

COMMISSION REGULATION (EC) No 996/1999
of 11 May 1999

on the implementation of Council Decision 1999/65/EC concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the fifth framework programme of the European Community (1998-2002)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 1999/65/EC of 22 December 1998 concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the fifth framework programme of the European Community (1998-2002)⁽¹⁾, and in particular Article 22 thereof,

- (1) Whereas the fifth framework programme of the European Community for research, technological development and demonstration activities (1998-2002) (hereinafter referred to as the 'fifth framework programme') was adopted by Decision No 182/1999/EC of the European Parliament and of the Council⁽²⁾; whereas, detailed rules must be laid down for the implementation of the rules regarding participation in the actions and of the rules governing the dissemination of research results laid down by Decision 1999/65/EC;
- (2) Whereas participation in indirect research and technological development (RTD) actions requires the concept of participant to be defined taking into account, in particular, the capacity in which he takes part in a project and his rights and obligations;
- (3) Whereas, in order to ensure that indirect RTD actions to be undertaken under the fifth framework programme have a European dimension, the application of the rules for the participation of undertakings, research centres and universities should place the emphasis on the requirement for several participants and on the transnational nature of the projects;
- (4) Whereas the particular nature of the indirect RTD action or the RTD activity to be undertaken may justify making exceptions to those principles;
- (5) Whereas, in view of their essentially transnational and European dimension, European Economic Interest Groupings (EEIG) within the meaning of

Council Regulation (EEC) No 2137/85⁽³⁾ should be able to take part on their own in indirect RTD actions requiring several participants;

- (6) Whereas the Commission must be able to ensure that the participants will have the necessary resources, of whatever kind, to carry out indirect RTD actions; whereas, in order to safeguard the Community's financial interests and avoid obstacles to such actions being carried out, the Commission must also be informed of the importance and origin of such resources, and of the conditions of their availability;
- (7) Whereas the Community's financial participation must be compatible with competition rules, notably those of the Community framework for State aid to research and development⁽⁴⁾;
- (8) Whereas the Community financial participation should be paid to the participants against justification of the eligible costs of the indirect RTD action, although other more appropriate methods may be used;
- (9) Whereas, as regards indirect RTD actions consisting of research and technological development projects, demonstration projects and combined RTD/demonstration projects, the participants should charge total costs unless their accounting system allows only additional costs to be charged;
- (10) Whereas, with a view to promoting innovation, reimbursement should be allowed with respect to certain costs of protecting knowledge and of measures to demonstrate its potential for use, in compliance with the rules of the Community framework for State aid for research and development;
- (11) Whereas the costs of coordinating a project can be significant and it should be possible to charge them where they are borne by the project coordinator;

⁽¹⁾ OJ L 26, 1.2.1999, p. 46.

⁽²⁾ OJ L 26, 1.2.1999, p. 1.

⁽³⁾ OJ L 199, 31.7.1985, p. 1.

⁽⁴⁾ OJ C 83, 11.4.1986, p. 2.

- (12) Whereas provision should be made for charging overheads on a flat-rate basis, particularly with a view to encouraging a transition towards the charging of total costs;
- (13) Whereas contracts may provide for payment of the Community's financial contribution in instalments; whereas there may nevertheless be restrictions on the possibility of the payment of an initial advance;
- (14) Whereas the Community's financial contribution should be paid without prejudice to financial controls carried out by or on behalf of the Commission or the Court of Auditors;
- (15) Whereas the rules governing ownership, extent of access rights and destination of knowledge depend, as a rule, on how close the project is to the market; whereas they should not be affected by exemptions or reductions regarding the rate of the Community financial participation referred to in Annex IV to the fifth framework programme;
- (16) Whereas, in order to encourage the participation of small and medium-sized enterprises (SMEs) and to achieve the objectives of cooperative research projects, it should be possible for exceptions to be made to the principle of the ownership of knowledge by the participants who carried out the work;
- (17) Whereas, in order to ensure the use of knowledge, it should be possible for exclusive access rights to be granted for exploitation purposes, while respecting the interests of the participants taking part in the same project and the applicable competition rules, in particular those of Commission Regulation (EC) No 240/96 of 31 January 1996 on the application of Article 85(3) of the Treaty to certain categories of technology transfer agreements⁽¹⁾;
- (18) Whereas Member States and Associated States must be able to have access, in accordance with the conditions provided for in Decision 1999/65/EC, to knowledge that is relevant to their policy orientations, particularly with a view to prevent overlaps in research activities;
- (19) Whereas the technological implementation plan should be prepared in line with progress on the work of the project; whereas it should be a determining element with a view to the use and dissemination of knowledge in the interests of the

Community, the participants and international agreements with the Community; whereas the technological implementation plan should be drawn up in such a manner as to allow its monitoring and to allow the conditions of exploitation and the search for financial resources for development to be facilitated;

- (20) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 23 of Decision 1999/65/EC,

HAS ADOPTED THIS REGULATION:

PART I

GENERAL PROVISIONS

Article 1

This Regulation lays down the detailed rules for applying Articles 4, 8, 11 and 14 to 20 of Decision 1999/65/EC.

Article 2

1. The definitions in Decision 1999/65/EC apply to this Regulation.
2. For the purposes of this Regulation, the following definitions shall apply:
 - (a) 'participant': a legal entity or international organisation, and the Joint Research Centre (JRC) under the conditions provided for in Article 7 of Decision 1999/65/EC, taking part in a project as principal contractor, assistant contractor, member, or grant holder;
 - (b) 'project': work to be carried out, under one or more contracts, as part of an RTD action provided for in the fifth framework programme;
 - (c) 'contract': agreement between the Community and one or more principal contractors and, as relevant, assistant contractors, with the aim of carrying out or contributing to a project;
 - (d) 'principal contractor': a participant, other than an assistant contractor, taking part in a project by virtue of the conclusion of a contract and having the rights and obligations provided for in this Regulation and in the contract;

⁽¹⁾ OJ L 31, 9.2.1996, p. 2.

- (e) 'assistant contractor': for indirect RTD actions consisting of research and technological development projects, demonstration projects and combined RTD/demonstration projects, a participant taking part in a project by virtue of the conclusion of a contract, acting under the technical supervision of one or more principal contractors and having the same rights and obligations as them, except as regards the scope of its responsibility for the execution of the project pursuant to the contract and access rights;
- (f) 'member': for indirect RTD actions consisting of research training networks, thematic networks and accompanying measures with similar objectives, and concerted actions, a participant taking part in a project under a membership contract signed with a principal contractor acting in agreement with the Community and in accordance with the contract, having the same rights and obligations pursuant to the membership contract *vis-à-vis* the Community as the principal contractor except where otherwise stipulated;
- (g) 'grant holder': a natural person taking part in an indirect RTD action consisting of a grant, who either concludes a contract with the Community or takes part, by virtue of an agreement with a host institute, in a contract concluded between the Community and that host institute;
- (h) 'subcontract': an agreement to provide services, supplies or goods between a principal contractor, assistant contractor or member and one or more subcontractors for the specific needs of the project under the conditions provided for in the contract;
- (i) 'subcontractor': a legal entity or international organisation, or the JRC, which is a party to a subcontract;
- (j) 'complementary contract': an agreement with the Community covering work that is technically interdependent with one or more projects, including for the purpose of using knowledge, and accepted as such by the participants in each contract;
- (k) 'complementary contractor': a legal entity or international organisation, or the JRC under the conditions provided for in Article 7 of Decision 1999/65/EC, which is a party to a complementary contract and is accepted as such by the participants in each contract;
- (l) 'RTD performer': a legal entity or international organisation, or the JRC, carrying out RTD work on behalf of participants, and by virtue of an agreement

concluded with them, under indirect RTD actions consisting of cooperative research projects;

- (m) 'consortium agreement': one or more agreements between participants in a project, and, as the case may be, RTD performers, which aims to specify or supplement as between them the provisions of a contract, but without coming into conflict with them;
- (n) 'European Economic Interest Grouping': any legal entity formed under the conditions, by the procedures and with the effects laid down by Regulation (EEC) No 2137/85;
- (o) 'access rights': licences and rights to use knowledge or pre-existing know-how;
- (p) 'favourable conditions': conditions more favourable than market conditions owing to discounts of any kind.

PART II

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

CHAPTER I

Number of participants

Section 1

Indirect RTD actions involving several participants

Article 3

1. The following indirect RTD actions shall involve several participants, including at least two principal contractors required to satisfy the conditions laid down in Article 4(1) of Decision 1999/65/EC:

- (a) research and technological development projects;
- (b) demonstration projects;
- (c) combined RTD/demonstration projects;
- (d) technology stimulation projects for SMEs, consisting of exploratory awards.

2. Indirect RTD actions consisting of cooperative research projects, as part of technology stimulation projects for SMEs, shall be carried out by at least three SMEs participating as principal contractors and satisfying the conditions laid down in Decision 1999/65/EC, in particular Article 4(1) thereof.

3. An EEIG is, by its nature, regarded as satisfying the conditions of Article 4(1) of Decision 1999/65/EC and may therefore be a sole principal contractor in the indirect RTD actions referred to in paragraph 1 of this Article. The same applies in the case of indirect RTD actions referred to in paragraph 2 when the EEIG comprises at least three SMEs.

Where an EEIG merely coordinates and organises the activities of its members, however, the conditions of Article 4(1) of Decision 1999/65/EC must be satisfied by those of its members which actually carry out the research on its behalf under the project.

Article 4

The following indirect RTD actions shall involve several participants, including at least two principal contractors or one principal contractor and one member satisfying the conditions of Article 4(1) of Decision 1999/65/EC:

- (a) research training networks;
- (b) thematic networks;
- (c) concerted actions.

Article 5

1. Two legal entities are independent of one another within the meaning of Article 4(1) of Decision 1999/65/EC where there is no controlling relationship between them.

A controlling relationship exists where one legal entity directly or indirectly controls the other or one legal entity is under the same direct or indirect control as the other.

Control may result in particular from:

- (a) direct or indirect holding of a majority of share capital in a legal entity or a majority of voting rights of the shareholders or associates of that entity;
- (b) direct or indirect holding in fact or in law of decision-making powers in a legal entity.

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

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

Section 2

Indirect RTD actions which may involve a single participant

Article 6

Indirect RTD actions consisting of accompanying measures, grants and support for access to research infrastructures may be carried out by a single principal contractor or grant-holder who must satisfy the conditions laid down in Article 4(2) of Decision 1999/65/EC.

CHAPTER II

Conditions applicable to resources

Article 7

The resources referred to in Article 8(2) of Decision 1999/65/EC shall be assessed according to and as far as is necessary for the execution of the indirect RTD action and with regard to the nature of the work to be carried out.

Article 8

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

Article 9

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

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

CHAPTER III

Community financial participation and eligible costs

Section 1

General principles

Article 10

1. The Community's financial participation under the fifth framework programme shall consist of a partial or full refund of the participants' eligible costs as defined by Article 11(2) of Decision 1999/65/EC.

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

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

- (a) projects for which the Community's financial contribution is less than or equal to EUR 100 000;
- (b) projects involving payments linked to the demonstration of best efforts to complete contractually agreed objectives;
- (c) projects consisting of grants and accompanying measures covered by invitations to apply as independent experts.

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

Section 2

Charging of total or additional eligible costs

Article 11

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

- (a) RTD projects;
- (b) demonstration projects;
- (c) combined RTD/demonstration projects;
- (d) cooperative research projects;
- (e) exploratory awards;
- (f) accompanying measures.

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

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

- (a) support for access to research infrastructures;
- (b) training grants;
- (c) research training networks;
- (d) thematic networks;
- (e) concerted actions.

Section 3

Eligible cost categories

Article 12

1. According to the indirect RTD action, the eligible costs categories shall include:

- (a) personnel;
- (b) durable equipment;
- (c) consumables;
- (d) travel and subsistence;
- (e) computing;
- (f) subcontracting;
- (g) protection of knowledge and measures to demonstrate the potential for use of knowledge;
- (h) other specific costs;
- (i) overheads.

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

The costs of coordinating indirect RTD actions consisting of cooperative research projects may however be charged under paragraph 1(f) where none of the principal contractors referred to in Article 3(2) is in a position to act as coordinator.

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

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

Article 13

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

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

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

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

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

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

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

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

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

8. The costs of protecting knowledge and of measures to demonstrate the potential for use of knowledge shall exclude the costs of obtaining the access rights referred to in Articles 26 to 35 and the costs of creating and marketing a product or process and the costs of creating and providing a service. Without prejudice to competition rules, they shall be refundable only with the Commission's written consent.

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

Article 14

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

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

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

Section 4

Payment of the community contribution

Article 15

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

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

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

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

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

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

Section 5

Financial audits

Article 16

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

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

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

PART III

MODES OF DISSEMINATION AND USE OF KNOWLEDGE

TITLE I

Rules applicable to indirect RTD actions

CHAPTER I

Adaptation of the rules for the dissemination and use of knowledge

Article 17

1. The rules regarding ownership, extent of access rights, and the use or dissemination of knowledge depend on the rate of Community financial participation referred to in Annex IV to the fifth framework programme or, exceptionally, on the particular nature of the indirect RTD action in accordance with the provisions of Chapters II to VI.

2. The rules set out in paragraph 1 shall not be affected by:

- (a) any exceptions provided for by the specific programmes to the rates of Community financial participation referred to in Annex IV to the fifth framework programme;
- (b) the reduction of the rates of Community financial participation referred to in Annex IV to the fifth framework programme owing to the application of the rules on combined State aid;
- (c) any other reduction of the rates of Community financial participation referred to in Annex IV to the fifth framework programme at the request of the participants.

CHAPTER II

*Article 20***Ownership of knowledge***Article 18*

1. Knowledge gained from projects, all the costs of which are borne by the Community, shall be the property of the Community.

At the participants' request, the Commission may authorise them to use its knowledge, on a royalty-free basis, for all their internal needs.

2. Knowledge gained from projects partly funded by the Community shall be the property of the participants carrying out the work leading to that knowledge.

3. Where several participants have carried out work generating knowledge, they shall agree among themselves on the allocation and the terms of exercising the ownership of the knowledge in accordance with the provisions of this Regulation and of the contract.

4. If personnel hired, and in particular employed, by a participant or RTD performer may claim rights to knowledge, the participant shall take steps or reach appropriate agreements to ensure that these rights can be exercised in a manner compatible with its obligations under this Regulation and the contract.

5. Paragraphs 1 to 4 apply with prejudice to Article 19.

Article 19

1. Knowledge gained from cooperative research projects shall be the joint property of the principal contractors referred to in Article 3(2).

They shall jointly decide the terms for exercising and terminating joint ownership of the knowledge in accordance with the provisions of this Regulation and the contract.

RTD performers shall make available to the principal contractors referred to in Article 3(2) the necessary data to enable or facilitate the exercise of ownership of the knowledge free of charge.

2. In the case of certain accompanying measures, the contract may provide that the knowledge is owned by the participants.

3. In the case of grants, the contract shall lay down the terms of allocating and exercising ownership of the knowledge.

Where a participant transfers ownership of knowledge, he shall take steps or conclude agreements to pass on his obligations under this Regulation and the contract to the assignee.

The participant shall inform the Commission and other participants in the same project in advance of the conditions of the assignment.

CHAPTER III

Protection of knowledge*Article 21*

1. The owners of knowledge shall provide adequate and effective protection for knowledge that is usable under Article 23.

The terms of the protection, including deadlines, shall be defined in the technological implementation plan referred to in Article 20 of Decision 1999/65/EC.

2. Where the Commission considers it necessary to protect knowledge in a particular country and such protection has not been applied for or has been waived, the Commission may, with the agreement of the participant concerned, take protection measures. In this case, the Community shall take on the obligations referred to in Article 22 to 35 instead of the participant.

The participant may not refuse without good reason.

The participant shall be entitled to royalty-free access rights in the country concerned, on terms to be defined in the contract, and shall be entitled to grant sub-licences.

3. A participant may publish, or allow the publication of, data, on whatever medium, concerning knowledge it owns provided that this does not affect the protection of that knowledge.

The Community and the other participants in the same project shall be given prior notice of any planned publication. A copy of the medium containing these data shall be communicated to them if they so request within 30 days after receipt of such notice. The Community and the other participants may object to publication within a new period of 30 days after receipt of such data on the ground that, from their point of view, it would adversely affect the protection of the knowledge as referred to in paragraph 1.

The consortium agreements may specify the details of such a right to object.

CHAPTER IV

Use of knowledge

Article 22

1. The participants shall use or cause to be used the knowledge referred to in Article 23 which they own, in accordance with the interests of the Community and in compliance with international agreements concluded with the Community.

The terms of use, including a reasonable deadline at which it must take place, shall be set out in the technological implementation plan in accordance, in particular, with the area of activity concerned.

2. If the knowledge is not used in accordance with paragraph 1, second subparagraph, the participants shall disseminate it, in accordance with the conditions set out in Article 19 of Decision 1999/65/EC, within a period laid down by the Community. Should the participants fail to do so, the Community shall disseminate the knowledge itself.

Article 23

1. The participants shall, in accordance with Article 22(1), use or cause to be used the knowledge gained, in particular from the following indirect RTD actions:

- (a) research and technological development projects;
- (b) demonstration projects;
- (c) combined RTD/demonstration projects;
- (d) cooperative research projects.

2. In the case of demonstration projects and cooperative research projects, the use of knowledge shall give priority to exploitation of such knowledge, taking account of the legitimate interests of the participants.

3. In the case of combined RTD/demonstration projects, paragraph 2 shall apply, as a rule, to knowledge gained from the 'demonstration' component.

It shall also apply where the 'research and technological development' and 'demonstration' components are not distinguishable and the weighted average of the Community funding rates normally applicable to both components does not exceed 42,5 %.

CHAPTER V

Making knowledge and pre-existing know-how available

Article 24

1. Access rights shall be granted by participants or RTD performers on request on the conditions provided for in Articles 26 to 35. Access rights shall be granted to pre-existing know-how provided that the participant concerned is free to do so.

2. The granting of access rights may be made conditional on the conclusion of specific agreements aimed at ensuring that they are used only for the intended purpose, and appropriate confidentiality agreements.

3. Except where the participant granting access rights so agrees, such rights give no entitlement to grant sub-licences.

4. With the agreement of the participant concerned, access rights may be granted on financial terms more favourable than those provided for in Articles 26 to 35.

5. Participants in a project may designate another contract as complementary contract and lay down terms for granting access rights, the period for which access rights may be demanded and the related financial conditions.

6. The essential transfer costs for the granting of access rights shall be borne by the beneficiary.

Article 25

Consortium agreements with the purpose, in particular, of granting additional access rights or supplementing the requirements applicable to access rights, but not conflicting with the latter, may be concluded between the participants and, as the case may be, RTD performers. Any agreement of this type must comply with competition policy as defined in the Treaty.

Section 1

Access rights for the execution of the project

Article 26

1. As regards research and technological development projects, paragraphs 2 and 3 shall apply.

2. Principal contractors involved in the same project shall enjoy royalty-free access rights to the knowledge needed to carry out their own work under that project.

Assistant contractors involved in the same project shall enjoy royalty-free access rights to the knowledge needed to carry out their own work under that project, when such rights are requested from the principal contractor or principal contractors to whose technical supervision they are subject or their other assistant contractors. When they are requested from other participants in the same project, access rights shall be granted on favourable conditions.

Subject to legitimate interests as provided in the contract, principal contractors established in a Member State or Associated State and working under the same specific programme shall enjoy access rights to the knowledge needed to carry out their own work under that specific programme on favourable conditions.

3. Principal contractors involved in the same project shall enjoy access rights to the pre-existing know-how needed to carry out their own work under that project on favourable conditions.

Assistant contractors involved in the same project shall enjoy access rights to the pre-existing know-how needed to carry out their own work under that project on favourable conditions, when such rights are requested from the principal contractor or principal contractors to whose technical supervision they are subject or their other assistant contractors. When they are requested from other participants in the same project, access rights shall be granted on market conditions.

Article 27

1. As regards demonstration projects, paragraphs 2 and 3 shall apply.

2. Principal contractors involved in the same project shall enjoy royalty-free access rights to the knowledge needed to carry out their own work under that project.

Assistant contractors involved in the same project shall enjoy royalty-free access rights to the knowledge needed to carry out their own work under that project, when such rights are requested from the principal contractor or principal contractors to whose technical supervision they are subject or their other assistant contractors. When they are

requested from other participants in the same project, access rights shall be granted on favourable conditions.

3. Principal contractors involved in the same project shall enjoy access rights to the pre-existing know-how needed to carry out their own work under that project on favourable conditions.

Assistant contractors involved in the same project shall enjoy access rights to the pre-existing know-how needed to carry out their own work under that project on favourable conditions, when such rights are requested from the principal contractor or principal contractors to whose technical supervision they are subject or their other assistant contractors. When they are requested from other participants in the same project, access rights shall be granted on market conditions.

Article 28

1. As regards combined RTD/demonstration projects, paragraphs 2 and 3 shall apply.

2. As a rule, the provisions of Article 26 shall apply to work involved in the 'research and technological development' component. The provisions of Article 27 shall apply to the work involved in the 'demonstration' component.

3. Where the 'research and technological development' and 'demonstration' components are not distinguishable, the provisions of Article 26 shall apply where the weighted average of the Community funding rates normally applicable to both components exceeds 42,5 %. At or below that rate the provisions of Article 27 shall apply.

Article 29

1. As regards cooperative research projects, paragraphs 2, 3 and 4 shall apply.

2. RTD performers involved in the same project shall enjoy royalty-free access rights to the knowledge needed to carry out their own work under that project.

3. RTD performers involved in the same project shall enjoy royalty-free access rights to the pre-existing know-how needed to carry out their own work under that project.

Principal contractors involved in the same project as referred to in Article 3(2) shall enjoy royalty-free access rights to the pre-existing know-how needed to carry out their own work under that project.

4. When the access rights referred to in paragraphs 2 and 3 are granted to RTD performers, the granting of such rights may be subject to the conclusion of specific agreements aimed at ensuring that they are used only for the intended purpose, and of appropriate confidentiality agreements.

Section 2

Access rights for use of knowledge

Article 30

1. As a rule, access rights may not be granted on an exclusive basis.

However, exclusive access rights to knowledge may be granted where it is economically indispensable in view, in particular, of the market, the risks and the investment required to exploit the knowledge. They shall be granted on market conditions.

Agreements on exclusive access rights shall satisfy the competition rules, notably those in Regulation (EC) No 240/96.

2. Participants planning to grant exclusive access rights shall give prior notice of the relevant conditions to the other participants.

Principal contractors involved in the same project may, within 30 days of receiving the notice referred to in the first subparagraph, state their commitment to exploit the knowledge on the basis of non-exclusive access rights, in accordance with the first subparagraph of paragraph 1. In that case, exclusive access rights may not be granted.

Article 31

A participant may refuse other participants access rights on his knowledge if he is exploiting it himself.

Such refusal shall only be justified, however, when it is economically indispensable in view, in particular, of the market, the risks and the investment required to exploit the knowledge.

Article 32

1. As regards research and technological development projects, paragraphs 2, 3 and 4 shall apply.

2. Principal contractors involved in the same project shall enjoy royalty-free access rights, for use purposes, to all the knowledge generated under that project.

A participant involved in the same project who does not generally carry out commercial activities and who is unable to exploit the knowledge he has generated may decide on his own to grant access rights to that knowledge to other principal contractors involved in that project, instead of royalty-free, on financial or similar terms which are reasonable and acceptable in relation to his contribution to the project and to the use potential of the knowledge. The negotiation of the terms shall not delay the granting of access rights.

Assistant contractors involved in the same project shall enjoy access rights to the knowledge needed to use the knowledge they have generated under that project on favourable conditions, when such rights are requested from the principal contractor or principal contractors to whose technical supervision they are subject or their other assistant contractors. When they are requested from other participants in the same project, access rights shall be granted on market conditions.

Subject to legitimate interests as provided in the contract, principal contractors established in a Member State or Associated State and involved in the same specific programme shall enjoy access rights to the knowledge generated under a project in the same specific programme which is needed to use the knowledge they have generated under that specific programme on market conditions.

3. Principal contractors involved in the same project shall enjoy access rights to the pre-existing know-how and to the knowledge other than that referred to under paragraph 2 which is needed to use the knowledge generated under that project on favourable conditions.

4. When the access rights referred to in paragraphs 2 and 3 are granted for the purpose of using knowledge in subsequent research activities, the granting of such rights may be made conditional on the submission of a duly justified request and on the conclusion of a specific agreement aimed at ensuring that they are used only for the intended purpose and of appropriate confidentiality commitments. In such a case, the access rights granted do not give any entitlement to grant sub-licences, unless the participant granting such rights agrees thereto.

Article 33

1. As regards demonstration projects, paragraphs 2 and 3 shall apply.

2. Principal contractors involved in the same project shall enjoy access rights, for exploitation purposes, to all the knowledge generated under that project, on favourable conditions.

Assistant contractors involved in the same project shall enjoy access rights to the knowledge needed to exploit the knowledge they have generated under that project on favourable conditions, when such rights are requested from the principal contractor or principal contractors to whose technical supervision they are subject or their other assistant contractors. When they are requested from other participants in the same project, access rights shall be granted on market conditions.

3. Principal contractors involved in the same project shall enjoy access rights to the pre-existing know-how and to the knowledge other than that referred to in paragraph 2 which is needed to exploit the knowledge generated under that project on favourable conditions.

Article 34

1. As regards combined RTD/demonstration projects, paragraphs 2 and 3 shall apply.

2. As a rule, the provisions of Article 32 shall apply to the work involved in the 'research and technological development' component. The provisions of Article 33 shall apply to the work involved in the 'demonstration' component.

3. Where the 'research and technological development' and 'demonstration' components are not distinguishable, the provisions of Article 32 shall apply where the weighted average of the Community funding rates normally applicable to both components exceeds 42,5 %. At or below that rate the provisions of Article 33 shall apply.

Article 35

Regarding cooperative research projects, principal contractors involved in the same project as referred to in Article 3(2) shall enjoy access rights to the pre-existing know-how needed to exploit the knowledge generated under that project on favourable conditions.

CHAPTER VI

Dissemination of knowledge*Article 36*

1. The participants and the Community must disseminate or arrange the dissemination of the knowledge referred to in paragraph 2 which lends itself to dissemination and is their property.

Participants shall agree terms with the Commission for the dissemination of knowledge within a reasonable period, in accordance with the conditions set out in Article 19(2) and (3) of Decision 1999/65/EC, in particular their legitimate interests, and the content of the contracts.

2. The obligation referred to in paragraph 1 concerns knowledge gained, in particular, from the following indirect RTD actions:

- (a) accompanying measures;
- (b) exploratory awards;
- (c) research training networks;
- (d) thematic networks;
- (e) concerted actions;
- (f) support for access to infrastructures;
- (g) grants.

Article 37

1. In particular cases, Member States and Associated States shall, on the basis of a reasoned request, have access to useful knowledge which is relevant to policy-making, including notably legislative policy-making.

Participants may oppose such a request in accordance with the conditions referred to in Article 19 of Decision 1999/65/EC.

2. The possibility of enjoying the access provided for in paragraph 1 shall be set out in the relevant calls for proposals and, if necessary, the implementing details thereof shall be specified in the contracts.

CHAPTER VII

Technological implementation plan*Article 38*

The rules concerning the technological implementation plan laid down in Article 20 of Decision 1999/65/EC shall apply in particular in the context of the following indirect RTD actions:

- (a) research and technological development projects;
- (b) demonstration projects;
- (c) combined RTD/demonstration projects;
- (d) cooperative research projects.

Article 39

1. In accordance with the provisions of Article 17, the technological implementation plan shall include a summary of the project and a forecast of the participants' intentions, as well as a description of their achievements, regarding dissemination and use of the knowledge, in accordance with Article 20 of Decision 1999/65/EC.

2. The summary of the project shall be submitted to the Commission through the coordinator for the purpose of dissemination and shall contain a description of the project and its results as well as the names of the participants owning the results.

3. The forecast of the participants' intentions regarding dissemination and use of the knowledge as well as their achievements in that field shall be submitted to the Commission by each participant individually and shall contain, in particular, the following data:

- (a) protection measures obtained or planned and steps taken to that effect;
- (b) data necessary to ascertain the terms of use as described in Article 22(1), second subparagraph, including an indicative timetable and an outline of the resources contemplated for that purpose;
- (c) terms of dissemination as described in Article 36(1), second subparagraph, including an indicative timetable and an outline of the resources contemplated for that purpose;
- (d) any other data necessary to ascertain the extent of the Community added-value.

The Commission shall keep confidential any data, knowledge, document and other element expressly communicated to it as confidential.

4. Any change made to the initial dissemination and use plan which significantly alters the dissemination and use conditions shall be duly justified in the technological implementation plan.

Article 40

The technological implementation plan, complying with the conditions of Article 39, shall be provided to the Community, by the deadline and in accordance with the

terms set out in the contract, and no later than the completion of the project.

Article 41

1. The technological implementation plan shall be approved by the Commission taking account of the interests of the Community as referred to in Article 2 of Decision 1999/65/EC and international agreements concluded with the Community.

2. The approval of the technological implementation plan, limited to verifying compliance with the obligations set out in the contract, shall be without prejudice to compliance with the conditions laid down in Articles 30 and 31.

3. In order to enable it to approve the technological implementation plan, the participants shall provide the Commission with the documentation they consider relevant in the light of Article 39, whatever its medium, and in an appropriate form.

Article 42

1. The participants shall inform the Commission, upon request, at any time during the period provided for in the contract, of the arrangements for carrying out the technological implementation plan.

Once it has been approved, they shall justify any change to it that significantly alters the dissemination or use conditions.

2. Participants shall provide the Commission, at the latest one year after the expiry of the deadlines laid down in the technological implementation plan, with a summary of the implementation of the plan for dissemination purposes without prejudice to Article 46.

Article 43

Without prejudice to the provisions laid down in the contracts, the Commission and its authorised representatives shall be empowered to carry out technological controls with a view to ensuring that participants are complying with the intentions stated in the technological implementation plan. The contracts shall determine the conditions under which the participants may oppose the carrying out of the technological controls by certain authorised representatives of the Commission.

Such controls may be carried out at any time after the approval of the technological implementation plan in accordance with Article 41, and up to one year after the expiry of the deadlines set out therein.

In order to carry out the controls, the Commission and its authorised representatives shall have access, on a confidential basis, to all data they consider relevant in the light of Article 39, on whatever medium, in the participants' possession, and may require it to be handed over to them in an appropriate form.

CHAPTER VIII

Incompatible or restrictive commitments

Article 44

1. Participants shall take all necessary steps to avoid commitments that are incompatible with the obligations provided for in Chapters III, IV and V or in the contract.
2. Without prejudice to paragraph 1, participants involved in the same project shall be informed, as soon as possible, by the participant required to grant access rights of any limitations on the granting of access rights to pre-existing know-how, obligations to grant rights to the knowledge or any restriction which might substantially affect the granting of access rights.

CHAPTER IX

Publicity and confidentiality

Article 45

1. The Commission shall publish general data, notably on the objectives, total estimated cost and Community financial contribution, duration and progress of the projects and knowledge.

The legal names of the participants and the names of the laboratories carrying out the work shall also be published unless the participants object, with sufficient advance notice, on duly substantiated, essential grounds of an industrial or commercial nature.

2. Any communication, publication or dissemination, on whatever medium, concerning the progress of the project or concerning the knowledge shall make appropriate mention of the programme under which the work is being carried out or the knowledge gained, and the support provided by the Community.

It shall be stated that the author is solely responsible for content communicated, published or disseminated and that it does not represent the Commission's opinion.

3. Contracts may contain additional provisions regarding publicity and confidentiality.

Article 46

1. Without prejudice to Article 45 and subject to the conditions to be laid down in the contracts, the Commission and the participants shall keep confidential any data, knowledge and documents communicated to them as confidential.

2. When disclosing any data, knowledge and documents, as referred to in paragraph 1, the Commission and the participants shall first require the recipient to keep it confidential and to use it only for the purpose for which it was disclosed.

Article 47

For the entire duration of the contract, and for a further two years following its expiry, participants shall, without prejudice to Article 46, provide appropriate data to standardisation bodies regarding knowledge obtained under that contract which may contribute to the preparation of European standards or, as appropriate, international standards. The Commission shall inform the contractors as far as possible of any standardisation work under way or planned.

TITLE III

Rules applicable to direct RTD actions

CHAPTER I

Ownership of knowledge

Article 48

1. Knowledge gained from projects undertaken under direct RTD actions shall be the property of the Community.

2. Where the Community transfers ownership of knowledge, it shall take steps or conclude agreements to pass on its obligations under this Regulation to the assignee.

CHAPTER II

Protection of knowledge

Article 49

1. The Community shall ensure adequate and effective protection of knowledge that is eligible for use under Article 50.

2. The Community may disclose data about the knowledge it owns provided that the protection of that knowledge is not thereby affected.

CHAPTER III

Use of knowledge*Article 50*

The Community shall use or cause to be used the knowledge owned by it which lends itself to such use, in accordance with the interests of the Community.

The terms of use shall depend in particular on the area of activity concerned.

CHAPTER IV

Making knowledge available for use*Article 51*

1. Knowledge owned by the Community should be made available to any interested legal entity established in the Community or an Associated State for its research needs or in so far as it undertakes to use such knowledge, or to cause it to be used, in accordance with the interests of the Community.

Such provision of knowledge may be subject to appropriate conditions, particularly concerning the payment of fees.

2. The rules laid down in paragraph 1 shall not apply to confidential knowledge.

Article 52

As a rule, knowledge owned by the Community may not be made available on an exclusive basis.

Exclusive agreements may be concluded, however, when it is economically indispensable in view, in particular, of the market, the risks and the investment required to exploit the knowledge. They shall be granted on market conditions.

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

Done at Brussels, 11 May 1999.

Agreements on exclusive availability of knowledge shall satisfy the competition rules, notably those in Regulation (EC) No 240/96.

Article 53

The Community may refuse to make its knowledge available under the conditions provided for in Article 51 if it is exploiting it itself.

Such refusal shall only be justified, however, when it is economically indispensable in view, in particular, of the market, the risks and the investment required to exploit the knowledge.

CHAPTER V

Dissemination of knowledge*Article 54*

The Community shall disseminate or cause to be disseminated the knowledge owned by it which lends itself to such dissemination, in accordance with the conditions laid down in Article 19(1) of Decision 1999/65/EC.

Part IV

Final provisions*Article 55*

This Regulation shall not affect the provisions contained in the decisions adopting the specific programmes specifying or supplementing Decision 1999/65/EC.

Article 56

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

For the Commission

Édith CRESSON
Member of the Commission