

1. The Court of Justice shall have jurisdiction:

- (a) any dispute between the members which relates to the subject matter of this Regulation and/or the statutes referred to in Article 4;
- (b) pursuant to any arbitration clause contained in agreements and contracts concluded by the ENIAC Joint Undertaking;
- (c) in actions brought against the ENIAC Joint Undertaking, including decisions of its bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;
- (d) in disputes related to compensation for damage caused by the staff of the ENIAC Joint Undertaking in the performance of their duties.

2. For any matter not covered by this Regulation or by other acts of Community law, the law of the State where the seat of the ENIAC Joint Undertaking is located shall apply.

Article 11

Report, evaluations and discharge

1. The Commission shall present to the European Parliament and the Council an annual report on the progress achieved by the ENIAC Joint Undertaking. This report shall contain details of implementation of the JTI on nanoelectronics, including number of proposals submitted, number of proposals selected for funding, type of participants, including SMEs, and country statistics.

2. By 31 December 2010, as well as by 31 December 2013, the Commission shall carry out an interim evaluation of the ENIAC Joint Undertaking with the assistance of independent experts, on the basis of terms of reference established after consultation of the ENIAC Joint Undertaking. These evaluations shall cover the quality and efficiency of the ENIAC Joint Undertaking and progress towards the objectives set. The Commission shall communicate the conclusions thereof, accompanied by its observations and, where appropriate, proposals to amend this Regulation, including the possible early termination of the ENIAC Joint Undertaking, to the European Parliament and the Council.

3. No later than six months after the winding-up of the ENIAC Joint Undertaking, the Commission shall conduct a final evaluation of the ENIAC Joint Undertaking with the assistance of independent experts. The results of the final evaluation shall be presented to the European Parliament and the Council.

4. Discharge for the implementation of the budget of the ENIAC Joint Undertaking shall be given by the European Parliament, upon recommendation of the Council, in accordance with the procedure provided for in the financial rules of the ENIAC Joint Undertaking referred to in Article 6.

Article 12

Protection of the financial interests of the members and anti-fraud measures

1. The ENIAC Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls.

2. In case of irregularities, the members of the ENIAC Joint Undertaking shall reserve the right to recover amounts unduly spent, including by a reduction or a suspension of subsequent contributions to the ENIAC Joint Undertaking.

3. For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 shall apply.

4. The ENIAC Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the ENIAC Joint Undertaking's public funding. These checks and audits shall be performed either directly by the ENIAC Joint Undertaking or by ENIAC member States on its behalf. ENIAC member States may carry out any other checks and audits among the recipients of their national funding as they deem necessary and shall communicate the results to the ENIAC Joint Undertaking.

5. The Commission and/or the Court of Auditors may, if necessary, carry out on-the-spot checks among the recipients of the ENIAC Joint Undertaking's funding and the agents responsible for its allocation. To that end, the ENIAC Joint Undertaking shall ensure that grant agreements and contracts provide for the right of the Commission and/or of the Court of Auditors to carry out the appropriate controls and, in the event of the detection of irregularities, to impose dissuasive and proportionate penalties.

6. The European Anti-Fraud Office (OLAF) established by Commission Decision 1999/352/EC, ECSC, Euratom ⁽¹⁾ shall enjoy the same powers in respect of the ENIAC Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the ENIAC Joint Undertaking is established, it shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF ⁽²⁾. The ENIAC Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

Article 13

Confidentiality

Without prejudice to Article 14, the ENIAC Joint Undertaking shall ensure the protection of sensitive information, whose

disclosure could damage the interests of its members or of participants in projects.

Article 14

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents ⁽³⁾ shall apply to documents held by the ENIAC Joint Undertaking.

2. The ENIAC Joint Undertaking shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 by 7 August 2008.

3. Decisions taken by the ENIAC Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

Article 15

Intellectual property

The rules governing the protection, use and the dissemination of research results, based on Regulation (EC) No 1906/2006, are set out in Article 23 of the statutes.

Article 16

Preparatory actions

1. The Commission shall be responsible for the establishment and initial operation of the ENIAC Joint Undertaking until the Joint Undertaking has the operational capacity to implement its own budget. The Commission shall carry out, in accordance with Community law, all necessary actions in collaboration with other founding members and with the involvement of the competent bodies.

2. For that purpose, until such time as the executive director takes up his/her duties following his/her appointment by the governing board in accordance with Article 7(2) of the statutes, the Commission may assign a limited number of its officials, including one to fulfil the functions of the executive director, on an interim basis.

3. The interim executive director may authorise all payments covered by the credits provided in the budget of the ENIAC Joint Undertaking once approved by the governing board and may conclude contracts, including staff contracts following the adoption of the ENIAC Joint Undertaking establishment plan.

⁽¹⁾ OJ L 136, 31.5.1999, p. 20.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

⁽³⁾ OJ L 145, 31.5.2001, p. 43.

The Commission authorising officer may authorise all payments covered by the credits provided in the budget of the ENIAC Joint Undertaking.

Article 17

Support from the host State

A host agreement shall be concluded between the ENIAC Joint Undertaking and Belgium concerning office accommodation,

privileges and immunities and other support to be provided by Belgium to the ENIAC Joint Undertaking.

Article 18

Entry into force

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 20 December 2007.

For the Council

The President

F. NUNES CORREIA

ANNEX

STATUTES OF THE ENIAC JOINT UNDERTAKING

Article 1

Definitions

For the purposes of these statutes, the following definitions shall apply:

- (a) 'project' means a research and/or development project that is selected by the ENIAC Joint Undertaking following open and competitive calls for proposals and thereafter partly funded by the ENIAC Joint Undertaking;
- (b) 'total costs' means eligible costs of the projects as defined by the respective funding authorities issuing the grant agreements;
- (c) 'running costs' means the costs necessary for the functioning of the ENIAC Joint Undertaking excluding the funding of R & D activities;
- (d) 'affiliated entity' means an affiliated entity as defined in Article 2 of the Regulation (EC) No 1906/2006.

Article 2

Tasks and activities

The main tasks and activities of the ENIAC Joint Undertaking shall be the following:

- (a) to ensure the establishment and sustainable management of the JTI on nanoelectronics;
- (b) to define and make any necessary adjustment to the multiannual strategic plan including the Research Agenda as referred to in Article 19;
- (c) to define and carry out annual implementation plans for executing the multiannual strategic plan as referred to in Article 19;
- (d) to initiate calls for proposals, to evaluate proposals, and award funding to projects selected through open, transparent and effective procedures, within the limits of available funds;
- (e) to develop close cooperation and ensure coordination with European national and trans-national activities, bodies and stakeholders, in particular the Framework Programme, aiming at fostering a fertile innovation environment in Europe and better synergies and exploitation of R & D results in the area of nanoelectronics;
- (f) to monitor progress towards the objectives of the ENIAC Joint Undertaking;
- (g) to undertake communication and dissemination activities;
- (h) to publish information on the projects, including the name of the participants and the amount of the financial contribution of the ENIAC Joint Undertaking per participant;
- (i) to carry out any other activity needed to achieve the objectives referred to in Article 2 of this Regulation.

Article 3

Members

1. The founding members of the ENIAC Joint Undertaking (hereinafter founding members) shall be:

- (a) the Community, represented by the Commission;
- (b) Belgium, Germany, Estonia, Ireland, Greece, Spain, France, Italy, the Netherlands, Poland, Portugal, Sweden, the United Kingdom; and
- (c) upon acceptance of the statutes of the ENIAC Joint Undertaking, the AENEAS association (hereinafter referred to as 'AENEAS'), an association registered under French law (registration No 20070039) with its registered office in Paris (France), acting as a representative of companies and other R & D actors operating in the field of nanoelectronics in Europe.

2. Provided that they subscribe to the objectives as described in Article 2 of this Regulation and are willing to assume all obligations of membership, including the acceptance of the statutes of the ENIAC Joint Undertaking, the following entities may become members of the ENIAC Joint Undertaking:

- (a) other Member States and associated countries;
- (b) any other country (hereinafter referred to as third country) pursuing R & D policies or programmes in the area of nanoelectronics;
- (c) any other legal entity capable of making a substantial financial contribution to the achievement of the objectives of the ENIAC Joint Undertaking.

3. The founding members and new members as referred to in paragraph 2 shall hereinafter be referred to as 'members'.

4. Member States and associated countries members of the ENIAC Joint Undertaking shall hereinafter be referred to as 'ENIAC member States'. Each ENIAC member State shall appoint its representative in the bodies of the ENIAC Joint Undertaking and designate the national entity or entities responsible for fulfilling its obligations with respect to implementation of the activities of the ENIAC Joint Undertaking.

5. The ENIAC member States and the Commission shall hereinafter be referred to as the 'public authorities' of the ENIAC Joint Undertaking.

Article 4

Accession and changes to membership

1. Any new membership application to the ENIAC Joint Undertaking shall be addressed to the governing board in accordance with Article 6(2)(a).

2. Member States or associated countries that are not founding members of the ENIAC Joint Undertaking shall become members upon notification to the governing board of their written acceptance of these statutes and of any other provisions governing the functioning of the ENIAC Joint Undertaking.

3. Any application for membership of the ENIAC Joint Undertaking by third countries shall be considered by the governing board, which shall make a recommendation to the Commission. The Commission may make a proposal to amend this Regulation on the accession of the third country, subject to the successful completion of negotiations with the ENIAC Joint Undertaking.

4. Decisions of the governing board on accession of any other legal entity or recommendations of the governing board on the accession of third countries shall be made taking into account the relevance and potential added value of the applicant for the achievement of the objectives of the ENIAC Joint Undertaking. For any application for new membership, the Commission shall provide timely information to the Council on the assessment and, where applicable, on the decision of the governing board.

5. Membership of the ENIAC Joint Undertaking may not be transferred to a third party unless the prior agreement of the governing board is given.

6. Any member may withdraw from the ENIAC Joint Undertaking. Withdrawal shall become effective and irrevocable six months after notification to the other members following which the former member shall be discharged from any obligations other than those already undertaken through decisions of the ENIAC Joint Undertaking in accordance with these statutes, prior to the member's withdrawal.

Article 5

Bodies of the ENIAC Joint Undertaking

1. The bodies of the ENIAC Joint Undertaking shall be:

- (a) the governing board;
- (b) the executive director;
- (c) the public authorities board;
- (d) the industry and research committee.

2. In case a specific task is not assigned to one of the bodies, the governing board shall be the competent one.

Article 6

Governing board

1. *Composition, voting rights and decision-taking*

- (a) The governing board shall consist of representatives of the members of the ENIAC Joint Undertaking and the chairperson of the industry and research committee;
- (b) each member of the ENIAC Joint Undertaking shall appoint its representatives and a lead delegate who shall hold the voting rights of the member in the governing board. The chairperson of the industry and research committee shall have no voting rights;
- (c) voting rights for AENEAS and the public authorities shall be equal and shall amount in total to at least 90 % of the total votes. The initial distribution of the voting rights shall be 50 % for AENEAS and 50 % for public authorities;
- (d) the distribution of the votes for the public authorities shall be established annually in proportion to the funds they have committed to projects in the past two financial years. The Commission shall hold a minimum of 10 % of the votes;

(e) for the first financial year, and any subsequent financial years in which one or two ENIAC member States have committed public funds to projects in the previous financial years, the Commission shall hold one third of the votes corresponding to public authorities. The remaining two thirds shall be distributed equally amongst the ENIAC member States;

(f) voting rights for any new member that is not a Member State or an associated country shall be determined by the governing board before accession of this member to the ENIAC Joint Undertaking;

(g) decisions shall be adopted by a majority of at least 75 % of votes unless otherwise explicitly stated in these statutes;

(h) the representatives shall not be personally liable for actions undertaken in their capacity as representatives to the governing board.

2. Role and tasks

The governing board shall have overall responsibility for the operations of the ENIAC Joint Undertaking and shall oversee the implementation of its activities.

The governing board shall in particular:

- (a) assess applications and decide or recommend changes in membership in accordance with Article 4;
- (b) decide on the termination of the membership of any member that is in default of its obligations and has not remedied within a reasonable period set by the executive director, without prejudice to the provisions of the Treaty ensuring compliance with Community law;
- (c) adopt the financial rules of the ENIAC Joint Undertaking in accordance with Article 6 of this Regulation;
- (d) approve the initiatives to amend the statutes in accordance with Article 24;
- (e) approve the multiannual strategic plan including the Research Agenda referred to in Article 19(1);
- (f) supervise the overall activities of the ENIAC Joint Undertaking;
- (g) supervise progress in implementing the multiannual strategic plan referred to in Article 19(1);
- (h) approve, in accordance with Article 18(4) the annual implementation plan and the annual budget plan referred to in Article 19(3), including the staff establishment plan;
- (i) approve the annual activity report referred to in Article 19(4) and the annual accounts and balance sheet;
- (j) appoint, dismiss or replace the executive director, provide guidance to the executive director, and monitor the executive director's performance;
- (k) establish committees or working groups to carry out specific tasks as necessary;
- (l) adopt its rules of procedure in accordance with paragraph 3;

- (m) assign any task not specifically allocated to one of the other bodies of the ENIAC Joint Undertaking;
- (n) adopt practical arrangements for implementing Regulation (EC) No 1049/2001 as referred to in Article 14 of this Regulation.

The Community shall hold a veto right for all decisions related to the use of its financial contributions, decisions concerning the winding-up of the ENIAC Joint Undertaking and decisions related to points (a), (b), (c), (j) and (n).

3. Rules of procedure

- (a) the governing board shall meet at least twice a year, normally at the seat of the ENIAC Joint Undertaking;
- (b) the meetings of the governing board shall be chaired by the chairperson of the industry and research committee;
- (c) unless otherwise decided by the governing board, the executive director shall participate in the meetings;
- (d) until the governing board has adopted its own rules of procedure the meetings shall be convened by the Commission;
- (e) the quorum of the governing board shall be constituted by the Commission, AENEAS and at least three ENIAC member States representatives.

Article 7

Executive Director

1. The Executive Director shall be the chief executive responsible for the day-to-day management of the ENIAC Joint Undertaking in accordance with the decisions of the governing board and its legal representative. He/she shall perform his/her tasks with complete independence and shall be accountable to the governing board. The executive director shall exercise, in respect of the staff, the powers laid down in Article 7(2) of this Regulation.

2. The Executive Director shall be appointed by the governing board for a period of three years, following a call for expression of interest published in the *Official Journal of the European Union* and in other publicly accessible periodicals or Internet sites. After an evaluation of the executive director's performance, the governing board may extend the term of office once for a further period of not more than four years.

3. The role and tasks of the Executive Director shall be:

- (a) to prepare the annual implementation plan referred to in Article 19(3) and the annual budget plan, in collaboration with the industry and research committee, and submit them to the governing board for approval, in accordance with Article 18;
- (b) to oversee the organisation and execution of all activities needed to carry out the annual implementation plan within the framework and the rules laid down by these statutes and subsequent decisions adopted by the governing board and the public authorities board;
- (c) to prepare the annual activity report and the annual accounts referred to in Article 19(4) and balance sheets as referred to in Article 18(5) and submit them to the governing board for approval;

- (d) to present proposals on the internal functioning of the ENIAC Joint Undertaking to the governing board for approval;
- (e) to present proposals on the rules of procedure for calls for proposals launched by the ENIAC Joint Undertaking, including the associated project proposal evaluation and selection process to the public authorities board for approval;
- (f) to manage the launch of calls for proposals, the process of evaluating and selecting project proposals and negotiating grant agreements for selected proposals, and the subsequent periodic monitoring and follow-up of projects within the mandate given by the public authorities board;
- (g) to conclude grant agreements for the implementation of the R & D activities as referred to in Articles 12 and 13, and service and supply contracts necessary for the operations of the ENIAC Joint Undertaking as referred to in Article 20;
- (h) to authorise all payments due by the ENIAC Joint Undertaking;
- (i) to establish and implement the necessary measures and actions for assessing the progress of the ENIAC Joint Undertaking towards achieving its objectives, including independent monitoring and auditing to assess the effectiveness and performance of the ENIAC Joint Undertaking;
- (j) to organise project reviews and technical audits for the assessment of research and development results, and to report to the governing board on the overall results;
- (k) to carry out financial audits, directly or through the national public authorities, on project participants as necessary, in compliance with the financial rules of the ENIAC Joint Undertaking;
- (l) to negotiate the conditions for accession of new members of the ENIAC Joint Undertaking, on behalf of and within the mandate of the governing board;
- (m) to carry out any other necessary action for the successful achievement of the ENIAC Joint Undertaking's objectives not provided for in the annual implementation plan referred to in Article 19(3), within any limits and conditions established by the governing board;
- (n) to convene and/or organise meetings of the governing board and of the public authorities board and to attend where appropriate these meetings as an observer;
- (o) to provide the governing board with any information requested by it;
- (p) to submit to the governing board his proposal(s) concerning the organisation structure of the Secretariat;
- (q) to perform risk assessment and risk management analysis and to propose to the governing board any insurance that it may be necessary for the ENIAC Joint Undertaking to take out in order to meet its obligations.

4. A secretariat under the responsibility of the executive director shall be established to provide support to all his/her tasks, including:

- (a) secretarial support for the bodies of the ENIAC Joint Undertaking;
- (b) operational support for evaluating proposals and monitoring projects, including support in organising calls for proposals and arranging for project reviews and technical audits;
- (c) establishment and management of an appropriate internal audit and accounting system;
- (d) financial tasks, including payments of financial contributions from the ENIAC Joint Undertaking to participants in projects;
- (e) support for communication activities such as public relations, publication and dissemination activities and organisation of events;
- (f) managing invitations to tender for ENIAC Joint Undertaking goods/services requirements according to the financial rules of the ENIAC Joint Undertaking.

5. Non-financial tasks of the secretariat may be contracted by the ENIAC Joint Undertaking to external service providers. Such contracts shall be established in accordance with the provisions of the financial rules of the ENIAC Joint Undertaking.

Article 8

Public authorities board

1. Composition, voting rights and decision-taking

- (a) The public authorities board shall consist of the public authorities of the ENIAC Joint Undertaking;
- (b) each public authority shall appoint its representatives and a lead delegate who shall hold the voting rights in the public authorities board;
- (c) one third of the voting rights in the public authorities board shall be assigned to the Community; the remaining two thirds shall be allocated to the other members of the public authorities board on an annual basis in proportion to their financial contribution to the activities of the ENIAC Joint Undertaking for that year in accordance with Article 11(6)(b) and with an upper limit for any given member of 50 % of the total voting rights in the public authorities board;
- (d) if less than three ENIAC Member States have communicated to the executive director their financial contribution according to Article 11(6)(b), the Community shall hold one third of the votes and the remaining two thirds shall be distributed equally amongst the ENIAC Member States;
- (e) decisions shall be taken by at least 60 % of total votes;

- (f) the representative of the Community shall have a veto right on all issues concerning the use of its own contribution to the ENIAC Joint Undertaking;

- (g) any Member State or associated country to the Framework Programme that is not a member of the ENIAC Joint Undertaking shall be able to participate in the public authorities board as an observer. These States shall receive all relevant public authorities board documents and shall be able to provide advice on any decision taken by the public authorities board.

2. Role and tasks

The public authorities board shall:

- (a) ensure that the principles of fairness and transparency are properly applied in the allocation of public funding to participants in projects;
 - (b) discuss and approve the annual work programme referred to in Article 19(2) upon proposals from the industry and research committee, including the budgets available for calls for proposals;
 - (c) approve the rules of procedure for calls for proposals, for the evaluation and selection of proposals and for monitoring of projects;
 - (d) upon proposal of the representative of the Community, decide on the ENIAC Joint Undertaking financial contribution to the budget of the calls for proposals;
 - (e) approve the scope and the launch of calls for proposals;
 - (f) approve the selection of project proposals to receive public funding following calls for proposals;
 - (g) upon proposal of the representative of the Community, decide on the percentage of the ENIAC Joint Undertaking's financial contribution referred to in Article 13(6)(a) to participants in projects arising from calls for proposals in any given year;
 - (h) adopt its rules of procedure in accordance with paragraph 3.
- ##### 3. Rules of procedure
- (a) the public authorities board shall meet at least twice a year, normally at the seat of the ENIAC Joint Undertaking;
 - (b) the public authorities board shall elect its chairperson;
 - (c) until the public authorities board has adopted its rules of procedure, the meetings shall be convened by the Commission;
 - (d) the quorum of the public authorities board shall be constituted by the Commission and at least three ENIAC member States representatives.

Article 9

Industry and research committee1. *Composition*

- (a) AENEAS shall appoint the members of the industry and research committee;
- (b) the industry and research committee shall consist of no more than 25 members.

2. *Role and tasks*

The industry and research committee shall:

- (a) elaborate the draft multiannual strategic plan referred to in Article 19(1), including the content and update of the Research Agenda, and submit it to the governing board for approval;
- (b) prepare the draft annual work programme referred to in Article 19(2), including proposals for the content of calls for proposals to be launched by the ENIAC Joint Undertaking;
- (c) elaborate proposals regarding the technological, research and innovation strategy of the ENIAC Joint Undertaking;
- (d) elaborate proposals for activities regarding the creation of open innovation environments, promoting the participation of SMEs, developing standards transparently and with openness to participation, international cooperation, dissemination and public relations;
- (e) advise the other bodies on any issue related to planning and operating research and development programmes, fostering partnerships and leveraging resources in Europe in order to achieve the objectives of the ENIAC Joint Undertaking;
- (f) appoint working groups where necessary under the overall coordination of one or more members of the industry and research committee in order to achieve the above tasks;
- (g) adopt its rules of procedure in accordance with paragraph 3.

3. *Rules of procedure*

- (a) the industry and research committee shall meet at least twice a year;
- (b) the industry and research committee shall elect its chairperson;
- (c) until the industry and research committee has adopted its own rules of procedure, the meetings shall be convened by AENEAS.

Article 10

Internal auditing function

The functions entrusted by Article 185(3) of the financial Regulation to the Commission's internal auditor shall be carried out under the responsibility of the governing board, which shall make appropriate provision, taking into account the size and the scope of the ENIAC Joint Undertaking.

Article 11

Sources of financing

1. The activities of the ENIAC Joint Undertaking shall be jointly funded through financial contributions paid in partial instalments and in-kind contributions from its members to support the running costs and the R & D Activities.

2. All resources of the ENIAC Joint Undertaking shall be devoted to achieving the objectives laid down in Article 2 of this Regulation.

3. The resources of the ENIAC Joint Undertaking entered to its budget shall be composed of:

- (a) members' contributions to the running costs, except for those referred to in paragraph 5(c);
- (b) a Community contribution to fund the R & D activities;
- (c) any revenue generated by the ENIAC Joint Undertaking;
- (d) any other financial contributions and revenues.

Any interest yielded by the contributions paid by its members shall be considered to be revenue of the ENIAC Joint Undertaking.

4. Any legal entity that is not a member may make in-kind or cash contributions to the resources of the ENIAC Joint Undertaking under the terms and conditions negotiated by the executive director on behalf of and within the mandate granted by the governing board.

5. The running costs of the ENIAC Joint Undertaking shall be borne by its members:

- (a) AENEAS shall make a contribution of up to EUR 20 million or up to 1 % of the sum of the total cost of all projects, whichever figure is higher, but not exceeding EUR 30 million;
- (b) the Community shall make a contribution of up to EUR 10 million. If part of this contribution is not used it may be available for R & D Activities referred to in paragraph 6;
- (c) ENIAC Member States shall make in-kind contributions to the running costs by facilitating the implementation of projects and the granting of public funds as referred to in Articles 12 and 13;

(d) the contributions of the Community and AENEAS shall be made available in accordance with the provisions of the relevant annual budget plan referred to in Article 18. Partial instalments shall be provided on the basis of the Joint Undertaking's financial needs.

6. The R & D activities of the ENIAC Joint Undertaking shall be supported through:

(a) a financial contribution from the Community of up to EUR 440 million to finance projects which may be increased by any unspent part of the Community contribution referred to in paragraph 5(b);

(b) financial contributions from ENIAC Member States that shall amount in total to at least 1,8 times the Community's financial contribution. These financial contributions shall be paid to project participants according to the provisions of Articles 12 and 13. Every year, ENIAC member States shall communicate to the executive director by a date determined by the governing board their national financial commitments reserved for calls for proposals to be launched by the ENIAC Joint Undertaking taking into account the scope of the supported R & D activities addressed in the calls for proposals;

(c) in-kind contributions by R & D organisations participating in projects which shall be equal to their share of the necessary eligible cost of carrying out the projects as defined on the basis of the rules of the funding authorities issuing the grant agreements. Their overall contribution over the duration of the ENIAC Joint Undertaking shall be equal to or greater than the contribution of public authorities.

7. The financial contributions of the members to the ENIAC Joint Undertaking shall be paid through partial instalments in accordance with the provisions of the annual budget plan referred to in Article 18.

8. Any new member of the ENIAC Joint Undertaking other than Member States or associated countries shall make a financial contribution to the ENIAC Joint Undertaking.

9. Should any member of the ENIAC Joint Undertaking be in default of its commitments concerning its agreed financial contribution to the ENIAC Joint Undertaking, the executive director shall notify the member thereof in writing and shall set a reasonable period by which the default may be remedied. If the default is not remedied within the given period, the executive director shall convene a meeting of the governing board to decide whether the defaulting member's membership should be revoked or if any other measures should be taken until its obligations have been met.

10. The ENIAC Joint Undertaking shall own all assets generated by or transferred to it for the fulfilment of its objectives as described in Article 2 of this Regulation, unless otherwise specified.

Article 12

Implementation of R & D activities

1. The ENIAC Joint Undertaking shall support R & D activities through open and competitive calls for proposals, independent evaluation and selection of proposals, allocation of public funding to selected proposals, and the funding of projects.

2. The ENIAC Joint Undertaking shall conclude grant agreements with project participants for the implementation of the projects. The terms and conditions of these grant agreements shall be in accordance with the financial rules of the ENIAC Joint Undertaking and shall refer to and, where appropriate, rely on corresponding national grant agreements as referred to in Article 13(6)(b).

3. In order to enable the implementation of projects and the granting of public funds, the ENIAC Joint Undertaking shall establish administrative arrangements with the national entities designated by the ENIAC member States for that purpose, in line with the financial rules of the ENIAC Joint Undertaking.

4. Member States or associated countries that are not members of the ENIAC Joint Undertaking may conclude similar arrangements with the ENIAC Joint Undertaking.

5. The ENIAC Joint Undertaking shall set up the procedures for the supervision and control of the R & D activities, including provisions for monitoring and technical auditing of projects. The ENIAC Member States shall not require additional monitoring and technical audit reports other than those required by the ENIAC Joint Undertaking.

Article 13

Funding of projects

1. Public funding for projects selected following calls for proposals published by the ENIAC Joint Undertaking consist of the national financial contributions of the ENIAC Member States, and/or of the financial contribution of the ENIAC Joint Undertaking. Any public support under this initiative is without prejudice to the procedural and material State aid rules when applicable.

2. The following legal entities shall be eligible for receiving funding from the Community contribution to the R & D Activities of the ENIAC Joint Undertaking:

(a) legal entities established in the ENIAC Member States having concluded a grant agreement for such project with the corresponding national authority following the award procedures of the ENIAC Joint Undertaking;

(b) other legal entities established in Member States or associated countries that are not members of the ENIAC Joint Undertaking. In this case, such States or countries may establish administrative arrangements with the ENIAC Joint Undertaking to enable the participation of the companies and R & D organisations located within their territory.

In order to be considered eligible for Community funding, costs incurred in the implementation of R & D Activities shall be exclusive of value added tax.

3. The calls for proposals launched and published by the ENIAC Joint Undertaking shall specify the overall budget available for each call. This budget shall indicate the amounts committed at national level by each ENIAC Member State and the estimated amount of the ENIAC Joint Undertaking's financial contribution. The calls shall state the evaluation criteria in relation to the objectives of the call and any national or Joint Undertaking eligibility criteria.

4. The ENIAC Joint Undertaking's financial contribution to the budget for each call shall be equivalent to 55 % of the total amount committed by the ENIAC Member States, unless the public authorities board decides otherwise on a proposal from the representative of the Community.

5. Calls, evaluation and selection of proposals shall respect the following rules:

- (a) calls for proposals launched by the ENIAC Joint Undertaking shall be open to participants established in ENIAC Member States and in any other Member State or associated country. They shall be made public;
- (b) consortia of participants in project proposals submitted in response to these calls shall include at least three non-affiliated entities established in at least three ENIAC Member States. The prospective participants and their contribution to the project proposals shall be verified by the Joint Undertaking, on the basis of verifications provided by the respective public authorities, against the pre-defined national and Joint Undertaking eligibility criteria for funding. They shall be informed on their compliance, where possible before they submit a full project proposal. These checks shall not result in significant delays in the proposal evaluation and the selection process;
- (c) the evaluation and selection process carried out with the assistance of independent experts shall ensure that allocation of the ENIAC Joint Undertaking's public funding follows the principles of equal treatment, excellence and competition;
- (d) following the evaluation of proposals, the public authorities board shall establish a ranked list of proposals on the basis of clear evaluation criteria and their collective contribution towards achieving the objectives of the call;
- (e) the public authorities board shall decide on the selection of proposals and the allocation of public funding to selected proposals up to the limit of the budgets available, taking into account any national eligibility criteria and the verifications carried out in accordance with point (b). This decision shall also be binding for ENIAC Member States without any further evaluation or selection processes.

6. Funding of projects

- (a) the financial contribution of the ENIAC Joint Undertaking to participants in projects shall be provided at a percentage of the total costs, defined when appropriate by the respective funding authorities issuing the grant agreements, incurred for implementing the project. This percentage shall be determined on a yearly basis by the ENIAC Joint Undertaking and be up to 16,7 %. This percentage shall be equal for all participants in projects arising from any given call for proposals;
- (b) ENIAC Member States shall establish grant agreements with participants in projects in accordance with their national rules, in particular as regards eligibility criteria and other necessary financial and legal requirements. When applicable, national financial contributions from ENIAC Member States shall be disbursed directly to participants in projects according to the national grant agreements. ENIAC Member States shall undertake best efforts to synchronise the terms and conditions and the establishment of grant agreements and to disburse their financial contributions in a timely manner.

Article 14

Financial commitments

The financial commitments of the ENIAC Joint Undertaking shall not exceed the amount of financial resources available or committed to its budget by its members.

Article 15

Financial revenues

Except when the ENIAC Joint Undertaking is wound up pursuant to Article 25, any excess revenue over expenditure shall not be paid to the members of the ENIAC Joint Undertaking.

Article 16

Financial year

The financial year shall correspond to the calendar year.

Article 17

Financial implementation

The Executive Director shall implement the budget of the ENIAC Joint Undertaking.

Article 18

Financial reporting

1. Every year, the Executive Director shall present to the governing board a preliminary draft annual budget plan containing a forecast of annual expenditure for the following two years and including the staff establishment plan. Within this forecast, the estimates of revenue and expenditure for the first of those two years shall be drawn up in such detail as is necessary for the internal budgetary procedure of each member regarding its financial contributions to the ENIAC Joint Undertaking. The executive director shall supply the governing board with all supplementary information needed for this purpose.

2. The members of the governing board shall communicate to the executive director their comments on the preliminary draft annual budget plan and in particular on the estimates of resources and expenditure for the following year.

3. Taking into account the comments received from the members of the governing board, the Executive Director shall prepare the draft annual budget plan for the following year in collaboration with the industry and research committee and submit it to the governing board for approval.

4. The annual budget plan and the annual implementation plan, referred to in Article 19(3), for a particular year shall be adopted by the governing board of the ENIAC Joint Undertaking by the end of the previous year.

5. Within two months of the closure of each financial year, the annual accounts and balance sheets for the preceding year shall be submitted by the executive director to the governing board for approval. The annual accounts and balance sheets for the preceding year shall be submitted to the Court of Auditors and the Commission.

*Article 19***Planning and reporting**

1. The multiannual strategic plan shall specify the strategy and plans for achieving the objectives of the ENIAC Joint Undertaking, including the Research Agenda.

2. The annual work programme shall describe the scope and budget of calls for proposals needed to implement the Research Agenda for a particular year.

3. The annual implementation plan shall specify the plan for the execution of all the activities of the ENIAC Joint Undertaking for a particular year, including planned calls for proposals and actions needing to be implemented through calls for proposals. The annual implementation plan shall be presented by the executive director to the governing board together with the annual budget plan referred to in Article 18.

4. The annual activity report shall present progress made by the ENIAC Joint Undertaking in each calendar year, in particular in relation to the multiannual strategic plan and the annual implementation plan for that year. It shall also include information on the participation of SMEs in Joint Undertaking's R & D Activities.

The annual activity report shall be presented by the executive director together with the annual accounts and balance sheets.

5. Once approved by the governing board, a publishable version of the multiannual strategic plan, the annual implementation plan and the annual activity report shall be made available.

*Article 20***Service and supply contracts**

The ENIAC Joint Undertaking shall set up all the appropriate procedures and mechanisms for the implementation, supervision and control of service and supply contracts concluded where necessary for the operations of the ENIAC Joint Undertaking, according to the provisions of its financial rules.

*Article 21***Liability of members, insurance**

1. The ENIAC Joint Undertaking shall not be responsible for meeting the financial obligations of its members. It shall not be liable for any ENIAC member State failing to meet its obligations resulting from calls for proposals launched by the ENIAC Joint Undertaking.

2. The members are not liable for any of the ENIAC Joint Undertaking's obligations. The financial liability of the members is an internal liability towards the ENIAC Joint Undertaking only, and is limited to their commitment to contribute to the resources as set out in Article 11(3).

3. Notwithstanding the financial contribution due to project participants pursuant to Article 13(6)(a), the financial liability of the ENIAC Joint Undertaking for its debts is limited to the contributions that the members have made to the running costs as set out in Article 11(3)(a).

4. The ENIAC Joint Undertaking shall take out and maintain appropriate insurance.

*Article 22***Conflict of interests**

The ENIAC Joint Undertaking shall avoid any conflict of interest in the implementation of its activities.

*Article 23***Intellectual property policy**

1. The following rules governing the protection, use and the dissemination of research results are based on Regulation (EC) No 1906/2006 and shall ensure that, where appropriate, intellectual property generated in R & D Activities under this Regulation is protected, and that research results are used and disseminated.

The objective of the intellectual property policy as laid down in this Article is to promote the creation of knowledge and its exploitation, to achieve fair allocation of rights, to reward innovation, and to achieve broad participation of private and public entities in projects.

2. For the purposes of this Article:

- (a) 'information' means any drawings, specifications, photographs, samples, models, processes, procedures, instructions, software, reports, papers, or any other technical and/or commercial information, know-how, data or documents of any kind, including oral information, other than 'Intellectual Property Rights';
- (b) 'Intellectual Property Rights' (IPR) means any intellectual property rights, including patents, utility models and utility certificates, industrial design rights, copyrights, trade secrets, database rights, topographies of semiconductor products' rights, as well as any registrations, applications, divisions, continuations, re-examinations, renewals or reissues of any of the foregoing, excluding trademarks and trade names;
- (c) 'background information' means any information which is owned or controlled by a project participant on the effective date of the corresponding project agreement, or in respect of which ownership or control is acquired by a project participant as a result of activities outside the framework of the project;
- (d) 'background IPR' means any IPRs which are owned or controlled by a project participant on the effective date of the corresponding project agreement, or in respect of which ownership or control is acquired during the term of the corresponding project agreement as a result of activities outside the framework of the project;
- (e) 'background' means background information and background IPR;
- (f) 'foreground information' means any information that is generated as a result of the activities conducted within the framework of a project concerned, as specified in the corresponding project agreement;
- (g) 'foreground IPR' means any IPRs that are generated as a result of the activities conducted within the framework of the project concerned as specified in the corresponding project agreement;

- (h) 'foreground' means foreground information and foreground IPR; background needed for the purposes of the project and, where appropriate, may agree to exclude specific background.
- (i) 'access right' means non-exclusive licenses and user rights to foreground or background, which rights shall not include the right to sublicense unless otherwise agreed upon in the project agreement;
- (j) 'needed' means 'technically essential' for the implementation of the project and/or in respect of use of foreground and, where IPRs are concerned, shall mean that those IPRs would be infringed if the access rights were not granted;
- (k) 'use' means the developing, creating and marketing of a product or process for creating and providing a service as may be further defined in the applicable project agreement;
- (l) 'dissemination' means the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium;
- (m) 'project agreement' means an agreement between project participants setting forth all or part of the terms and conditions that apply between them regarding a specific project, such as a project consortium agreement, which agreement shall include without limitation access rights in accordance with this Article;
- (n) 'transfer conditions' means financial conditions that have a value lower than fair and reasonable conditions, normally the cost of making the access rights available.
3. Without prejudice of Community competition rules, the intellectual property arrangements in projects shall be governed by the following principles:
- 3.1. *Ownership*
- 3.1.1. The ENIAC Joint Undertaking shall own any tangible and intangible assets created with its own resources or transferred to it for the implementation of the ENIAC Joint Undertaking, unless otherwise specified.
- 3.1.2. Notwithstanding the provisions above, the ENIAC Joint Undertaking shall not retain any information or IPR created in projects.
- 3.1.3. Each participant in a project remains the owner of its background. Participants may define the background needed for the purposes of the ENIAC Joint Undertaking project in a written project agreement and, where appropriate, may exclude specific background.
- 3.1.4. Foreground arising from work carried out under projects shall be the property of the participant(s) carrying out the work generating that foreground according to the arrangements described in the grant and project agreements and the principles laid down in this Article.
- 3.2. *Access rights*
- 3.2.1. Project participants may decide to grant broader access rights than required by this Article. Project participants may define the
- 3.2.2. Access rights to background shall be granted to other participants in the same project if such background is needed by those other participants to carry out their own work in the project, provided that the owner is entitled to grant such rights. Access rights shall be granted on transfer conditions to be agreed by the project participants concerned, unless otherwise agreed by all participants in the project agreement.
- 3.2.3. Access rights to foreground shall be granted to other participants in the same project if such foreground is needed by those other participants to carry out their own work in the project. Such access rights shall be granted on a royalty-free non-exclusive and non-transferable basis.
- 3.2.4. Participants in the same project shall enjoy access rights to background if this is needed for the use of their own foreground of that project, provided that the owner of the background is entitled to grant them. Such access rights shall be granted on a non-exclusive, non-transferable basis on fair, reasonable and non-discriminatory conditions.
- 3.2.5. Participants in the same project shall enjoy access rights to foreground if this is needed for their own use. Such access rights shall be granted on a non-transferable non-exclusive basis either royalty-free or on fair, reasonable and non-discriminatory conditions.
- 3.2.6. Subject to the agreement of all the owners concerned, access rights to foreground for the purposes of pursuing further research activities shall be granted to a third party on fair and reasonable conditions to be agreed.
- 3.3. *Protection, use and dissemination*
- 3.3.1. Where foreground is capable of being profitably exploited, its owner (i) shall provide for its appropriate and effective protection, having due regard to its own and other participants' legitimate interests in the project concerned, particularly commercial interests, and (ii) shall use it or ensure that it is used.
- 3.3.2. Each participant shall ensure that the foreground of which it has ownership is disseminated without undue delay.
- 3.3.3. All dissemination activities shall be compatible with the protection of IPR, confidentiality obligations, and the legitimate interest of the owners of the foreground.
- 3.3.4. Prior notice of any dissemination activity regarding foreground, background or confidential information owned by other participants in the same project or other data or information that is amalgamated with the other participants' foreground, background or confidential information, shall be given to the other participants. Within 45 days following such notification, any of those participants may object in writing if its legitimate interests in relation to its foreground or background may be harmed by such

dissemination. In such cases, the dissemination activity shall not take place unless appropriate steps are taken to safeguard those legitimate interests.

3.3.5. All publications, patent applications filed by or on behalf of a participant, or any other dissemination relating to foreground shall include a statement that the foreground concerned was generated with financial support from the ENIAC Joint Undertaking. All dissemination activities shall be compatible with the protection of intellectual property rights, confidentiality obligations, and the legitimate interest of the owners of the foreground.

3.4. *Transfer*

3.4.1. Where a participant transfers ownership of foreground, it shall pass on its obligations regarding such foreground to the transferee including the obligation to pass those obligations on to any subsequent transferee. These obligations shall include those relating to the granting of access rights, and dissemination and use.

3.4.2. Subject to its obligations concerning confidentiality, where a project participant is required to pass on its obligations to provide access rights, it shall give at least 45 days' prior notice to the other participants of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the foreground to permit the other participants to exercise their access rights. Following notification, any other participant may object within 30 days or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its access rights. Where any of the other participants demonstrate that their access rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between participants concerned.

3.5. Project participants in the same project shall conclude among themselves a project agreement that shall lay down the intellectual property arrangements in compliance with this Article.

Article 24

Amendments to the statutes

1. Any member of the ENIAC Joint Undertaking may make an initiative for amending the statutes to the governing board.

2. The initiatives referred to in paragraph 1, as approved by the governing board, shall be submitted as draft amendments to the Commission who shall adopt them, as appropriate.

3. However, any amendment affecting the essential elements of these statutes, and in particular amendments to Articles 3, 4, 6, 7, 11, 13, 21, 24 and 25 thereof, shall be adopted in accordance with Article 172 of the Treaty.

Article 25

Winding up

1. At the end of the period provided for in Article 1(1) of this Regulation, or following an amendment pursuant to Article 11(2) of this Regulation, the ENIAC Joint Undertaking shall be wound up.

2. The winding-up procedure shall be automatically triggered if the Commission withdraws from the ENIAC Joint Undertaking.

3. For the purpose of conducting the proceedings involved in liquidating the ENIAC Joint Undertaking, the governing board shall appoint one or more liquidators, who shall comply with the decisions of the governing board.

4. When the ENIAC Joint Undertaking is being wound up, it shall return to the host State any physical support item made available by the host State in accordance with the host agreement referred to in Article 17 of this Regulation.

5. When any physical asset has been dealt with as provided for in paragraph 4, any further assets shall be used to cover the liabilities of the ENIAC Joint Undertaking and the costs relating to its winding-up. Any surplus shall be distributed among the members existing at the time of the winding-up in proportion to their actual contribution to the ENIAC Joint Undertaking. Any surplus distributed to the Community shall be returned to the Commission budget.

6. Remaining assets shall be distributed to the members existing at the time of the winding-up in proportion to their actual contribution to the ENIAC Joint Undertaking.

7. An ad hoc procedure shall be set up to ensure the appropriate management of any grant agreement and service and supply contract concluded by the ENIAC Joint undertaking, with a duration longer than the duration of the ENIAC Joint Undertaking.

COUNCIL REGULATION (EC) No 73/2008**of 20 December 2007****setting up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines****(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 171 and 172 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 European Economic and Social Committee ⁽¹⁾,

Whereas:

(1) Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) ⁽²⁾ (hereinafter referred to as the Seventh Framework Programme) provides for a Community contribution for the establishment of long-term public private partnerships in the form of Joint Technology Initiatives which could be implemented through Joint Undertakings within the meaning of Article 171 of the Treaty. These Joint Technology Initiatives result from the work of European Technology Platforms, already set up under the Sixth Framework Programme, and cover selected aspects of research in their field. They should combine private sector investment and European public funding, including funding from the Seventh Framework Programme.

(2) Council Decision/2006/971/EC of 19 December 2006 concerning the specific programme 'Cooperation' implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ⁽³⁾ (hereinafter referred to as the Specific Programme Cooperation) underlines the need for ambitious pan-European public private partnerships to accelerate the development of major technologies, large research actions at Community level including, in particular, Joint Technology Initiatives.

(3) The Lisbon Growth and Jobs Agenda underscores the need to develop favourable conditions for investment in knowledge and innovation in Europe to boost competitiveness, growth and jobs in the Community.

(4) In its conclusions of 13 March 2003, of 22 September 2003 and of 24 September 2004, the Council highlighted the importance of further developing actions following the 3 % Action Plans, including the development of new initiatives aimed at intensifying cooperation between industry and the public sector in funding research to enhance trans-national public-private links.

(5) In its conclusions of 4 December 2006 and of 19 February 2007, the Competitiveness Council and in its conclusions of 9 March 2007 the European Council invited the Commission to present proposals for the setting up of Joint Technology Initiatives for such initiatives that have reached an appropriate stage of preparedness.

(6) The European Federation of Pharmaceutical Industries and Associations (hereinafter referred to as EFPIA) took the lead in establishing the European Technology Platform on Innovative Medicines under the Sixth Framework Programme. It developed a Strategic Research Agenda, based on an extensive consultation with public and private stakeholders. The Strategic Research Agenda described the research bottlenecks in the drug development process and recommends the scientific direction for a Joint Technology Initiative on Innovative Medicines.

(7) The Joint Technology Initiative on Innovative Medicines responds to the Commission Communication of 1 July 2003 'A Stronger European-based Pharmaceutical Industry for the Benefit of the Patient — A Call for Action' and in particular to the recommendation regarding access to innovative medicines to secure the development of a competitive innovative-based industry. This Communication was a response to the Report 'Stimulating Innovation and Improving the EU Science Base' adopted on 7 May 2002 by the High Level Group on innovation and provision of medicines — G10 Medicines. This Joint Technology Initiative also responds to the Commission Communication of 23 January 2002 'Life Sciences and Biotechnology — a strategy for Europe (2002)'.

(8) The Joint Technology Initiative on Innovative Medicines also replies to the need for action as identified in the Report 'Creating an Innovative Europe' of January 2006. This

⁽¹⁾ Opinion delivered on 24 October 2007 (not yet published in the Official Journal).

⁽²⁾ OJ L 412, 30.12.2006, p. 1.

⁽³⁾ OJ L 400, 30.12.2006, p. 86, corrected by OJ L 54, 22.2.2007, p. 30.

report identifies pharmaceuticals as a key strategic area and it stresses the need for the Joint Technology Initiative on Innovative Medicines at European level.

activities. Such research activities should respect fundamental ethical principles applicable in the Seventh Framework Programme.

- (9) The Joint Technology Initiative on Innovative Medicines should be a public private partnership aiming at increasing investments in the biopharmaceutical sector in Europe in the Members States and countries associated within the Seventh Framework Programme. It should provide socio-economic benefits for European citizens, contribute to the health of European citizens, increase the competitiveness of Europe and help to establish Europe as the most attractive place for biopharmaceutical research and development.
- (10) The objective of the Joint Technology Initiative on Innovative Medicines should be to foster collaboration between all stakeholders such as industry, public authorities (including regulators), organisations of patients, academia and clinical centres. The Joint Technology Initiative on Innovative Medicines should define a commonly agreed research agenda (hereinafter referred to as Research Agenda) closely following the recommendations of the Strategic Research Agenda developed by the European Technology Platform on Innovative Medicines which identified efficacy, safety, knowledge management and training as important areas.
- (11) The Joint Technology Initiative on Innovative Medicines should propose a coordinated approach to overcome identified research bottlenecks in the drug development process, and to support pre-competitive pharmaceutical research and development, in order to accelerate the development of safe and more effective medicines for patients. In the present context 'pre-competitive pharmaceutical research and development' should be understood as research on the tools and methodologies used in the drug development process.
- (12) The Joint Technology Initiative on Innovative Medicines should deliver new approaches, methods and technologies, improve knowledge management of research results and data, and support the training of professionals. To this end, it is necessary to set up a Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines (hereinafter referred to as the IMI Joint Undertaking) as a legal entity.
- (13) The objective of the IMI Joint Undertaking should be achieved through support of research activities by pooling resources from the public and private sectors. To this end, the IMI Joint Undertaking should be capable of organising competitive calls for proposals for supporting the research activities. Such research activities should respect fundamental ethical principles applicable in the Seventh Framework Programme.
- (14) The IMI Joint Undertaking should be set up for a period up to 31 December 2017 to ensure the appropriate management of research activities initiated but not concluded during the Seventh Framework Programme (2007 to 2013).
- (15) The IMI Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament, on the recommendation of the Council, in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the budget of the European Communities (hereinafter referred to as the Financial Regulation) ⁽¹⁾ taking however into account the specificities resulting from the nature of joint technology initiatives as public-private partnerships and in particular from the private sector contribution to the budget.
- (16) Founding members of the IMI Joint Undertaking should be the Community and EFPIA.
- (17) EFPIA is a non-profit organisation representing the research based pharmaceutical industry in Europe. The aim of EFPIA is to ensure and promote the technological and economic development of the pharmaceutical industry in Europe. EFPIA is open for membership to national associations of research-based pharmaceutical companies, as well as directly to research-based pharmaceutical companies. It applies general principles of openness and transparency for membership ensuring a wide industrial involvement.
- (18) The IMI Joint Undertaking should be open to new members.
- (19) The rules for organisation and operation of the IMI Joint Undertaking should be laid down in the Statutes of the IMI Joint Undertaking as part of this Regulation.
- (20) A letter of commitment concerning the Statutes of the IMI Joint Undertaking has been signed by EFPIA and its research based pharmaceutical companies that are members of EFPIA.
- (21) The research activities should be covered by funding from the Community and at least on an equal level by resources from the research based pharmaceutical companies that are members of EFPIA. Further financing options may be
- ⁽¹⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

available, *inter alia*, from the European Investment Bank, in particular through the Risk-Sharing Finance Facility developed jointly with the EIB and the Commission pursuant to Annex III to Decision/2006/971/EC.

- (22) The running costs of the IMI Joint Undertaking should be covered in equal amount by EFPIA and the Community.
- (23) To ensure an equal partnership, the research based pharmaceutical companies that are members of EFPIA activities should not be eligible to receive financial support from the IMI Joint Undertaking.
- (24) The IMI Joint Undertaking should adopt, in accordance with the Financial Regulation and subject to prior consent of the Commission, specific financial rules which take into account its specific operating needs arising, in particular, from the need to combine Community and private funding to support research and development activities in an efficient and timely manner. In order to ensure a harmonised treatment between the participants of the Joint Undertaking research activities and those of the indirect actions of the Seventh Framework Programme, it is appropriate that value added tax should not be an eligible cost for Community funding, in accordance with Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) ⁽¹⁾.
- (25) The need to ensure stable employment conditions and equal treatment of staff, and in order to attract specialised scientific and technical staff of the highest calibre, requires the application of the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities laid down in Regulation (EC, Euratom, ECSC) No 259/68 of the Council ⁽²⁾ to all staff recruited by the IMI Joint Undertaking.
- (26) As a body possessing legal personality, the IMI Joint Undertaking should be accountable for its actions. As regards the resolution of disputes in contractual matters, it should be possible that the contracts concluded by the Joint Undertaking provide that the Court of Justice of the European Communities has jurisdiction.
- (27) Appropriate measures should be taken to prevent irregularities and fraud and the necessary steps should be taken to

recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ⁽³⁾, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽⁴⁾, and the Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations concluded by the European Anti-Fraud Office (OLAF) ⁽⁵⁾.

- (28) In order to facilitate the setting up of the IMI Joint Undertaking, the Commission should be responsible for the establishment and initial operation of the IMI Joint Undertaking until it has the operational capacity to implement its own budget.
- (29) The IMI Joint Undertaking should be established in Brussels, Belgium. A host agreement should be concluded between the IMI Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the IMI Joint Undertaking.
- (30) Since the objective of this Regulation, namely the establishment of the IMI Joint Undertaking, cannot be sufficiently achieved by the Member States due to the trans-national nature of the great research challenge identified, which requires the pooling of complementary knowledge and financial resources across the sectors and borders and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective,

HAS ADOPTED THIS REGULATION:

Article 1

Establishment of a Joint Undertaking

1. A Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines is hereby set up for a period up to 31 December 2017 (hereinafter referred to as IMI Joint Undertaking).

⁽¹⁾ OJ L 391, 30.12.2006, p. 1.

⁽²⁾ OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 337/2007 (OJ L 90, 30.3.2007, p. 1).

⁽³⁾ OJ L 312, 23.12.1995, p. 1.

⁽⁴⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁵⁾ OJ L 136, 31.5.1999, p. 1.

2. The seat of the IMI Joint Undertaking shall be located in Brussels, Belgium.

Article 5

Community contribution

Article 2

Objectives

The IMI Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and in particular the Theme 'Health' of the Specific Programme Cooperation implementing the Seventh Framework Programme. It shall have the objective of significantly improving the efficiency and effectiveness of the drug development process with the long-term aim that the pharmaceutical sector produce more effective and safer innovative medicines. In particular it shall:

- (a) support 'pre-competitive pharmaceutical research and development' in the Member States and countries associated with the Seventh Framework Programme via a coordinated approach to overcome the identified research bottlenecks in the drug development process;
- (b) support the implementation of the research priorities as set out by the Research Agenda of the Joint Technology Initiative on Innovative Medicines (hereinafter referred to as 'Research Activities'), notably by awarding grants following competitive calls for proposals;
- (c) ensure complementarity with other activities of the Seventh Framework Programme;
- (d) be a public-private partnership aiming at increasing the research investment in the biopharmaceutical sector in the Member States and countries associated to the Seventh Framework Programme by pooling resources and fostering collaboration between the public and private sectors;
- (e) promote the involvement of small and medium-sized enterprises (SME) in its activities, in line with the objectives of the Seventh Framework Programme.

Article 3

Legal status

The IMI Joint Undertaking shall be a Community body and shall have legal personality. In each of the Member States of the European Community, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

Article 4

Statutes

The Statutes of the IMI Joint Undertaking, as set out in the Annex hereto, shall constitute an integral part of this Regulation and are hereby adopted.

1. The maximum Community contribution to the IMI Joint Undertaking covering running costs and Research Activities shall be EUR 1 000 million. The contribution shall be paid from the appropriation in the general budget of the European Union allocated to the 'Health' theme of the Specific Programme Cooperation implementing the Seventh Framework Programme according to the provisions of Article 54(2)(b) of the Financial Regulation.

2. The arrangements for the Community financial contribution shall be established by means of a general agreement and annual financial agreements to be concluded between the Commission, on behalf of the Community, and the IMI Joint Undertaking.

3. The Community contribution to the IMI Joint Undertaking for the funding of the Research Activities shall be granted following open and competitive calls for proposals.

Article 6

Financial rules

1. The IMI Joint Undertakings shall adopt specific financial rules in accordance with Article 185(1) of the Financial Regulation. They may depart from Commission Regulation (EC, Euratom) No 2343/2002⁽¹⁾ on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation where the specific operating needs of the IMI Joint Undertaking so require and subject to prior consent of the Commission.

2. The IMI Joint Undertaking shall have its own internal audit capability.

Article 7

Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the IMI Joint undertaking and its Executive Director.

2. Without prejudice to paragraph 3 of this Article and Article 6(3) of the Statutes, the IMI Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority empowered to conclude contracts by the Conditions of Employment of Other Servants of the European Communities in respect of its staff.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

3. The Governing Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations of Officials of the European Communities, and the Conditions of Employment of Other Servants of the European Communities.

4. The staff resources shall be determined in the establishment plan of the IMI Joint Undertaking that will be set out in its annual budget.

5. The staff of the IMI Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed no more than once for a fixed period. The total period of engagement shall not exceed seven years and shall not in any case exceed the lifetime of the Joint Undertaking.

6. All cost related to the staff shall be borne by the IMI Joint Undertaking.

Article 8

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the IMI Joint Undertaking and its staff.

Article 9

Liability

1. The contractual liability of the IMI Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement or contract in question.

2. In the case of non-contractual liability, the IMI Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.

3. Any payment by the IMI Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the IMI Joint Undertaking and shall be covered by the resources of the IMI Joint Undertaking.

4. The IMI Joint Undertaking shall be solely responsible for meeting its obligations.

Article 10

Jurisdiction of the Court of Justice and applicable law

1. The Court of Justice shall have jurisdiction:

- (a) in any dispute between the Members which relates to the subject matter of this Regulation and/or the Statutes referred to in Article 4;
- (b) pursuant to any arbitration clause contained in agreements and contracts concluded by the IMI Joint Undertaking;

(c) in actions brought against the IMI Joint Undertaking, including decisions of its bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;

(d) in disputes related to compensation for damage caused by the staff of the IMI Joint Undertaking in the performance of their duties.

2. For any matter not covered by this Regulation or by other acts of Community law, the law of the State where the seat of the IMI Joint Undertaking is located shall apply.

Article 11

Report, evaluation and discharge

1. The Commission shall present to the European Parliament and to the Council an annual report on the progress achieved by the IMI Joint Undertaking. This report shall contain details of implementation including number of proposals submitted, number of proposals selected for funding, type of participants, including SMEs, and country statistics.

2. By 31 December 2010, as well as by 31 December 2013, the Commission shall carry out interim evaluations of the IMI Joint Undertaking with the assistance of independent experts on the basis of terms of reference established after consultation of the IMI Joint Undertaking. These evaluations shall cover the quality and efficiency of the IMI Joint Undertaking and progress towards the objectives set. The Commission shall communicate the conclusions thereof, accompanied by its observations and, where appropriate, proposals to amend this Regulation, including the possible early termination of the IMI Joint Undertaking, to the European Parliament and the Council.

3. Not later than six months after the end of the Joint Undertaking, the Commission shall conduct a final evaluation of the IMI Joint Undertaking with the assistance of independent experts. The results of the final evaluation shall be presented to the European Parliament and to the Council.

4. Discharge for the implementation of the budget of the IMI Joint Undertaking shall be given by the European Parliament, upon recommendation of the Council, in accordance with a procedure provided for by the financial rules of the IMI Joint Undertaking referred to in Article 6.

Article 12

Protection of the financial interests of the Members and anti-fraud measures

1. The IMI Joint Undertaking shall ensure that the financial interests of its Members are adequately protected by carrying out or by allowing the carrying out of appropriate internal and external controls.

2. In case of irregularities committed by the IMI Joint Undertaking or its staff, the Members shall reserve the right to recover amount unduly spent or to reduce or suspend any subsequent contribution to the IMI Joint Undertaking.

3. For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 shall apply.

4. The IMI Joint Undertaking shall carry out on-the-spot checks and financial audits among the participants of the Research Activities funded by the IMI Joint Undertaking.

5. The Commission and/or the Court of Auditors may, if necessary, carry out on-the-spot checks among the recipients of the IMI Joint Undertaking's funding and the agents responsible for allocating it. To that end, the IMI Joint Undertaking shall ensure that grant agreements and contracts provide for the right of the Commission and/or the Court of Auditors to carry out the appropriate controls and, in the event of the detection of irregularities, to impose dissuasive and proportionate penalties.

6. The European Anti-Fraud Office (OLAF) established by Commission Decision 1999/352/EC, ECSC, Euratom ⁽¹⁾ shall enjoy the same powers in respect of the IMI Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the IMI Joint Undertaking is established, it shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) ⁽²⁾. The IMI Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

Article 13

Confidentiality

Without prejudice to Article 14, the IMI Joint Undertaking shall ensure the protection of sensitive information, the disclosure of which could damage the interests of its Members or of participants in the activities of the IMI Joint Undertaking.

Article 14

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European

Parliament, Council and Commission documents ⁽³⁾ shall apply to documents held by the IMI Joint Undertaking.

2. The IMI Joint Undertaking shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 by 7 August 2008.

3. Decisions taken by the IMI Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

Article 15

Intellectual property

The IMI Joint Undertaking shall adopt distinct rules governing the protection, use and dissemination of research results based on the principles of Regulation (EC) 1906/2006 as set out in Article 22 of the Statutes which ensure that, where appropriate, intellectual property generated in Research Activities under this Regulation is protected, and that research results are used and disseminated.

Article 16

Preparatory actions

1. The Commission shall be responsible for the establishment and initial operation of the IMI Joint Undertaking until the IMI Joint Undertaking has the operational capacity to implement its own budget. It shall carry out, in accordance with Community law, all necessary actions in collaboration with other Founding Members and the involvement of the Governing Board.

2. For that purpose, until such time as the Executive Director takes up his/her duties following his/her appointment by the Governing Board in accordance with Article 6(3) of the Statutes, the Commission may assign a limited number of its officials, including one to fulfil the functions of the Executive Director, on an interim basis.

3. The interim Executive Director may authorise all payments covered by the credits provided in the budget of the IMI Joint Undertaking once approved by the Governing Board and may conclude contracts, including staff contracts following the adoption of the IMI Joint Undertaking establishment plan. The Commission authorising officer may authorise all payments covered by the credits provided in the general budget of the IMI Joint Undertaking.

⁽¹⁾ OJ L 136, 31.5.1999, p. 20.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

⁽³⁾ OJ L 145, 31.5.2001, p. 43.

*Article 17***Support from the host State**

A host agreement shall be concluded between the IMI Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the IMI Joint Undertaking.

*Article 18***Entry into force**

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 20 December 2007.

For the Council

The President

F. NUNES CORREIA

ANNEX

STATUTES OF THE JOINT UNDERTAKING FOR THE IMPLEMENTATION OF THE JOINT TECHNOLOGY INITIATIVE ON INNOVATIVE MEDICINES

*Article 1***Tasks and activities**

The main tasks and activities of the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines (hereinafter referred to as IMI Joint Undertaking) shall be the following:

- (a) to ensure the establishment and sustainable management of the Joint Technology Initiative on 'Innovative Medicines';
- (b) to define and carry out the annual implementation plan referred to in Article 18 via calls for project;
- (c) to regularly review and make any necessary adjustments to the Research Agenda of the Joint Technology Initiative on Innovative Medicines in light of scientific developments occurring during its implementation;
- (d) to mobilise the public and private sector resources needed;
- (e) to establish and develop close and long-term cooperation between the Community, industry and the other stakeholders such as regulatory bodies, patients organisations, academia and clinical centres, as well as cooperation between industry and academia;
- (f) to facilitate coordination with national and international activities in this area;
- (g) to undertake communication and dissemination activities;
- (h) to communicate and interact with the Member States and the countries associated within the Seventh Framework Programme via a group specifically established for this purpose (hereinafter referred to as IMI States Representatives Group);
- (i) to organise at least an annual meeting (hereinafter referred to as a Stakeholder Forum) with interest groups to ensure openness and transparency of the Research Activities of the IMI Joint Undertaking with its stakeholders;
- (j) to notify legal entities that have concluded a grant agreement (hereinafter referred to as Grant Agreement) with the IMI Joint Undertaking of the potential borrowing opportunities from the European Investment Bank, in particular the Risk Sharing Finance Facility set up under the Seventh Framework Programme;
- (k) to publish information on the projects, including the name of the participants and the amount of the financial contribution of the IMI Joint Undertaking per participant;
- (l) to ensure the efficiency of the Joint Technology Initiative on 'Innovative Medicines';
- (m) to carry out any other activity needed to achieve the objectives referred to in Article 2 of the Regulation.

*Article 2***Members**

1. The founding members of the IMI Joint Undertaking (hereinafter referred to as Founding Members) shall be:

- (a) the European Community, represented by the Commission; and,
- (b) upon acceptance of the Statutes of the IMI Joint Undertaking, the European Federation of Pharmaceutical Industries and Associations (hereinafter referred to as EFPIA) a non-profit association registered under Swiss law (registration number 4749) with its permanent office in Brussels, Belgium. EFPIA operates as a representative organisation of the Pharmaceutical Industry in Europe.

2. Provided that they contribute to the funding to achieve the objectives of the IMI Joint Undertaking as described in Article 2 of the Regulation and accept the Statutes of the IMI Joint Undertaking, any legal entity supporting directly or indirectly research and development in a Member State or in a country associated to the Seventh Framework Programme may apply to become a Member of the IMI Joint Undertaking.

3. The Founding Members and new members referred to in paragraphs 1 and 2 are hereinafter referred to as 'Members'.

*Article 3***Accession and changes to membership**

1. Any application for new membership shall be addressed to the Governing Board.

2. Decisions of the Governing Board on accession of any other legal entity shall be made taking into account the relevance and potential added value of the applicant for the achievement of the objectives of the IMI Joint Undertaking. For any application for new membership, the Commission shall provide timely information to the Council on the assessment and, where applicable, on the decision of the Governing Board.

3. Any Member may terminate its membership of the IMI Joint Undertaking. The termination shall become effective and irrevocable six months after notification to the other Members following which the former Member shall be discharged from any obligations others than those approved by the IMI Joint Undertaking prior to the membership termination.

4. Membership of the IMI Joint Undertaking may not be transferred to a third party unless the prior agreement of the Governing Board is given.

*Article 4***Bodies**

1. The bodies IMI Joint Undertaking shall be:

- the Governing Board,
- the Executive Director,

— the Scientific Committee.

2. In case a specific task is not assigned to one of the bodies, the Governing Board shall be the competent one.

3. The IMI Joint Undertaking shall be supported by two external advisory bodies: the IMI States Representatives Group and Stakeholder Forum.

Article 5

Governing Board

1. Composition, voting rights and decision taking

- (a) Each Member of the IMI Joint Undertaking shall be represented in the Governing Board by a maximum of five representatives;
- (b) the Founding Members shall have five votes each in the Governing Board;
- (c) the voting right of any new Member shall be determined in proportion to its contribution towards the total contributions to the activities of the IMI Joint Undertaking;
- (d) the vote of each Member shall be indivisible;
- (e) the Governing Board shall make decisions by a three-quarters majority and shall require the positive vote by the Founding Members;
- (f) the chairperson of the Governing Board shall be a representative of the Founding Members, serving on a rotating basis;
- (g) the representatives of the Members shall not be personally liable for actions undertaken in their capacity as representatives on the Governing Board.

2. The role and tasks

The Governing Board shall have overall responsibility for the operations of the IMI Joint Undertaking and shall oversee the implementation of its activities.

The Governing Board shall in particular:

- (a) assess the application(s) and decide changes in membership in accordance with Article 3;
- (b) decide on the termination of the membership in the IMI Joint Undertaking of any Member which does not fulfil its obligations without prejudice to the provisions of the Treaty ensuring compliance with Community law;
- (c) approve the annual implementation plan proposal and the corresponding expenditure estimates;
- (d) approve the annual budget proposal, including the staff establishment plan;
- (e) approve the calls for proposals;

- (f) approve the annual activity report, including the corresponding expenditure;
- (g) approve the annual accounts and the balance-sheet;
- (h) approve, as appropriate, any change to the Research Agenda recommended by the Scientific Committee;
- (i) approve the guidelines on evaluation and selection of project proposals as proposed by the Executive Office;
- (j) approve the list of selected project proposals;
- (k) appoint, dismiss or replace the Executive Director, provide guidance and direction to the Executive Director, and monitor the Executive Director's performance;
- (l) approve the organisational structure of the Executive Office based on recommendations of the Executive Director;
- (m) adopt the financial rules of the IMI Joint Undertaking in accordance with Article 6 of the Regulation;
- (n) approve the internal rules and procedures of the IMI Joint Undertaking, including the Intellectual Property Policy in line with the principles set out in Article 22;
- (o) adopt its rules of procedure in accordance with paragraph 3;
- (p) approve the initiatives to amend the Statutes in accordance with Article 23;
- (q) assign any task not specifically allocated to one of the other bodies of the IMI Joint Undertaking;
- (r) adopt practical arrangements for implementing Regulation (EC) No 1049/2001 as referred to in Article 14 of the Regulation;
- (s) supervise the overall activities of the IMI Joint Undertaking.

3. Rules of procedure

- (a) The Governing Board shall meet at least twice a year. Extraordinary meetings shall be convened at the request of one of the Members or at the request of the Executive Director. The meetings shall normally take place at the seat of the IMI Joint Undertaking;
- (b) Unless otherwise decided in particular cases, the Executive Director shall participate in the meetings;
- (c) The chairman of the IMI States Representatives Group shall have the right to attend meetings of the Governing Board as an observer;
- (d) The chairman of the Scientific Committee shall participate by invitation of the Governing Board, as relevant to the agenda;
- (e) Observers and/or other experts may be invited by the Governing Board to attend meetings as and when relevant to the agenda.

Article 6

Executive Director

1. The Executive Director shall be the chief executive responsible for the day-to-day management of the IMI Joint Undertaking in accordance with the decisions of the Governing Board. In that context, he/she shall regularly inform as well as respond to any specific ad hoc requests for information from the Governing Board and the Scientific Committee. The Director shall exercise, in respect of the staff, the powers laid down in Article 7(2) of the Regulation.

2. The Executive Director shall be the legal representative of the IMI Joint Undertaking. He/she shall perform his/her tasks with complete independence, and shall be accountable to the Governing Board.

3. The Executive Director shall be appointed by the Governing Board for a period of three years following a call for expressions of interest published in the *Official Journal of the European Union* and in other periodicals or on Internet sites. After an evaluation of the Director's performance, the Governing Board may extend the term of office once for a further period of not more than four years.

4. The Executive Director shall in particular:

- (a) be responsible for the communication activities related to the IMI Joint Undertaking;
- (b) manage appropriately the public and private funds;
- (c) recommend to the Governing Board, arrangements and guidelines for evaluation and selection of the project proposals for approval. These guidelines shall include procedures, composition, duties of the peer review committees that evaluate the project proposals and the rules for dissemination of research results;
- (d) supervise the management of the launch of the calls for project proposals, the evaluation and selection of the project proposals, the negotiation of the selected project proposals, the follow-up of the project proposals and the administration of the grants, including the coordination of the funded research activities;
- (e) be in charge of the establishment and management of the appropriate accounting system;
- (f) provide the Governing Board and the Scientific Committee with relevant documentation and logistical support;
- (g) prepare the annual implementation plan proposal and the corresponding expenditure estimates;
- (h) prepare the annual budget proposal, including the staff establishment plan;
- (i) prepare the annual activity report, including the corresponding expenditure;
- (j) prepare the annual accounts and the balance-sheet;
- (k) prepare any other information that may be requested by the Governing Board;

- (l) manage invitations for tenders for IMI Joint Undertaking goods/services requirements according to the financial rules of the IMI Joint Undertaking;
- (m) prepare the calls for proposals;
- (n) perform tasks entrusted or delegated to it by the Governing Board;
- (o) submit to the Governing Board any change to the Research Agenda as recommended by the Scientific Committee;
- (p) submit to the Governing Board his/her proposal(s) concerning the organisation structure of the Executive Office and organise, direct and supervise the staff of the IMI Joint Undertaking;
- (q) convene meetings of the Governing Board;
- (r) call the annual meeting of the Stakeholder Forum, to ensure openness and transparency of the activities of the IMI Joint Undertaking with its stakeholders;
- (s) attend as appropriate the meetings of the Governing Board, of the Scientific Committee and of the Stakeholder Forum as observer;
- (t) if appropriate, set up scientific ad hoc/subsidiary bodies/committees decided by the Governing Board and gather experts scientific advice;
- (u) provide to the Governing Board any other information that may be requested;
- (v) be responsible for risk assessment and risk management;
- (w) propose to the Governing Board any insurance that it may be necessary for the IMI Joint Undertaking to take out in order to meet its obligations;
- (x) be responsible for concluding Grant Agreements for the implementation of the Research Activities, and service and supply contracts necessary for the operations of the IMI Joint Undertaking as referred to in Article 12.

5. The Executive Director shall be supported by the staff of the Executive Office.

Article 7

Scientific Committee

1. The Scientific Committee is an advisory body to the Governing Board and shall conduct its activities in close liaison and with the support of the Executive Office.

2. The Scientific Committee shall consist of no more than 15 members.

3. The members shall reflect a balanced representation of expertise from academia, patient organisations, industry and regulatory bodies. Collectively, the Scientific Committee members shall have the scientific

competencies and expertise covering the complete drug development process needed to make strategic science-based recommendations regarding the IMI Joint Undertaking.

4. The Governing Board shall establish the specific criteria and selection process for the composition of the Scientific Committee and shall appoint its members from a list proposed by the IMI States Representatives Group.

5. A chairperson shall be elected by consensus of the Scientific Committee from among its members.

6. The Scientific Committee shall have the following tasks:

- (a) advise on the continued relevance of the Research Agenda and recommend any amendments;
- (b) advise on the scientific priorities for the annual implementation plan proposal;
- (c) advise the Governing Board and the Executive Director on the scientific achievements described in the annual activity report;
- (d) advise on the composition of the peer review committees.

7. The Scientific Committee shall meet at least once a year and shall be convened by the chairperson.

8. The Scientific Committee may, with the agreement of the chairperson, invite non-member persons to participate in its meetings for advice.

Article 8

IMI States Representatives Group

1. Composition

The IMI States Representative Group shall consist of one representative of each Member State and of each country associated to the Framework Programme. It shall elect a chairperson among its members.

2. Role and tasks

The IMI States Representative Group shall have an advisory role for the IMI Joint Undertaking and shall act as an interface between the IMI Joint Undertaking and the relevant stakeholders within their respective countries. It shall in particular:

- (a) advise on the annual scientific priorities, including the synergies with the Framework Programme;
- (b) facilitate the dissemination of information related to the calls for stakeholders within their own countries;
- (c) be informed on the outcome of the evaluation process;
- (d) provide an opinion on the update of the Research Agenda;
- (e) advise on the activities of the IMI Joint Undertaking;

(f) advise on the changes to the call and the evaluation process and intellectual property rules of the IMI Joint Undertaking;

(g) inform the IMI Joint Undertaking on relevant activities ongoing at national level.

3. The IMI States Representative Group shall meet at least bi-annually and shall be convened by the Executive Director. Extraordinary meetings can be convened to deal with specific matters of major relevance to IMI Joint Undertaking activities. These meetings shall be called by the Executive Director either on his/her own initiative or upon request from IMI States Representatives Group. The IMI States Representatives Group may issue, on its own initiative, recommendations to the IMI Joint Undertaking. The IMI Joint Undertaking shall inform the IMI States Representatives Group of the follow up it has given to such recommendations.

The Executive Director shall attend the meetings of the IMI States Representatives Group.

The IMI States Representative Group shall adopt its rules of procedure.

Article 9

Stakeholder Forum

1. The Stakeholder Forum shall be a meeting opened to all stakeholders and convened at least once a year by the Executive Director.

2. The Stakeholder Forum shall be informed on the activities of the IMI Joint Undertaking and shall be invited to provide comments.

Article 10

Internal auditing function

The functions entrusted by Article 185(3) of the Financial Regulation to the Commission's internal auditor shall be carried out under the responsibility of the Governing Board, which shall make appropriate provision taking into account the size and scope of the IMI Joint Undertaking.

Article 11

Sources of financing

1. All resources of the IMI Joint Undertaking and its activities shall be devoted to the objectives provided for in Article 2 of the Regulation.

2. The resources of the IMI Joint Undertaking entered to its budget shall be composed of:

- (a) Members' financial contributions;
- (b) any revenue generated by the IMI Joint Undertaking;
- (c) any other financial contributions, resources and revenues.

Any interest yielded by the contributions paid by its Members shall be considered to be revenue of the IMI Joint Undertaking.

3. The running costs of the IMI Joint Undertaking shall be financed by its Members:

- (a) The Founding Members shall contribute on an equal level, each of them with an amount not exceeding 4 % of the total financial contribution by the Community to the IMI Joint Undertaking. If part of the contribution from the Community is not used, it may be available for Research Activities referred to in paragraph 4;
 - (b) Any other member shall contribute in proportion to its total contribution towards the Research Activities.
4. The Research Activities shall be jointly funded through:
- (a) non-monetary contributions (hereinafter referred to as contributions in kind) by the research based pharmaceutical companies that are members of EFPIA, with resources (such as personnel, equipment, consumables, etc.) at least equal to the financial contribution of the Community;
 - (b) a matching financial contribution of the Community from the Seventh Framework Programme entered to the budget of the IMI Joint Undertaking;
 - (c) contributions from members referred to in Article 2(2).

Contributions in kind shall be subject to an evaluation. The methodology for evaluating contributions in kind shall be defined in the internal rules and procedures of the IMI Joint Undertaking, in compliance with its financial rules and based on the Rules of Participation of the Seventh Framework Programme. Contributions in kind shall be verified by an independent auditor.

5. The participating research based pharmaceutical companies that are members of EFPIA shall not be eligible to receive any financial support from the IMI Joint Undertaking for any activity.

6. Should any Member of the IMI Joint Undertaking, or any participating research based pharmaceutical company that is a member of EFPIA, fail to meet its commitments concerning its agreed contributions, the Executive Director shall convene a meeting of the Governing Board to decide:

- (a) in the case of a defaulting Member, whether its membership should be terminated, or if any other measures should be taken until it has been met its obligations; or
- (b) in the case of a defaulting participating research based pharmaceutical company that is a member of EFPIA, which appropriate measures should be taken.

7. The IMI Joint Undertaking shall own all assets generated by it or transferred to it for the fulfilment of its objectives provided for in Article 2 of the Regulation.

Article 12

Research activities, Grant Agreements and Project Agreements

1. The IMI Joint Undertaking shall support prospective research activities following open and competitive calls for project proposals, independent evaluation, and the conclusion of Grant Agreements and Project Agreements.

2. The IMI Joint Undertaking shall set up the procedures and mechanisms for the implementation, supervision and control of concluded Grant Agreements.

3. The Grant Agreement shall:

- (a) set up the appropriate arrangements for the implementation of the research activities;
 - (b) set up the appropriate financial arrangements and the rules relating to intellectual property rights on the basis of the principles as set out in Article 22;
 - (c) govern the relationship between the selected consortium and the IMI Joint Undertaking.
4. The Project Agreement shall be concluded between the members of a consortium:
- (a) to set up the appropriate arrangements for the implementation of the Grant Agreement;
 - (b) to govern the relationship between the participants in a project.

5. Any legal entity carrying out activities relevant to the objectives of the IMI Joint Undertaking in a Member State or country associated to the Seventh Framework Programme shall be eligible for participating in a project. Any other legal entities may participate if so agreed by the Governing Board.

6. Apart from the contribution to the running costs as set out in Article 11(3), the Community contribution to the IMI Joint Undertaking shall be used for the implementation of the Research Activities. The upper funding limits of such Community financial contribution shall comply with those laid down by the Rules for Participation of the Seventh Framework Programme. The following legal entities are eligible for such funding:

- (a) micro, small and medium-sized enterprises within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽¹⁾;
- (b) legal entities established as non-profit public bodies under national law ⁽²⁾;
- (c) intergovernmental organisations, which have legal personality under international public law, as well as any specialised agencies set up by such intergovernmental organisations;
- (d) legal entities established under Community law;
- (e) legal entities established as non-profit organisations which carry out research or technological development as one of their main objectives;
- (f) secondary and higher education establishments;
- (g) non-profit qualified patients organisations.

⁽¹⁾ O J L 124, 20.5.2003, p. 36.

⁽²⁾ For the purpose of the Regulation, 'non-profit public bodies' include those that may make profit but are not permitted to distribute such profits otherwise than in the furtherance of public interest purposes and which carry out scientific and technological research among their main activities.

7. In order to be considered eligible for Community funding, costs incurred in the implementation of the research activities shall be exclusive of value added tax.

Article 13

Financial commitments

The financial commitments of the IMI Joint Undertaking shall not exceed the amount of financial resources available or committed to its budget by its Members.

Article 14

Financial revenues

Except when the IMI Joint Undertaking is wound up pursuant to Article 24, any excess revenue over expenditure shall not be paid to the Members of the IMI Joint Undertaking.

Article 15

Financial year

The financial year shall correspond to the calendar year.

Article 16

Financial implementation

The Executive Director shall implement the budget of the IMI Joint Undertaking.

Article 17

Financial reporting

1. Every year, the Executive Director shall present to the Governing Board a preliminary draft Annual Budget Plan containing a forecast of annual expenditure for the following two years. Within this forecast, the estimates of revenue and expenditure for the first of those two years shall be drawn up in such detail as is necessary for the internal budgetary procedure of each Member regarding its financial contributions to the IMI Joint Undertaking. The Executive Director shall supply the Governing Board with all supplementary information needed for this purpose.

2. The members of the Governing Board shall communicate to the Executive Director their comments on the preliminary draft Annual Budget Plan and in particular on the estimates of resources and expenditure for the following year.

3. Taking into account the comments received from the members of the Governing Board, the Executive Director shall prepare the draft Annual Budget Plan for the following year and submit it to the Governing Board for approval.

4. The Annual Budget Plan and the annual implementation plan for a particular year shall be adopted by the Governing Board of the IMI Joint Undertaking by the end of the previous year.

5. Within two months after the closure of each financial year, the annual accounts and balance sheets for the preceding year shall be submitted by the Executive Director to the Governing Board for approval. The Annual Accounts and balance sheets for the preceding year shall be submitted to the Court of Auditors and the Commission.

Article 18

Planning and reporting

1. The Annual Implementation Plan shall describe the activities of IMI Joint Undertaking planned for the coming year and the corresponding expenditure estimates. Once approved by the Governing Board, a publishable version of the Annual Implementation Plan shall be made publicly available.

2. An Annual Activity Report shall present progress made by the IMI Joint Undertaking in each calendar year, in particular in relation to the Annual Implementation Plan for that year. It shall also include information on the performed Research Activities and the participation of SMEs in them as well as on other activities during the previous year and the corresponding expenditure. The expenditure shall be based on Members' financial contributions as well as contributions from participating research based pharmaceutical companies that are members of EFPIA.

The Annual Activity Report shall be presented by the Executive Director together with the Annual Accounts and balance sheets. Once approved by the Governing Board, the Annual Activity Report shall be made public.

Article 19

Service and supply contracts

The IMI Joint Undertaking shall set up all the procedures and mechanisms for the implementation, supervision and control of concluded service and supply contracts concluded where necessary for the operations of the IMI Joint Undertaking, according to the provisions of its financial rules.

Article 20

Liability of Members, insurance

1. The financial liability of the Members for the debts of the IMI Joint Undertaking is limited to their contribution already made for the running costs as set out in Article 11(3).

2. The IMI Joint Undertaking shall take out and maintain appropriate insurance.

Article 21

Conflict of interests

The IMI Joint Undertaking shall avoid any conflict of interest in the implementation of its activities.

Article 22

Intellectual property policy

1. The IMI Joint Undertaking shall adopt its general rules governing the intellectual property policy of the IMI Joint Undertaking that will be incorporated in the grant agreements and project agreements.

2. The objective of the intellectual property policy of the IMI Joint Undertaking is to promote knowledge creation, together with its disclosure and exploitation, to achieve fair allocation of rights, to reward innovation, and to achieve a broad participation of private and public entities (including, but not limited to, participating research based pharmaceutical companies that are members of EFPIA, academic groups and small and medium-sized enterprises) in projects.

3. The intellectual property policy shall reflect the following principles:

- (a) Each participant in a project shall remain the owner of the intellectual property that it introduces into a project, and shall remain the owner of the intellectual property that it generates in a project unless otherwise mutually agreed in writing by the participants in a project. The terms and conditions of access rights and licenses with regard to the intellectual property introduced into or generated by participants in a project, shall be defined in the Grant Agreement and the Project Agreement of the project concerned;
- (b) Participants in a project shall undertake to disseminate and allow the use of the results and the intellectual property generated by the project concerned under terms and conditions defined in the Grant Agreement and the Project Agreement taking into account the protection of intellectual property rights, confidentiality obligations and legitimate interests of the owners.

Article 23

Amendments to the Statutes

1. Any Member of the IMI Joint Undertaking may take an initiative to the Governing Board for the amendment of these Statutes.
2. The initiatives referred to in paragraph 1 as approved by the Governing Board shall be submitted as draft amendments to the Commission who shall adopt them, as appropriate.
3. However, any amendment affecting the essential elements of these Statutes and in particular amendments to Articles 2, 3, 5, 6, 11, 12, 20, 23 and 24 thereof shall be adopted in accordance with Article 172 of the Treaty.

Article 24

Winding up

1. At the end of the period provided for in Article 1 of the Regulation, or following an amendment pursuant to Article 11(2) of the Regulation, the IMI Joint Undertaking shall be wound up.
2. The winding up procedure shall be automatically triggered if one of the Founding Members terminates its membership of the IMI Joint Undertaking.
3. For the purpose of conducting the proceedings in winding up of the IMI Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.
4. When the IMI Joint Undertaking is being wound up, it shall return to the host state any physical support item made available by the host state in accordance with the host agreement.
5. When any physical support item has been dealt with as provided in paragraph 4, any further assets shall be used to cover the liabilities of the IMI Joint Undertaking and the expenditures relating to its winding up. Any surplus or deficit shall be distributed among or met by the Members existing at the time of the winding up in proportion of their actual contribution to the IMI Joint Undertaking. Any surplus distributed to the Community shall be returned to the Commission budget.
6. Remaining assets, debts or liabilities shall be distributed to the Members existing at the time of the winding up in proportion to their actual contribution to the IMI Joint Undertaking.
7. An ad hoc procedure shall be set up to ensure the appropriate management of any Grant Agreement referred to in Article 12 and service and supply contract referred to in Article 19, with duration longer than the duration of the IMI Joint Undertaking.

COUNCIL REGULATION (EC) No 74/2008**of 20 December 2007****on the establishment of the 'ARTEMIS Joint Undertaking' to implement a Joint Technology Initiative in Embedded Computing Systems**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 171 and 172 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 European Economic and Social Committee ⁽¹⁾,

Whereas:

(1) Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) ⁽²⁾ (hereinafter referred to as the Seventh Framework Programme), provides for a Community contribution for the establishment of long term public private partnerships in the form of Joint Technology Initiatives (JTIs) which could be implemented through Joint Undertakings within the meaning of Article 171 of the Treaty. These JTIs stem from the work of European Technology Platforms, already set up under the Sixth Framework Programme, and cover selected aspects of research in their field. They should combine private-sector investment and European public funding, including funding from the Seventh Framework Programme.

(2) Council Decision 2006/971/EC of 19 December 2006 concerning the specific programme 'Cooperation' implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) ⁽³⁾ (hereinafter referred to as the Specific Programme Cooperation), underlines the need for ambitious pan-European public private partnerships to speed up the development of major technologies by large research actions at Community level including, in particular, JTIs.

(3) The Lisbon Growth and Jobs Agenda underscores the need to develop favourable conditions for investment in knowledge and innovation in the Community to boost competitiveness, growth and jobs.

(4) In its conclusions of 25-26 November 2004, the Council encouraged the Commission to further elaborate the concepts of Technology Platforms and JTIs. It underlined that such initiatives could contribute to coordinating overall Community research efforts with a view to achieving synergies with the activities of existing schemes such as EUREKA and COST taking into account their important contribution to research and development (R & D).

(5) European companies and other research and development organisations active in the field of Embedded Computing Systems took the lead in establishing the European Technology Platform on Embedded Computing Systems (hereinafter referred to as the ARTEMIS Technology Platform) under the Sixth Framework Programme. The ARTEMIS Technology Platform developed a Strategic Research Agenda based on an extensive consultation with public and private stakeholders. The Strategic Research Agenda identified the priorities in the Embedded Computing Systems domain and recommended directions for a JTI in this field.

(6) The JTI on Embedded Computing Systems responds to the Commission Communications of 6 April 2005 on 'Building the ERA of knowledge for growth' and of 20 July 2005 on 'Common Actions for Growth and Employment: The Community Lisbon Programme', which call for a new and more ambitious approach to large-scale public-private partnerships in fields of major interest for European competitiveness identified through dialogue with industry.

(7) The JTI on Embedded Computing Systems responds to the need for support for pervasive Information and Communication Technologies as identified in the Report 'Creating an Innovative Europe' of January 2006 ⁽⁴⁾. This report also commends the ARTEMIS Joint Technology Platform model for combining national and Community funding within a clear legal structure and in a harmonised and synchronous manner.

(8) The JTI on Embedded Computing Systems should create a sustainable public-private partnership and increase and leverage private and public investment in the sector of embedded systems in Europe, which for the purpose of this Regulation should be deemed to include the Member States

⁽¹⁾ Opinion of 24 October 2007 (not yet published in the Official Journal).

⁽²⁾ OJ L 412, 30.12.2006, p. 1.

⁽³⁾ OJ L 400, 30.12.2006, p. 86. Corrected by OJ L 54, 22.2.2007, p. 30.

⁽⁴⁾ http://ec.europa.eu/invest-in-research/action/2006_ahogroup_en.htm

of the European Union (hereinafter referred to as Member States) and Countries associated to the Seventh Framework Programme (hereinafter referred to as Associated Countries). The JTI on Embedded Computing Systems should also achieve effective coordination and synergy of resources and funding from the Framework Programme, industry, national R & D programmes and intergovernmental R & D schemes (EUREKA), thus contributing to strengthening Europe's future growth, competitiveness and sustainable development. Finally, its objective should be to foster collaboration between all stakeholders such as industry including small and medium-sized enterprises (SMEs), national authorities, academic and research centres pulling together and focusing the research effort.

- (9) The JTI on Embedded Computing Systems should define a commonly agreed research agenda (hereinafter referred to as the Research Agenda) closely following the recommendations of the Strategic Research Agenda developed by the ARTEMIS Technology Platform. This Research Agenda should identify and regularly review research priorities for the development and adoption of key technologies for embedded computing systems across different application areas in order to strengthen European competitiveness and allow the emergence of new markets and societal applications.
- (10) The JTI on Embedded Computing Systems should address the design, development and deployment of ubiquitous, interoperable and cost-effective, powerful, safe and secure electronic and software systems. It should deliver reference designs and architectures that offer common architectural approaches for given ranges of applications, middleware that allows seamless connectivity and interoperability and integrated system design methods and tools for rapid development and prototyping.
- (11) The ambition and scope of the stated objectives of the JTI on Embedded Computing Systems, the scale of the financial and technical resources that need to be mobilised, and the need to achieve effective coordination and synergy of resources and funding, call for action to be taken by the Community. Therefore, it is necessary to set up a Joint Undertaking (hereinafter referred to as the ARTEMIS Joint Undertaking) under Article 171 of the Treaty as a legal entity responsible for the implementation of the JTI on Embedded Computing Systems. To ensure the appropriate management of R&D activities initiated under the Seventh Framework Programme (2007-2013), the ARTEMIS Joint Undertaking should be set up for a period up to 31 December 2017.
- (12) The ARTEMIS Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament, on the recommendation of the Council, taking however into account the specificities resulting from the nature of JTIs as public-private partnerships and in particular from the private sector contribution to the budget.
- (13) The objectives of the ARTEMIS Joint Undertaking should be pursued by pooling resources from the public and private sectors to support R & D Activities in the form of projects. To that end, the ARTEMIS Joint Undertaking should be able to organise competitive calls for proposals for projects to implement parts of the Research Agenda. The R & D Activities should respect fundamental ethical principles applicable in the Seventh Framework Programme.
- (14) Founding members of the ARTEMIS Joint Undertaking should be the Community, Belgium, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Hungary, the Netherlands, Austria, Portugal, Romania, Slovenia, Finland, Sweden, the United Kingdom and ARTEMISIA, an association representing companies and other R & D organisations active in the field of Embedded Computing Systems in Europe. The ARTEMIS Joint Undertaking should be open to new members.
- (15) The rules for the organisation and operation of the ARTEMIS Joint Undertaking should be laid down in the Statutes of the ARTEMIS Joint Undertaking as part of this Regulation.
- (16) A letter of commitment to contribute to the establishment and implementation of the ARTEMIS Joint Undertaking has been signed by ARTEMISIA.
- (17) The projects should be supported both by the Community's and ARTEMIS Member States' financial contributions as well as by contributions in kind from the research and development organisations participating in the projects of the ARTEMIS Joint Undertaking.

Further financing options may be available, inter alia, from the European Investment Bank (EIB), in particular through the Risk-Sharing Finance Facility developed jointly with the EIB and the Commission pursuant to Annex III of Decision 2006/971/EC.
- (18) Public funding for the R & D Activities following open and competitive calls for proposals published by the ARTEMIS Joint Undertaking should consist of national financial contributions from the ARTEMIS Member States and a financial contribution from the ARTEMIS Joint Undertaking. The financial contribution of the ARTEMIS Joint Undertaking should be provided at a percentage of the R & D costs incurred by participants in projects. This percentage should be equal for all participants in projects in any given call for proposals.

- (19) Over the duration of the ARTEMIS Joint Undertaking the R & D organisations participating in projects should provide resources that equal or exceed the total public funding for the R & D Activities.
- (20) Since there is a need to ensure stable employment conditions and equal treatment of staff, and in order to attract specialised scientific and technical staff of the highest calibre, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, laid down in Regulation (EEC, Euratom, ECSC) No 259/68 of the Council ⁽¹⁾ should apply to all staff recruited by the ARTEMIS Joint Undertaking.
- (21) As a body endowed with legal personality, the ARTEMIS Joint Undertaking should be accountable for its actions. Where relevant, the Court of Justice should be competent to resolve any disputes arising from the activities of the ARTEMIS Joint Undertaking.
- (22) The Commission should regularly report on the progress achieved by the ARTEMIS Joint Undertaking to the European Parliament and the Council.
- (23) The ARTEMIS Joint Undertaking should adopt, in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾ (hereinafter referred to as the Financial Regulation) and subject to prior consent from the Commission, specific financial rules which take into account its specific operating needs arising, in particular, from the need to combine Community and national funding to support R & D Activities in an efficient and timely manner. In order to ensure a harmonised treatment between the participants of the ARTEMIS Joint Undertaking research activities and those of the indirect actions of the Seventh Framework Programme, it is appropriate that value added tax should not be an eligible cost for Community funding, in line with Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) ⁽³⁾.
- (24) Appropriate measures should be taken to prevent irregularities and fraud and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ⁽⁴⁾, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽⁵⁾, and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations concluded by the European Anti-Fraud Office ⁽⁶⁾.
- (25) The Intellectual Property Rights policy of the ARTEMIS Joint Undertaking should promote knowledge creation and exploitation.
- (26) In order to facilitate its setting up, the Commission should be responsible for the establishment and initial operation of the ARTEMIS Joint Undertaking until it has the operational capacity to implement its own budget.
- (27) Since the objective of this Regulation, namely the establishment of the ARTEMIS Joint Undertaking, cannot be sufficiently achieved by the Member States due to the trans-national nature of the great research challenges identified, which requires the pooling of complementary knowledge and financial resources across the sectors and borders and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective,

HAS ADOPTED THIS REGULATION:

Article 1

Establishment of a Joint Undertaking

1. For the implementation of the Joint Technology Initiative (JTI) on Embedded Computing Systems, a Joint Undertaking within the meaning of Article 171 of the Treaty, hereinafter referred to as the 'ARTEMIS Joint Undertaking', is hereby set up for a period up to 31 December 2017.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 337/2007 (OJ L 90, 30.3.2007, p. 1).

⁽²⁾ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽³⁾ OJ L 391, 30.12.2006, p. 1.

⁽⁴⁾ OJ L 312, 23.12.1995, p. 1.

⁽⁵⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁶⁾ OJ L 136, 31.5.1999, p. 1.

2. The seat of the ARTEMIS Joint Undertaking shall be located in Brussels, Belgium.

Article 5

Community contribution

Article 2

Objectives

The ARTEMIS Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and the Theme 'Information and Communication Technologies' of the Specific Programme 'Cooperation'. It shall in particular:

- (a) define and implement a 'Research Agenda' for the development of key technologies for Embedded Computing Systems across different application areas in order to strengthen European competitiveness and sustainability, and allow the emergence of new markets and societal applications. Activities for the implementation of the Research Agenda are hereinafter referred to as 'R & D Activities';
- (b) support the implementation of the R & D Activities notably by awarding funding to participants in selected projects following competitive calls for proposals;
- (c) promote a public-private partnership aimed at mobilising and pooling Community, national and private efforts, increasing overall R & D investments in the field of Embedded Computing Systems, and fostering collaboration between the public and private sectors;
- (d) achieve synergy and coordination of European R & D efforts into the field of Embedded Computing Systems including, when added value can be created, the progressive integration in the ARTEMIS Joint Undertaking of the related activities in this field currently implemented through intergovernmental R & D schemes (Eureka);
- (e) promote the involvement of SMEs in its activities in line with the objectives of the Seventh Framework Programme.

Article 3

Legal status

The ARTEMIS Joint Undertaking shall be a Community body and shall have legal personality. In each of the Member States of the European Community, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

Article 4

Statutes

The Statutes of the ARTEMIS Joint Undertaking, as set out in the Annex hereto, constitute an integral part of this Regulation and are hereby adopted.

1. The maximum Community contribution to the ARTEMIS Joint Undertaking covering running costs and R & D Activities shall be EUR 420 million paid from the appropriations in the general budget of the European Union allocated to the Theme 'Information and Communication Technologies' of the Specific Programme 'Cooperation', according to the provisions of Article 54(2)(b) of the Financial Regulation.

2. The arrangements for the Community financial contribution shall be established by means of a general agreement and annual financial agreements to be concluded between the Commission, on behalf of the Community, and the ARTEMIS Joint Undertaking.

3. The Community contribution to the ARTEMIS Joint Undertaking used to fund projects shall be allocated following open and competitive calls for proposals.

Article 6

Financial rules

1. The ARTEMIS Joint Undertaking shall adopt specific financial rules in accordance with Article 185(1) of the Financial Regulation. They may depart from the rules laid down in Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation⁽¹⁾ where the specific operating needs of the ARTEMIS Joint Undertaking so require and subject to prior consent of the Commission.

2. The ARTEMIS Joint Undertaking shall have its own internal audit capability.

Article 7

Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the ARTEMIS Joint Undertaking and its Executive Director.

2. Without prejudice to paragraph 3 of this Article and Article 7(2) of the Statutes, the ARTEMIS Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and

⁽¹⁾ OJ L 357, 31.12.2002 p. 72.

on the authority empowered to conclude contracts by the Conditions of Employment of Other Servants of the European Communities in respect of its staff.

3. The Governing Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations of Officials of the European Communities, and the Conditions of Employment of Other Servants of the European Communities.

4. The staff resources shall be determined in the establishment plan of the ARTEMIS Joint Undertaking that shall be set out in its annual budget.

5. The staff of the ARTEMIS Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed no more than once for a fixed period. The total period of engagement shall not exceed seven years and shall not in any case exceed the lifetime of the Joint Undertaking.

6. All cost related to the staff shall be borne by the ARTEMIS Joint Undertaking.

7. The ARTEMIS Joint Undertaking may adopt provisions to allow experts to be seconded to it.

Article 8

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the ARTEMIS Joint Undertaking and its staff.

Article 9

Liability

1. The contractual liability of the ARTEMIS Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement or contract in question.

2. In the case of non-contractual liability, the ARTEMIS Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.

3. Any payment by the ARTEMIS Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the ARTEMIS Joint Undertaking and shall be covered by the resources of the ARTEMIS Joint Undertaking.

4. The ARTEMIS Joint Undertaking shall be solely responsible for meeting its obligations.

Article 10

Jurisdiction of the Court of Justice and applicable law

1. The Court of Justice shall have jurisdiction:

- (a) in any dispute between the members which relates to the subject matter of this Regulation and/or the Statutes referred to in Article 4;
- (b) pursuant to any arbitration clause contained in agreements and contracts concluded by the ARTEMIS Joint Undertaking;
- (c) in actions brought against the ARTEMIS Joint Undertaking, including decisions of its bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;
- (d) in disputes related to compensation for damage caused by the staff of the ARTEMIS Joint Undertaking in the performance of their duties.

2. For any matter not covered by this Regulation or by other acts of Community law, the law of the State where the seat of the ARTEMIS Joint Undertaking is located shall apply.

Article 11

Report, evaluation and discharge

1. The Commission shall present to the European Parliament and the Council an annual report on the progress achieved by the ARTEMIS Joint Undertaking. This report shall contain details of implementation of the JTI on Embedded Computing Systems including number of proposals submitted, number of proposals selected for funding, type of participants, including SMEs, and country statistics.

2. By 31 December 2010, as well as by 31 December 2013, the Commission shall carry out an interim evaluation of the ARTEMIS Joint Undertaking with the assistance of independent experts, on the basis of terms of reference established after consultation of the ARTEMIS Joint Undertaking. These evaluations shall cover the quality and efficiency of the ARTEMIS Joint Undertaking and progress towards the objectives set. The Commission shall communicate the conclusions thereof, accompanied by its observations and, where appropriate, proposals to amend this Regulation, including the possible early termination of the Joint Undertaking, to the European Parliament and the Council.

3. No later than six months after the winding-up of the Joint Undertaking, the Commission shall conduct a final evaluation of the ARTEMIS Joint Undertaking with the assistance of independent experts. The results of the final evaluation shall be presented to the European Parliament and the Council.

4. Discharge for the implementation of the budget of the ARTEMIS Joint Undertaking shall be given by the European Parliament, upon recommendation of the Council, in accordance with a procedure provided for by the financial rules of the ARTEMIS Joint Undertaking referred to in Article 6.

Article 12

Protection of the financial interests of the members and anti-fraud measures

1. The ARTEMIS Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls.

2. In case of irregularities, the members of the ARTEMIS Joint Undertaking shall reserve the right to recover amounts unduly spent, including by a reduction or a suspension of subsequent contributions to the ARTEMIS Joint Undertaking.

3. For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 shall apply.

4. The ARTEMIS Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the ARTEMIS Joint Undertaking's public funding. These checks and audits shall be performed either directly by the ARTEMIS Joint Undertaking or by ARTEMIS Member States on its behalf. ARTEMIS Member States may carry out any other checks and audits among the recipients of their national funding as they deem necessary and shall communicate the results to the ARTEMIS Joint Undertaking.

5. The Commission and/or the Court of Auditors may, as necessary, carry out on-the-spot checks among the recipients of the ARTEMIS Joint Undertaking's funding and the agents responsible for its allocation. To that end, the ARTEMIS Joint Undertaking shall ensure that grant agreements and contracts provide for the right of the Commission and/or the Court of Auditors to carry out, the appropriate controls and, in the event of the detection of irregularities, to impose dissuasive and proportionate penalties.

6. The European Anti-Fraud Office (OLAF) established by Commission Decision 1999/352/EC, ECSC, Euratom ⁽¹⁾ shall enjoy the same powers in respect of the ARTEMIS Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the ARTEMIS Joint Undertaking is established, it shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF ⁽²⁾. The ARTEMIS Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

Article 13

Confidentiality

Without prejudice to Article 14, the ARTEMIS Joint Undertaking shall ensure the protection of sensitive information, whose

disclosure could damage the interests of its members or of participants in projects.

Article 14

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents ⁽³⁾ shall apply to documents held by the ARTEMIS Joint Undertaking.

2. The ARTEMIS Joint Undertaking shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 by 7 August 2008.

3. Decisions taken by the ARTEMIS Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

Article 15

Intellectual property

The rules governing the protection, use and the dissemination of research results, based on Regulation (EC) No 1906/2006, are set out in Article 23 of the Statutes.

Article 16

Preparatory actions

1. The Commission shall be responsible for the establishment and initial operation of the ARTEMIS Joint Undertaking until the ARTEMIS Joint Undertaking has the operational capacity to implement its own budget. The Commission shall carry out, in accordance with Community law, all necessary actions in collaboration with other founding members and the involvement of the competent bodies.

2. For that purpose, until such time as the Executive Director takes up his duties following his appointment by the Governing Board in accordance with Article 7(2) of the Statutes, the Commission may assign a limited number of its officials, including one to fulfil the functions of the Executive Director, on an interim basis.

3. The interim Executive Director may authorise all payments covered by the credits provided in the budget of the ARTEMIS Joint Undertaking once approved by the Governing Board and may conclude contracts, including staff contracts following the adoption of the ARTEMIS Joint Undertaking establishment plan. The Commission authorising officer may authorise all payments covered by the credits provided in the budget of the ARTEMIS Joint Undertaking.

⁽¹⁾ OJ L 136, 31.5.1999, p. 20.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

⁽³⁾ OJ L 145, 31.5.2001, p. 43.

*Article 17***Support from the host State**

A host agreement shall be concluded between the ARTEMIS Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the ARTEMIS Joint Undertaking.

*Article 18***Entry into force**

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 20 December 2008.

For the Council

The President

F. NUNES CORREIA

ANNEX

STATUTES OF THE ARTEMIS JOINT UNDERTAKING

Article 1

Definitions

For the purposes of these Statutes, the following definitions shall apply:

- (a) 'project' means a research and/or development project that is selected by the ARTEMIS Joint Undertaking following open and competitive calls for proposals and thereafter partly funded by the ARTEMIS Joint Undertaking;
- (b) 'total costs' means eligible costs of the projects as defined by the respective funding authorities issuing the grant agreements;
- (c) 'running costs' means the costs necessary for the functioning of the ARTEMIS Joint Undertaking excluding the funding of R & D activities;
- (d) 'affiliated entity' means an affiliated entity as defined in Article 2 of the Regulation (EC) No 1906/2006.

Article 2

Tasks and activities

The main tasks and activities of the ARTEMIS Joint Undertaking shall be the following:

- (a) to ensure the establishment and sustainable management of the JTI on Embedded Computing Systems;
- (b) to define and make any necessary adjustment to the Multiannual Strategic Plan including the Research Agenda as referred to in Article 19(1);
- (c) to define and carry out Annual Implementation Plans as referred to in Article 19(3) for executing the Multiannual Strategic Plan as referred to in Article 19(1);
- (d) to initiate calls for proposals, to evaluate proposals, and award funding to projects selected through open, transparent and effective procedures, within the limits of available funds;
- (e) to develop close cooperation and ensure coordination with European, in particular the Seventh Framework Programme, national and transnational activities, bodies and stakeholders, aiming at fostering a fertile innovation environment in Europe and better synergies and exploitation of research and development results in the area of Embedded Computing Systems;
- (f) to monitor progress towards the objectives of the ARTEMIS Joint Undertaking;
- (g) to undertake communication and dissemination activities;
- (h) to publish information on the projects, including the name of the participants and the amount of the financial contribution of the ARTEMIS Joint Undertaking per participant;

- (i) to carry out any other activity needed to achieve the objectives referred to in Article 2 of the Regulation.

Article 3

Members

1. The founding members of the ARTEMIS Joint Undertaking (hereinafter referred to as 'founding members') shall be:

- (a) the Community, represented by the Commission;
- (b) Belgium, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Hungary, the Netherlands, Austria, Portugal, Romania, Slovenia, Finland, Sweden, the United Kingdom; and
- (c) upon acceptance of the Statutes of the ARTEMIS Joint Undertaking, the ARTEMISIA association (hereinafter referred to as ARTEMISIA), an association registered under Dutch law (registration No 17201341) with its registered office in Eindhoven (the Netherlands), acting as a representative of companies and other R & D actors operating in the field of Embedded Computing Systems in Europe.

2. Provided that they subscribe to the objectives as described in Article 2 of the Regulation and are willing to assume all obligations of membership, including the acceptance of the Statutes of the ARTEMIS Joint Undertaking, the following entities may become members of the ARTEMIS Joint Undertaking:

- (a) other Member States and Associated Countries;
- (b) any other country (hereinafter referred to as third country) pursuing R & D policies or programmes in the area of Embedded Computing Systems;
- (c) any other legal entity capable of making a substantial financial contribution to the achievement of the objectives of the ARTEMIS Joint Undertaking.

3. The founding members and new members as referred to in paragraph 2 shall hereinafter be referred to as 'members'.

4. Member States and Associated Countries members of the ARTEMIS Joint Undertaking shall hereinafter be referred to as 'ARTEMIS Member States'. Each ARTEMIS Member State shall appoint its representative in the bodies of the ARTEMIS Joint Undertaking and designate the national entity or entities responsible for fulfilling its obligations with respect to implementation of the activities of the ARTEMIS Joint Undertaking.

5. The ARTEMIS Member States and the Commission shall hereinafter be referred to as the 'public authorities' of the ARTEMIS Joint Undertaking.

Article 4

Accession and changes to membership

1. Any new membership application to the ARTEMIS Joint Undertaking shall be addressed to the Governing Board in accordance with Article 6(2)(a).

2. Member States or Associated Countries that are not founding members of the ARTEMIS Joint Undertaking shall become members upon notification to the Governing Board of their written acceptance of these Statutes and of any other provisions governing the functioning of the ARTEMIS Joint Undertaking.

3. Any application for membership of the ARTEMIS Joint Undertaking by third countries shall be considered by the Governing Board, which shall make a recommendation to the Commission. The Commission may make a proposal to amend this Regulation on the accession of the third country, subject to the successful completion of negotiations with the ARTEMIS Joint Undertaking.

4. Decisions of the Governing Board on accession of any other legal entity or recommendations of the Governing Board on the accession of third countries shall be made taking into account the relevance and potential added value of the applicant for the achievement of the objectives of the ARTEMIS Joint Undertaking. For any application for new membership, the Commission shall provide timely information to the Council on the assessment and, where applicable, on the decision of the Governing Board.

5. Membership of the ARTEMIS Joint Undertaking may not be transferred to a third party unless the prior agreement of the Governing Board is given.

6. Any member may withdraw from the ARTEMIS Joint Undertaking. Withdrawal shall become effective and irrevocable six months after notification to the other members following which the former member shall be discharged from any obligations other than those already undertaken through decisions of the ARTEMIS Joint Undertaking in accordance with these Statutes, prior to the member's withdrawal.

Article 5

Bodies of the ARTEMIS Joint Undertaking

1. The Bodies of the ARTEMIS Joint Undertaking shall be:

- the Governing Board,
- the Executive Director,
- the Public Authorities Board,
- the Industry and Research Committee.

2. In case a specific task is not assigned to one of the bodies, the Governing Board shall be the competent one.

Article 6

Governing Board

1. *Composition, voting rights and decision taking*

(a) The Governing Board shall consist of representatives of the members of the ARTEMIS Joint Undertaking and the Chairperson of the Industry and Research Committee;

(b) each member of the ARTEMIS Joint Undertaking shall appoint its representatives and a lead delegate who shall hold the voting rights of the member in the Governing Board. The Chairperson of the Industry and Research Committee shall have no voting rights;

(c) voting rights for ARTEMISIA and the public authorities shall be equal and shall amount in total to at least 90 % of the total votes. The initial distribution of the voting rights shall be 50 % for ARTEMISIA and 50 % for public authorities;

(d) the distribution of the votes for the public authorities shall be established annually in proportion to the funds they have committed to projects in the past two financial years. The Commission shall hold a minimum of 10 % of the votes;

(e) for the first financial year, and any subsequent financial years in which two or fewer ARTEMIS Member States have committed public funds to projects in the previous financial years, the Commission shall hold one third of the votes corresponding to public authorities. The remaining two thirds shall be distributed equally amongst the ARTEMIS Member States;

(f) voting rights for any new member that is not a Member State or an Associated Country shall be determined by the Governing Board before accession of this member to the ARTEMIS Joint Undertaking;

(g) decisions shall be adopted by a majority of at least 75 % of total votes unless otherwise explicitly stated in these Statutes;

(h) the representatives shall not be personally liable for actions undertaken in their capacity as representatives in the Governing Board.

2. *Role and tasks*

The Governing Board shall have overall responsibility for the operations of the ARTEMIS Joint Undertaking and shall oversee the implementation of its activities.

The Governing Board shall in particular:

(a) assess applications and decide or recommend changes in membership in accordance with Article 4;

(b) decide on the termination of the membership of any member that is in default of its obligations and has not remedied within a reasonable period set by the Executive Director, without prejudice to the provisions of the Treaty ensuring compliance with Community law;

(c) adopt the financial rules of the ARTEMIS Joint Undertaking in accordance with Article 6 of the Regulation;

(d) approve the initiatives to amend the Statutes in accordance with Article 24;

(e) approve the Multiannual Strategic Plan including the Research Agenda referred to in Article 19(1);

(f) supervise the overall activities of the ARTEMIS Joint Undertaking;

- (g) supervise progress in implementing the Multiannual Strategic Plan referred to in Article 19(1);
- (h) approve, in accordance to Article 18(4), the Annual Implementation Plan and the Annual Budget Plan referred to in Article 19(3), including the staff establishment plan;
- (i) approve the Annual Activity Report referred to in Article 19(4) and the Annual Accounts and balance sheet;
- (j) appoint, dismiss or replace the Executive Director, provide guidance to the Executive Director, and monitor the Executive Director's performance;
- (k) establish committees or working groups to carry out specific tasks as necessary;
- (l) adopt its rules of procedure in accordance with paragraph 3;
- (m) assign any task not specifically allocated to one of the other Bodies of the ARTEMIS Joint Undertaking;
- (n) adopt practical arrangements for implementing Regulation (EC) No 1049/2001 as referred to in Article 14 of the Regulation.

The Community shall hold a veto right for all decisions related to the use of its financial contributions, decisions concerning the winding-up of the Joint Undertaking and decisions related to points (a), (b), (c), (j), and (n).

3. Rules of procedure

- (a) The Governing Board shall meet at least twice a year, normally at the seat of the ARTEMIS Joint Undertaking;
- (b) the meetings of the Governing Board shall be chaired by the Chairperson of the Industry and Research Committee;
- (c) unless otherwise decided by the Governing Board, the Executive Director shall participate in the meetings;
- (d) until the Governing Board has adopted its own rules of procedure the meetings shall be convened by the Commission;
- (e) the quorum of the Governing Board shall be constituted by the Commission, ARTEMISIA and at least three ARTEMIS Member States representatives.

Article 7

Executive Director

1. The Executive Director shall be the chief executive responsible for the day-to-day management of the ARTEMIS Joint Undertaking in accordance with the decisions of the Governing Board and its legal representative. He shall perform his tasks with complete independence and shall be accountable to the Governing Board. The Director shall exercise, in respect of the staff, the powers laid down in Article 7(2) of the Regulation.

2. The Executive Director shall be appointed by the Governing Board for a period of three years, following a call for expression of interest published in the *Official Journal of the European Union* and in other

publicly accessible periodicals or internet sites. After an evaluation of the Executive Director's performance, the Board may extend the term of office once for a further period of not more than four years.

3. The role and tasks of the Executive Director shall be:

- (a) to prepare the Annual Implementation Plan referred to in Article 19(3) and the Annual Budget Plan, in collaboration with the Industry and Research Committee, and submit them to the Governing Board for approval, in accordance with Article 18;
- (b) to oversee the organisation and execution of all activities needed to carry out the Annual Implementation Plan within the framework and the rules laid down by these Statutes and subsequent decisions adopted by the Governing Board and the Public Authorities Board;
- (c) to prepare the Annual Activity Report referred to in Article 19(4) and the Annual Accounts and balance sheets as referred to in Article 18(5) and submit them to the Governing Board for approval;
- (d) to present proposals on the internal functioning of the ARTEMIS Joint Undertaking to the Governing Board for approval;
- (e) to present proposals on the rules of procedure for calls for proposals launched by the ARTEMIS Joint Undertaking, including the associated project proposal evaluation and selection process to the Public Authorities Board for approval;
- (f) to manage the launch of calls for proposals, the process of evaluating and selecting project proposals and negotiating grant agreements for selected proposals, and the subsequent periodic monitoring and follow-up of projects within the mandate given by the Public Authorities Board;
- (g) to conclude grant agreements for the implementation of the R & D Activities as referred to in Article 12 and 13, and service and supply contracts necessary for the operations of the ARTEMIS Joint Undertaking as referred to in Article 20;
- (h) to authorise all payments due by the ARTEMIS Joint Undertaking;
- (i) to establish and implement the necessary measures and actions for assessing the progress of the ARTEMIS Joint Undertaking towards achieving its objectives, including independent monitoring and auditing to assess the effectiveness and performance of the ARTEMIS Joint Undertaking;
- (j) to organise project reviews and technical audits for the assessment of research and development results, and to report to the Governing Board on the overall results;
- (k) to carry out financial audits, directly or through the national public authorities, on project participants as necessary, in compliance with the financial rules of the ARTEMIS Joint Undertaking;
- (l) to negotiate the conditions for accession of new members of the ARTEMIS Joint Undertaking, on behalf of and within the mandate of the Governing Board;

- (m) to carry out any other necessary action for the successful achievement of the ARTEMIS Joint Undertaking's objectives not provided for in the Annual Implementation Plan referred to in Article 19(3), within any limits and conditions established by the Governing Board;
- (n) to convene and/or organise meetings of the Governing Board and of the Public Authorities Board and to attend where appropriate these meetings as an observer;
- (o) to provide the Governing Board with any information requested by it;
- (p) to submit to the Governing Board his proposal(s) concerning the organisation structure of the Secretariat;
- (q) to perform risk assessment and risk management analysis and to propose to the Governing Board any insurance that it may be necessary for the ARTEMIS Joint Undertaking to take out in order to meet its obligations.

4. A Secretariat under the responsibility of the Executive Director shall be established to provide support in all his tasks, including:

- (a) secretarial support for the Bodies of the ARTEMIS Joint Undertaking;
- (b) operational support for evaluating proposals and monitoring projects, including support in organising calls for proposals and arranging for project reviews and technical audits;
- (c) establishment and management of an appropriate internal audit and accounting system;
- (d) financial tasks, including payments of financial contributions from the ARTEMIS Joint Undertaking to participants in projects;
- (e) support for communication activities such as public relations, publication and dissemination activities and organisation of events;
- (f) managing invitations to tender for ARTEMIS Joint Undertaking goods/services requirements according to the financial rules of the ARTEMIS Joint Undertaking.

5. Non-financial tasks of the Secretariat may be contracted by the ARTEMIS Joint Undertaking to external service providers. Such contracts shall be established in accordance with the provisions of the financial rules of the ARTEMIS Joint Undertaking.

Article 8

Public Authorities Board

1. Composition, voting rights and decision taking:

- (a) The Public Authorities Board shall consist of the public authorities of the ARTEMIS Joint Undertaking;
- (b) each public authority shall appoint its representatives and a lead delegate who shall hold the voting rights in the Public Authorities Board;

- (c) one third of the voting rights in the Public Authorities Board shall be assigned to the Community; the remaining two thirds shall be allocated to the other members of the Public Authorities Board on an annual basis in proportion to their financial contribution to the activities of the ARTEMIS Joint Undertaking for that year in accordance with Article 11(6)b and with an upper limit for any given member of 50 % of the total voting rights in the Public Authorities Board;

- (d) if less than three ARTEMIS Member States have communicated to the Executive Director their financial contribution according to Article 11(6)(b), the Community shall hold one third of the votes and the remaining two thirds shall be distributed equally amongst the ARTEMIS Member States;

- (e) decisions shall be taken by at least 60 % of total votes;

- (f) the representative of the Community shall have a veto right on all issues concerning the use of its own contribution to the ARTEMIS Joint Undertaking;

- (g) any Member State or Associated Country that is not member of the ARTEMIS Joint Undertaking shall be able to participate in the Public Authorities Board as an observer. These States shall receive all relevant Public Authorities Board documents and shall be able to provide advice on any decision taken by the Public Authorities Board.

2. Role and tasks

The Public Authorities Board shall:

- (a) ensure that the principles of fairness and transparency are properly applied in the allocation of public funding to participants in projects;
- (b) discuss and approve the Annual Work Programme referred to in Article 19(2) upon proposals from the Industry and Research Committee, including the budgets available for calls for proposals;
- (c) approve the rules of procedure for calls for proposals, for the evaluation and selection of proposals and for monitoring of projects;
- (d) upon proposal of the representative of the Community, decide on the ARTEMIS Joint Undertaking financial contribution to the budget of the calls for proposals;
- (e) approve the scope and the launch of calls for proposals;
- (f) approve the selection of project proposals to receive public funding following calls for proposals;
- (g) upon proposal of the representative of the Community, decide on the percentage of the ARTEMIS Joint Undertaking's financial contribution referred to in Article 13(6)(a) to participants in projects arising from calls for proposals in any given year;
- (h) adopt its rules of procedure in accordance with paragraph 3.

3. Rules of procedure

- (a) The Public Authorities Board shall meet at least twice a year, normally at the seat of the ARTEMIS Joint Undertaking;
- (b) the Public Authorities Board shall elect its Chairperson;
- (c) until the Public Authorities Board has adopted its rules of procedure, the meetings shall be convened by the Commission;
- (d) the quorum of the Public Authorities Board shall be constituted by the Commission and at least three ARTEMIS Member States representatives.

Article 9

Industry and Research Committee

1. Composition

ARTEMISIA shall appoint the members of the Industry and Research Committee.

The Industry and Research Committee shall consist of no more than 25 members.

2. Role and tasks

The Industry and Research Committee shall:

- (a) elaborate the draft Multiannual Strategic Plan referred to in Article 19(1), including the content and update of the Research Agenda, and submit it to the Governing Board for approval;
- (b) prepare the draft Annual Work Programme referred to in Article 19(2), including proposals for the content of calls for proposals to be launched by the ARTEMIS Joint Undertaking;
- (c) elaborate proposals regarding the technological, research and innovation strategy of the ARTEMIS Joint Undertaking;
- (d) elaborate proposals for activities regarding the creation of open innovation environments, promoting the participation of SMEs, developing standards transparently and with openness to participation, international cooperation, dissemination and public relations;
- (e) advise the other bodies on any issue related to planning and operating research and development programmes, fostering partnerships and leveraging resources in Europe in order to achieve the objectives of the ARTEMIS Joint Undertaking;
- (f) appoint working groups where necessary under the overall coordination of one or more members of the Industry and Research Committee in order to achieve the above tasks;
- (g) adopt its rules of procedure in accordance with paragraph 3.

3. Rules of procedure

- (a) The Industry and Research Committee shall meet at least twice a year;

- (b) the Industry and Research Committee shall elect its Chairperson;
- (c) until the Industry and Research Committee has adopted its own rules of procedure, the meetings shall be convened by ARTEMISIA.

Article 10

Internal auditing function

The functions entrusted by Article 185(3) of the Financial Regulation to the Commission's internal auditor shall be carried out under the responsibility of the Governing Board, which shall make appropriate provision, taking into account the size and the scope of the ARTEMIS Joint Undertaking.

Article 11

Sources of financing

1. The activities of the ARTEMIS Joint Undertaking shall be jointly funded through financial contributions paid in partial instalments and in-kind contributions from its members to support the running costs and the R & D Activities.

2. All resources of the ARTEMIS Joint Undertaking shall be devoted to achieving the objectives laid down in Article 2 of the Regulation.

3. The resources of the ARTEMIS Joint Undertaking entered to its budget shall be composed of:

- (a) members' contributions to the running costs, except for the ones referred to in paragraph 5(c);
- (b) a Community contribution to fund the R & D Activities;
- (c) any revenue generated by the ARTEMIS Joint Undertaking;
- (d) any other financial contributions and revenues.

Any interest yielded by the contributions paid by its members shall be considered to be revenue of the ARTEMIS Joint Undertaking.

4. Any legal entity that is not a member may make in-kind or cash contributions to the resources of the ARTEMIS Joint Undertaking under the terms and conditions negotiated by the Executive Director on behalf of and within the mandate granted by the Governing Board.

5. The running costs of the ARTEMIS Joint Undertaking shall be borne by its members:

- (a) ARTEMISIA shall make a contribution of up to EUR 20 million or up to 1 % of the sum of the total cost of all projects, whichever figure is higher, but not exceeding EUR 30 million;
- (b) the Community shall make a contribution of up to EUR 10 million. If part of this contribution is not used it may be available for R & D Activities referred to in paragraph 6;

(c) ARTEMIS Member States shall make in-kind contributions to the running costs by facilitating the implementation of projects and the granting of public funds as referred to in Articles 12 and 13;

(d) the contributions of the Community and ARTEMISIA shall be made available in accordance with the provisions of the relevant Annual Budget Plan referred to in Article 18. Partial instalments shall be provided on the basis of the Joint Undertaking's financial needs.

6. The R & D Activities of the ARTEMIS Joint Undertaking shall be supported through:

(a) a financial contribution from the Community of up to EUR 410 million to finance projects which may be eventually increased by any unspent part of the Community contribution referred to in paragraph 5(b);

(b) financial contributions from ARTEMIS Member States that shall amount in total to at least 1,8 times the Community's financial contribution. These financial contributions shall be paid to project participants according to the provisions of Articles 12 and 13. Every year, ARTEMIS Member States shall communicate to the Executive Director by a date determined by the Governing Board their national financial commitments reserved for calls for proposals to be launched by the ARTEMIS Joint Undertaking taking into account the scope of the supported R & D Activities addressed in the calls;

(c) in-kind contributions by research and development organisations participating in projects which shall be equal to their share of the necessary eligible cost of carrying out the projects as defined on the basis of the rules of the respective funding authorities issuing the grant agreements. Their overall contribution over the duration of the ARTEMIS Joint Undertaking shall be equal to or greater than the contribution of public authorities.

7. The financial contributions of the members to the ARTEMIS Joint Undertaking shall be paid through partial instalments in accordance with the provisions of the Annual Budget Plan referred to in Article 18.

8. Any new member of the ARTEMIS Joint Undertaking other than Member States or Associated Countries shall make a financial contribution to the ARTEMIS Joint Undertaking.

9. Should any member of the ARTEMIS Joint Undertaking be in default of its commitments concerning its agreed financial contribution to the ARTEMIS Joint Undertaking, the Executive Director shall notify such member in writing thereof and shall set a reasonable period in which such default may be remedied. If such default has not been remedied within such period, the Executive Director shall convene a meeting of the Governing Board to decide whether the defaulting member's membership should be revoked or if any other measures should be taken until its obligations have been met.

10. The ARTEMIS Joint Undertaking shall own all assets generated by or transferred to it for the fulfilment of its objectives as described in Article 2 of the Regulation, unless otherwise specified.

Article 12

Implementation of R & D Activities

1. The ARTEMIS Joint Undertaking shall support R & D Activities through open and competitive calls for proposals, independent evaluation and selection of proposals, allocation of public funding to selected proposals, and the funding of projects.

2. The ARTEMIS Joint Undertaking shall conclude grant agreements with project participants for the implementation of the projects. The terms and conditions of these grant agreements shall be in accordance with the ARTEMIS Joint Undertaking financial rules referred to in Article 6 of the Regulation and shall refer to and, where appropriate, rely on corresponding national grant agreements as referred to in Article 13(6)(b).

3. In order to enable the implementation of projects and the granting of public funds, the ARTEMIS Joint Undertaking shall establish administrative arrangements with the national entities designated by the ARTEMIS Member States for that purpose, in line with the financial rules of the ARTEMIS Joint Undertaking.

4. Member States or Associated Countries that are not members of the ARTEMIS Joint Undertaking may conclude similar arrangements with the ARTEMIS Joint Undertaking.

5. The ARTEMIS Joint Undertaking shall set up the procedures for the supervision and control of the R & D Activities, including provisions for monitoring and technical auditing of projects. The ARTEMIS Member States shall not require additional monitoring and technical audit reports other than those required by the ARTEMIS Joint Undertaking.

Article 13

Funding of projects

1. Public funding for projects selected following calls for proposals published by the ARTEMIS Joint Undertaking shall consist of the national financial contributions from the ARTEMIS Member States and/or the financial contribution from the ARTEMIS Joint Undertaking. Any public support under this initiative is without prejudice to the procedural and material State aid rules when applicable.

2. The following legal entities shall be eligible for receiving funding from the Community contribution to the R & D Activities of the ARTEMIS Joint Undertaking as referred to in Article 5 of the Regulation:

(a) legal entities established in the ARTEMIS Member States having concluded a grant agreement for such project with the corresponding national authority following the award procedures of the ARTEMIS Joint Undertaking;

(b) other legal entities established in Member States or Associated Countries that are not members of the ARTEMIS Joint Undertaking. In this case, such States or countries may establish administrative arrangements with the ARTEMIS Joint Undertaking to enable the participation of the companies and research and development organisations located in their territories.

In order to be considered eligible for Community funding, costs incurred in the implementation of R & D Activities shall be excluded of value added tax.

3. The calls for proposals launched and published by the ARTEMIS Joint Undertaking shall specify the overall budget available for each call. This budget shall indicate the amounts committed at national level by each ARTEMIS Member State and the estimated amount of the ARTEMIS Joint Undertaking financial contribution. The calls shall state the evaluation criteria in relation to the objectives of the call and any national or ARTEMIS Joint Undertaking eligibility criteria.

4. The ARTEMIS Joint Undertaking financial contribution to the budget of each call shall be equivalent to 55 % of the total amount committed by the ARTEMIS Member States, unless the Public Authorities Board decides otherwise at the proposal of the representative of the Community.

5. Calls, evaluation and selection of proposals shall respect the following rules:

- (a) calls for proposals launched by the ARTEMIS Joint Undertaking shall be open to participants established in ARTEMIS Member States and in any other Member State or Associated Country. They shall be made public;
- (b) consortia of participants in project proposals submitted in response to these calls shall include at least three non-affiliated entities established in at least three ARTEMIS Member States. The prospective Participants and their contribution to the project proposals shall be verified by the ARTEMIS Joint Undertaking, on the basis of verifications provided by the respective public authorities, against the pre-defined national and Joint Undertaking eligibility criteria for funding. They shall be informed on their compliance, where possible before they submit a full project proposal. These checks shall not result in significant delays in the proposal evaluation and the selection process;
- (c) the evaluation and selection process carried out with the assistance of independent experts shall ensure that allocation of the ARTEMIS Joint Undertaking public funding follows the principles of equal treatment, excellence and competition;
- (d) following the evaluation of proposals, the Public Authorities Board shall establish a ranked list of proposals on the basis of clear evaluation criteria and their collective contribution towards achieving the objectives of the call;
- (e) the Public Authorities Board shall decide on the selection of proposals and the allocation of public funding to selected proposals up to the limit of the budgets available, taking into account any national eligibility criteria and the verifications carried out in accordance with point (b). This decision shall also be binding for ARTEMIS Member States without any further evaluation or selection processes.

6. Funding of projects shall respect the following rules:

- (a) the financial contribution of the ARTEMIS Joint Undertaking to participants in projects shall be provided at a percentage of the total costs, defined when appropriate by the respective funding authorities issuing the grant agreements, incurred for implementing the project. This percentage shall be determined on a yearly basis by the ARTEMIS Joint Undertaking and be up to 16,7 %. This percentage shall be equal for all participants in projects arising from any given call for proposals;
- (b) ARTEMIS Member States shall establish grant agreements with participants in projects in accordance with their national rules, in

particular as regards eligibility criteria and other necessary financial and legal requirements. When applicable, national financial contributions from ARTEMIS Member States shall be disbursed directly to participants in projects according to the national grant agreements. ARTEMIS Member States shall undertake best efforts to synchronise the terms and conditions and the establishment of grant agreements and to disburse their financial contributions in a timely manner.

Article 14

Financial commitments

The financial commitments of the ARTEMIS Joint Undertaking shall not exceed the amount of financial resources available or committed to its budget by its members.

Article 15

Financial revenue

Except when the ARTEMIS Joint Undertaking is wound up pursuant to Article 25, any excess revenue over expenditure shall not be paid to the members of the ARTEMIS Joint Undertaking.

Article 16

Financial year

The financial year shall correspond to the calendar year.

Article 17

Financial implementation

The Executive Director shall implement the budget of the ARTEMIS Joint Undertaking.

Article 18

Financial reporting

1. Every year, the Executive Director shall present to the Governing Board a preliminary draft Annual Budget Plan containing a forecast of annual expenditure for the following two years and including the staff establishment plan. Within this forecast, the estimates of revenue and expenditure for the first of those two years shall be drawn up in such detail as is necessary for the internal budgetary procedure of each member regarding its financial contributions to the ARTEMIS Joint Undertaking. The Executive Director shall supply the Governing Board with all supplementary information needed for this purpose.

2. The members of the Governing Board shall communicate to the Executive Director their comments on the preliminary draft Annual Budget Plan and in particular on the estimates of resources and expenditure for the following year.

3. Taking into account the comments received from the members of the Governing Board, the Executive Director shall prepare the draft Annual Budget Plan for the following year in collaboration with the Industry and Research Committee and submit it to the Governing Board for approval.

4. The Annual Budget Plan and the Annual Implementation Plan for a particular year shall be adopted by the Governing Board of the ARTEMIS Joint Undertaking by the end of the previous year.

5. Within two months of the closure of each financial year, the Annual Accounts and balance sheets for the preceding year shall be submitted by the Executive Director to the Governing Board for approval. The Annual Accounts and balance sheets for the preceding year shall be submitted to the Court of Auditors and the Commission.

Article 19

Planning and reporting

1. The Multiannual Strategic Plan shall specify the strategy and plans for achieving the objectives of the ARTEMIS Joint Undertaking, including the Research Agenda.

2. The Annual Work Programme shall describe the scope and budget of calls for proposals needed to implement the Research Agenda for a particular year.

3. The Annual Implementation Plan shall specify the plan for the execution of all the activities of the ARTEMIS Joint Undertaking for a particular year, including planned calls for proposals and actions needing to be implemented through calls for proposals. The Annual Implementation Plan shall be presented by the Executive Director to the Governing Board together with the Annual Budget Plan referred to in Article 18.

4. The Annual Activity Report shall present progress made by the ARTEMIS Joint Undertaking in each calendar year, in particular in relation to the Multiannual Strategic Plan and the Annual Implementation Plan for that year. It shall also include information on the participation of SMEs in Joint Undertaking's R & D Activities. The Annual Activity Report shall be presented by the Executive Director together with the Annual Accounts and balance sheets.

5. Once approved by the Governing Board, a publishable version of the Multiannual Strategic Plan, the Annual Implementation Plan and the Annual Activity Report shall be made available.

Article 20

Service and supply contracts

The ARTEMIS Joint Undertaking shall set up all the appropriate procedures and mechanisms for the implementation, supervision and control of service and supply contracts concluded where necessary for the operations of the ARTEMIS Joint Undertaking, according to the provisions of its financial rules.

Article 21

Liability of members, insurance

1. The ARTEMIS Joint Undertaking shall not be responsible for meeting the financial obligations of its members. It shall not be liable for any ARTEMIS Member State failing to meet its obligations resulting from calls for proposals launched by the ARTEMIS Joint Undertaking.

2. The members are not liable for any of the ARTEMIS Joint Undertaking's obligations. The financial liability of the members is an internal liability towards the ARTEMIS Joint Undertaking only, and is limited to their commitment to contribute to the resources as set out in Article 11(3).

3. Notwithstanding the financial contributions due to project participants pursuant to Article 13(6)(a), the financial liability of the ARTEMIS

Joint Undertaking for its debts is limited to the contributions that the members have made to the running costs as set out in Article 11(3)(a).

4. The ARTEMIS Joint Undertaking shall take out and maintain appropriate insurance.

Article 22

Conflict of interests

The ARTEMIS Joint Undertaking shall avoid any conflict of interests in the implementation of its activities.

Article 23

Intellectual property policy

1. The following rules governing the protection, use and the dissemination of research results are based on Regulation (EC) No 1906/2006 and shall ensure that, where appropriate, intellectual property generated in R & D Activities under this Regulation is protected, and that research results are used and disseminated.

The objective of the intellectual property policy as laid down in this Article is to promote the creation of knowledge and its exploitation, to achieve fair allocation of rights, to reward innovation, and to achieve broad participation of private and public entities in projects.

2. For the purposes of this Article:

- (a) 'information' means any drawings, specifications, photographs, samples, models, processes, procedures, instructions, software, reports, papers, or any other technical and/or commercial information, know-how, data or documents of any kind, including oral information, other than 'Intellectual Property Rights';
- (b) 'Intellectual Property Rights' (IPR) means any intellectual property rights, including patents, utility models and utility certificates, industrial design rights, copyrights, trade secrets, database rights, topographies of semiconductor products' rights, as well as any registrations, applications, divisions, continuations, re-examinations, renewals or reissues of any of the foregoing, excluding trademarks and trade names;
- (c) 'background information' means any information which is owned or controlled by a project participant on the effective date of the corresponding project agreement, or in respect of which ownership or control is acquired by a project participant as a result of activities outside the framework of the project;
- (d) 'background IPR' means any IPRs which are owned or controlled by a project participant on the effective date of the corresponding project agreement, or in respect of which ownership or control is acquired during the term of the corresponding project agreement as a result of activities outside the framework of the project;
- (e) 'background' means background information and background IPR;
- (f) 'foreground information' means any information that is generated as a result of the activities conducted within the framework of a project concerned, as specified in the corresponding project agreement;

- (g) 'foreground IPR' means any IPRs that are generated as a result of the activities conducted within the framework of the project concerned as specified in the corresponding project agreement;
- (h) 'foreground' means foreground information and foreground IPR;
- (i) 'access right' means non-exclusive licences and user rights to foreground or background which rights shall not include the right to sublicense unless otherwise agreed upon in the project agreement;
- (j) 'needed' means 'technically essential' for the implementation of the project and/or in respect of use of foreground and, where Intellectual Property Rights are concerned, shall mean that those Intellectual Property Rights would be infringed if the access rights were not granted;
- (k) 'use' means the developing, creating and marketing of a product or process for creating and providing a service as may be further defined in the applicable project agreement;
- (l) 'dissemination' means the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium;
- (m) 'project agreement' means an agreement between project participants setting forth all or part of the terms and conditions that apply between them regarding a specific project, such as a project consortium agreement, which agreement shall include without limitation access rights in accordance with this Article;
- (n) 'transfer conditions' means financial conditions that have a value lower than fair and reasonable conditions, normally the cost of making the access rights available.

3. Without prejudice of Community competition rules, the intellectual property arrangements in projects shall be governed by the following principles:

3.1. Ownership

- 3.1.1. The ARTEMIS Joint Undertaking shall own any tangible and intangible assets created with its own resources or transferred to it for the implementation of the ARTEMIS Joint Undertaking, unless otherwise specified.
- 3.1.2. Notwithstanding the provisions above, the ARTEMIS Joint Undertaking shall not retain any information or IPR created in projects.
- 3.1.3. Each participant in a project remains the owner of its background. Participants may define the background needed for the purposes of the ARTEMIS Joint Undertaking project in a written project agreement and, where appropriate, may exclude specific background.
- 3.1.4. Foreground arising from work carried out under projects shall be the property of the participant(s) carrying out the work generating that foreground according to the arrangements described in the grant and project agreements and the principles laid down in this Article.

3.2. Access rights

- 3.2.1. Project participants may decide to grant broader access rights than required by this Article. Project participants may define the background needed for the purposes of the project and, where appropriate, may agree to exclude specific background.
- 3.2.2. Access rights to background shall be granted to other participants in the same project if such background is needed by those other participants to carry out their own work in the project, provided that the owner is entitled to grant such rights. Access rights shall be granted on Transfer Conditions to be agreed by the project participants concerned, unless otherwise agreed by all participants in the project agreement.
- 3.2.3. Access rights to foreground shall be granted to other participants in the same project if such foreground is needed by those other participants to carry out their own work in the project. Such access rights shall be granted on a royalty-free non-exclusive and non-transferable basis.
- 3.2.4. Participants in the same project shall enjoy access rights to background if this is needed for the use of their own foreground of that project, provided that the owner of the background is entitled to grant them. Such access rights shall be granted on a non-exclusive, non-transferable basis on fair, reasonable and non-discriminatory conditions.
- 3.2.5. Participants in the same project shall enjoy access rights to foreground if this is needed for their own Use. Such access rights shall be granted on a non-transferable non-exclusive basis either royalty-free or on fair, reasonable and non-discriminatory conditions.
- 3.2.6. Subject to the agreement of all the owners concerned, access rights to foreground for the purposes of pursuing further research activities shall be granted to a third party on fair and reasonable conditions to be agreed.

3.3. Protection, use and dissemination

- 3.3.1. Where foreground is capable of being profitably exploited, its owner (i) shall provide for its appropriate and effective protection, having due regard to its own and the other participants' legitimate interest in the project concerned, particularly commercial interests, and (ii) shall use it or ensure that it is used.
- 3.3.2. Each participant shall ensure that the foreground of which it has ownership is disseminated without undue delay.
- 3.3.3. All dissemination activities shall be compatible with the protection of intellectual property rights, confidentiality obligations, and the legitimate interest of the owners of the foreground.
- 3.3.4. Prior notice of any dissemination activity regarding foreground, background or confidential information owned by other participants in the same project or other data or information that is amalgamated with such other participants foreground, background or confidential information, shall be given to such other participants. Within 45 days following such notification, any of those participants may object in writing if its legitimate interests in relation to its foreground or background may be harmed by such

dissemination. In such cases, the dissemination activity shall not take place unless appropriate steps are taken to safeguard those legitimate interests.

3.3.5. All publications, patent applications filed by or on behalf of a participant, or any other dissemination relating to foreground shall include a statement that the foreground concerned was generated with financial support from the ARTEMIS Joint Undertaking. All dissemination activities shall be compatible with the protection of intellectual property rights, confidentiality obligations, and the legitimate interest of the owners of the foreground.

3.4. *Transfer*

3.4.1. Where a participant transfers ownership of foreground, it shall pass on its obligations regarding such foreground to the transferee including the obligation to pass those obligations on to any subsequent transferee. These obligations shall include those relating to the granting of access rights, and dissemination and use.

3.4.2. Subject to its obligations concerning confidentiality, where a project participant is required to pass on its obligations to provide access rights, it shall give at least 45 days prior notice to the other participants of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the foreground to permit the other participants to exercise their access rights. Following notification, any other participant may object within 30 days or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its access rights. Where any of the other participants demonstrate that their access rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between participants concerned.

3.5. Project participants in the same project shall conclude among themselves a project agreement that shall lay down the intellectual property arrangements in compliance with this Article.

Article 24

Amendments to the Statutes

1. Any member of the ARTEMIS Joint Undertaking may make an initiative for amending the Statutes to the Governing Board.

2. The initiatives referred to in paragraph 1, as approved by the Governing Board, shall be submitted as draft amendments to the Commission who shall adopt them, as appropriate.

3. However, any amendment affecting the essential elements of these Statutes, and in particular amendments to Articles 3, 4, 6, 7, 11, 13, 21, 24 and 25 thereof, shall be adopted in accordance with Article 172 of the Treaty.

Article 25

Winding up

1. At the end of the period provided for in Article 1(1) of the Regulation, or following an amendment pursuant to Article 11(2) of the Regulation, the ARTEMIS Joint Undertaking shall be wound up.

2. The winding-up procedure shall be automatically triggered if the Commission withdraws from the ARTEMIS Joint Undertaking.

3. For the purpose of conducting the proceedings involved in liquidating the ARTEMIS Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.

4. When the ARTEMIS Joint Undertaking is being wound up, it shall return to the host State any physical support item made available by the host State in accordance with the host agreement referred to in Article 17 of the Regulation.

5. When any physical asset has been dealt with as provided for in paragraph 4, any further assets shall be used to cover the liabilities of the ARTEMIS Joint Undertaking and the costs relating to its winding-up. Any surplus shall be distributed among the members existing at the time of the winding-up in proportion to their actual contribution to the ARTEMIS Joint Undertaking. Any surplus distributed to the Community shall be returned to the Commission budget.

6. Remaining assets shall be distributed to the members existing at the time of the winding-up in proportion to their actual contribution to the ARTEMIS Joint Undertaking.

7. An ad hoc procedure shall be set up to ensure the appropriate management of any grant agreement and service and supply contract concluded by the ARTEMIS Joint undertaking, with a duration longer than the duration of the ARTEMIS Joint Undertaking.