

27 February 2002

6TH EU RESEARCH AND TECHNOLOGICAL DEVELOPMENT FRAMEWORK PROGRAMME

RULES FOR PARTICIPATION AND DISSEMINATION OF RESEARCH RESULTS

**UNICE COMMENTS ON THE AMENDED DECISION PROPOSAL SUBMITTED BY THE COMMISSION
(COM 2001-822)**

The new measures and procedures in the 6th RTD Framework Programme, especially those for integrated projects (IP), offer many new chances and much more flexibility for cooperation than those in its predecessor. However, besides more freedom and flexibility, European industry and science also need well defined rules of participation. The following issues in particular still need to be improved and clarified:

Simple and common rules for different funding measures

Contracts should be as simple as possible but also as precise as necessary. The contract between the European Commission and the consortium should leave sufficient freedom and flexibility. However, the less is resolved in the main contract with the Commission, the more must be determined in the consortium's cooperation agreement. If, as foreseen, the financial contribution from the Commission is not broken down by activities and by partners, then this must be done in the cooperation agreement. It should be left to the consortium to find agreements among themselves on critical issues such as liability and intellectual property rights. The Commission should only give guidelines and should not impose particular requirements.

Contractor versus coordinator

It is not sufficiently clear who will enter into the contract with the Commission (all the contractors, or only the coordinator acting on behalf of the other contractors?) and what the legal consequences will be. For instance, what will the legal situation be in the event that the coordinator signs on behalf of a participant which subsequently goes bankrupt or changes ownership? Contracts with the Commission should be entered into by all the contractors. This will enhance the clarity of the contractual relationships and prevent an unjustified shift in legal liability from the Commission to the coordinator. Liability for the contractual aspects of setting up the consortium with all the participants should at least be shared with the Commission, which has the requisite power in its capacity as funding authority. Moreover, if the contract were entered into only by the coordinator, the administrative burden would fall entirely on the coordinator.

The consortium agreement must be signed by all partners in good time. Otherwise, the designated main contractor and project coordinator will not be able to assume responsibility and liability, and the project cannot start.

Unacceptability of unlimited joint and several financial liability (article 13)

No partner, especially if it is an SME or public research institute, can accept unlimited joint and several liability. All the specific liability rules required need to be defined and laid down in the cooperation agreement, and expressly drawn to the Commission's attention. Each partner can only be held liable its own fraudulent activities. Joint and several liability would only be applicable if the fraudulent partner cannot be identified or the situation is not brought to the Commission's attention promptly. In this case, each partner should be liable in proportion to its contribution to the project and only up to the level of funding for its own portion of the work package.

Application of the principle of best effort at technical level (articles 13 and 18)

Typically, many risks are involved in research. Therefore, neither a consortium nor an individual partner can be held liable if, for technical reasons, the predicted result of the project is not achieved. In this case, the principle of best effort – to be demonstrated by the consortium – should apply.

Reliable and simple procedures for cost statements (article 18)

By contrast with the detailed final cost statement at the end of the project, periodic cost statements during the lifetime of the project should be simple. They should be limited to certification of person-months during the period under consideration. Certification may be delegated to national authorities. Payments for the period ahead should not be delayed by time-consuming certification procedures.

Ownership of access rights for use (article 20)

Access rights for use of knowledge arising from the project are the property of the consortium. Affiliates should in principle have the same rights unless otherwise defined in the consortium agreement. The Commission may disseminate the knowledge only if the partners do not intend to use it themselves within a certain period agreed between the Commission and the consortium.

Stipulation of access rights in the consortium agreement (articles 24-26)

Access rights for knowledge arising from the project and also the access rights for pre-existing know-how must be clearly stipulated in and granted by virtue of the consortium agreement, covering execution of the project as well as use of results. Under no circumstances should access rights for knowledge arising from the project be granted to third parties without the consortium's consent.

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