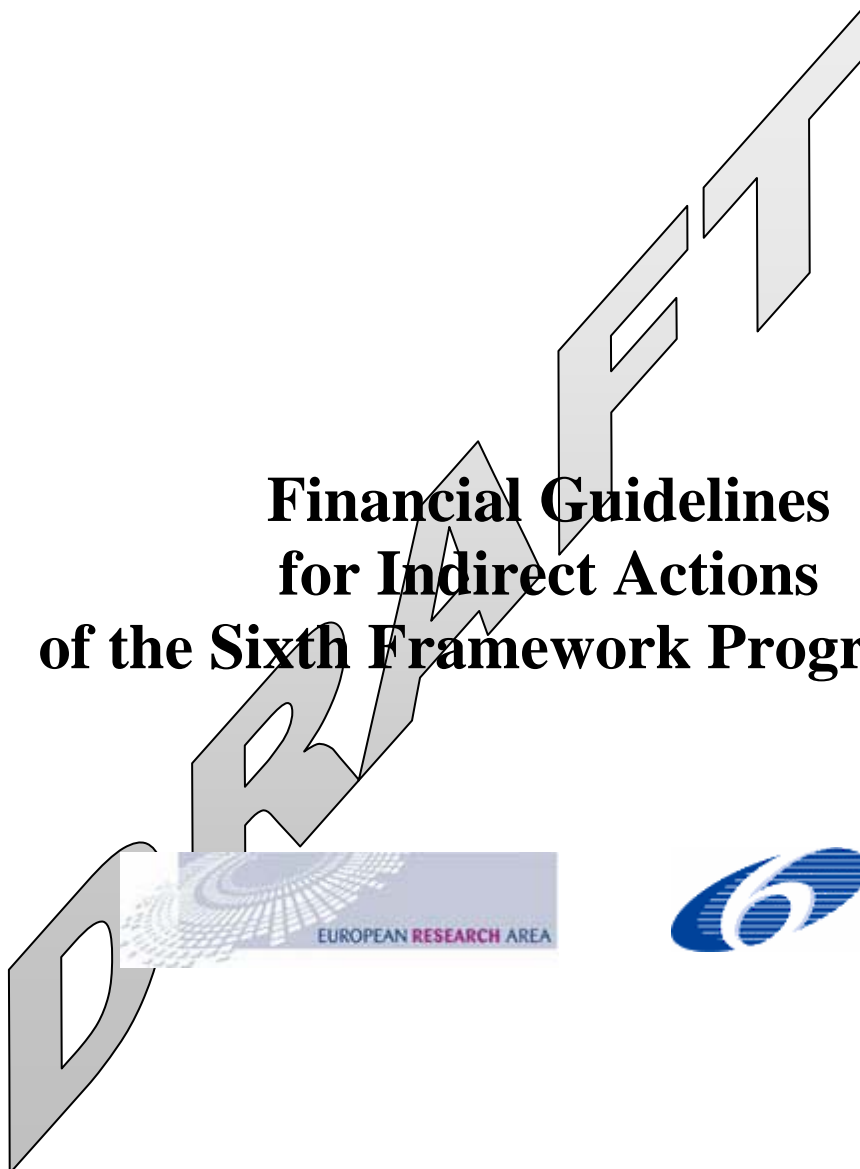


Financial Guidelines for Indirect Actions of the Sixth Framework Programmes



FINANCIAL GUIDELINES – EXECUTIVE SUMMARY

1 - First Principles

- The Financial Regulation of the Communities¹, and the Rules for participation and dissemination of the results of the Sixth Framework Programme (6FP)², establish the basic principles for the **Community financial contribution** to indirect actions in the 6FP. This contribution can be made either :
 - by means of a call for tenders (public procurement), ^{3, 4} ~~or~~
 - more usually, by means of a call for proposals (grant).^{5, 6}
- In addition to the two different procedures (call for tenders vs. call for proposals) there are differences relating to the amount and nature of the financial contribution. Whereas public procurement consists of the payment of a market price for goods or services rendered, grants are limited to a contribution to certain costs (or in special cases a lump sum payment) incurred by the beneficiary. Therefore, public procurement permits a profit whereas grants forbid any profit.
- Usually, the Community financial contribution to indirect actions (research and development projects) under the 6FP will be by means of grants (public procurement is used only in the case of purchase of goods or services by the Commission for its use and this is limited to certain specific support actions (the instrument SSA)⁷). All other instruments will be financed by means of a grant (other specific support actions, integrated projects, networks of excellence, specific targeted projects, coordination actions specific actions for SMEs and integrated infrastructure initiatives).

¹ Regulation (EC, EURATOM) n°1605/2002 of the Council of 25 June 2002 regarding the Financial Regulation applicable to the general budget of the European Communities – OJ L248 of 16.9.2002, pages 1 à 48.

² Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006) – adopted by Council on 5.11.2002.

³ Title V, Chapter 1, Section 1, Article 88, Paragraph 1 of Regulation n°1605/2002 of the Council of 25 June 2002

« Public contracts are contracts for pecuniary interest concluded in writing by a contracting authority within the meaning of Articles 103 and 168, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

These contracts comprise:

(a) building contracts;

(b) supply contracts;

(c) works contracts;

(d) service contracts »

⁴ Articles 9.2b) and 14.1b) of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

⁵ Title VI, Chapter 1, Section 1, Article 107, Paragraph 1 of Regulation n°1605/2002 of the Council of 25 June 2002

« Grants are direct financial contributions, by way of donation, from the budget in order to finance:

(a) either an action intended to help achieve an objective forming part of a European Union policy;

(b) or the functioning of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy.

They shall be covered by a written agreement. »

⁶ Article 14.1 of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

⁷ Articles 9.2b) and 14.1 of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

2 - Nature of the grant

- The Rules for Participation allow the Community contribution to a grant to be made in one of two forms:
 - **Lump sum payments**⁸
 - **Reimbursement of eligible costs**⁹ (« Grant to Budget » et « Grant to Integration »)
- The use of lump sums or fixed rate amounts is limited by the Financial Regulation to actions such as prizes, training actions, unitary scale costs (where rates are fixed according to certain terms and conditions across the board for all users), and actions where the EC contribution is less than €5,000. Therefore, lump sum grants will only be used under the 6FP for certain specific support actions and certain human resources and mobility actions. *(Certain kinds of reimbursements of eligible costs can be by means of fixed rates with the agreement of the participant eg. fixed rate reimbursement for overheads in certain cost models or certain actions)*
- The vast majority of indirect actions under the 6FP will be financed by means of grants in the form of reimbursement of eligible costs.

3 - Principles applicable to grants which reimburse eligible costs

- The Community financial contribution to grants which reimburse eligible costs must conform to the principles and rules established by the Financial Regulation¹⁰, its Implementing Rules¹¹, the Framework Programme¹² and its Rules for Participation¹³ including:
 - The principle of non-profit
 - The principle of co-financing
 - The principle of additionality

These principles must be followed at the level of the project itself.

4 - The Community financial contribution

- The amount of the Community financial contribution is determined by a number of factors including the instrument, the activity, the cost model, the amount of any

⁸ Article 14.1 b) of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

⁹ Articles 14.1 a) and 14.1 c) of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

¹⁰ Title VI – Chapter 2 « Grant principles » – Article 109 – paragraphs 1 and 2 of Regulation n°1605/2002 of Council of 25 June 2002

Title VI – Chapter 2 « Grant principles » – Article 113 – Regulation n°1605/2002 of Council of 25 June 2002

¹¹ Article 163 « Rule of non-profit » - paragraph 1 of the Regulation of the Commission regarding the implementing rules of Regulation n°1605/2002 – SEC (2002) 835 final of 24.7.2002.

¹² Annex III – Section 2 – paragraph 5 of the Decision of the European Parliament and Council n°1513/2002/EC of 27 June 2002

Annexe III – Section 2 – table – footnote page (1) of the Decision of the European Parliament and Council n°1513/2002/EC of 27 June 2002

¹³ Article 14 « Community financial contribution » – Paragraph 2 (d) of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

receipts to the project and the Community framework state aids in the area of research and development.

a. Cost Model Applicability

- The cost models are applicable to all instruments in the Sixth Framework Programme where the Community contribution is a grant for integration (Networks of Excellence) or a grant to the budget (Integrated Projects, Specific Targeted Projects, Specific Actions for SMEs, Integrated Infrastructure Initiatives*, Coordination Actions, and certain Specific Support Actions). They do not apply to those instruments where the Community financial contribution is a lump sum grant (certain Specific Support Actions and certain Actions promoting human resources and mobility).
- For some actions promoting human resources and mobility a specialised version of the cost model is applied.

b. Cost Models

There are three cost models in typical research actions:

- **Full Cost with actual indirect costs (FC)**
- all eligible direct and indirect costs are charged by the contractors.
 - **Full Cost with indirect flat rate costs (FCF)**
- all eligible direct costs and a flat rate for indirect costs are charged. The flat rate is 20% of all direct eligible costs minus the cost of sub-contracts.
 - **Additional Costs with indirect flat rate costs (AC)**
- all eligible direct additional costs and a flat rate for indirect costs are charged. The flat rate is 20% of all direct additional costs minus the cost of sub-contracts.
- (***User fee**: a user fee cost model may be used for access to infrastructure activities either in the integrated infrastructure initiatives or in the specific support actions for transnational access)

- **Direct costs** are eligible costs that are associated directly to the project, and are determined by the contractor in accordance with its usual accounting practices;
- **Direct additional costs**, are eligible costs additional to the normal recurring costs of the contractor that are associated directly to the project and are not covered by any other sources of funding.

Direct additional costs of personnel can include:

- personnel with a temporary contract for working under the Community contract concerned ;
 - personnel with a temporary contract with a view to completing a doctorate ;
 - personnel whose employment contract depends wholly or in part on additional external financing. In this case, costs charged to the project must exclude all costs covered by normal recurring financing.
- **Indirect costs** are, for those working on the full cost model, all eligible costs determined by the contractor, in accordance with its usual accounting practices, which are not directly attributable to the project but are incurred in relation to the direct costs of the project. For those contractors using either of the flat rate models (FCF, AC) a flat rate is applied to the direct costs and is deemed to cover the indirect costs.

c. Access to the Cost Models

Access to a cost model depends on the type of legal entity concerned:

- All legal entities can use the FC model with the exception of physical persons;
- Physical persons must use the AC model;
- Non-commercial or non-profit organisations established either under public law or private law and international organisations may choose one of the AC, FCF or FC models. However, only those non-commercial or non-profit organisations established either under public law or private law and international organisations which do not have an accounting system that allows the share of their direct and indirect costs relating to the project to be distinguished may opt for the AC model.
- SMEs have the choice between the FC and FCF model.

d. Use of a Cost Model

Each contractor must apply the same cost reporting model in all contracts established under the Sixth Framework Programme. However:

- any legal entity which is eligible to opt for the AC model in a first contract can change to the FCF or the FC model in a later contract. If it does so, it must then use the new cost reporting model in subsequent contracts;
- any legal entity which is eligible to opt for the FCF model in a first contract can change to the FC model in a later contract. If it does so, it must then use the new cost reporting model in subsequent contracts.

e. Receipts of the Project

Three kinds of receipts must be taken into consideration:

- Financial transfers or their equivalent to the contractor from third parties;
- Contributions in kind from third parties;
- Income generated by the project.

In the first two cases (financial transfers or contributions in kind), these endowments are considered as receipts of the project if the third party has provided them specifically to be used in the project. However, if the use of these contributions is at the discretion of the contractor they may be considered as eligible costs to the project but are not be considered to be receipts.

Where contributions from third parties are used by the contractor for the project, the latter is required to inform the third party of this use, in accordance with the national legislation or practice in force.

In the case of income generated by the project itself, any income generated by the project itself, including the sale of assets bought for the project (limited to the initial cost of purchase) are considered as income to the project (eg. admission fee to a conference carried out by the consortium; sale of the proceedings of such a conference; sale of equipment bought for the project etc.)

The table reproduced below and explained in detail in the Financial Guidelines indicates the maximum reimbursement rates per instrument, per activity and per cost model for all indirect actions.

Maximum reimbursement rates of eligible costs	Research and technological development or innovation activities	Demonstration activities	Training activities	Management of the consortium activities	Other specific activities (*)
Network of excellence				100% (up to 7% of the contribution) (AC : eligible direct costs)	100%
Integrated project	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%	100%	100% (up to 7% of the contribution) (AC : eligible direct costs)	
Specific targeted research or innovation project	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%		100% (up to 7% of the contribution) (AC : eligible direct costs)	
Specific research project for SMEs	FC/FCF : 50% AC : 100%		100% (for collective research only)	100% (up to 7% of the contribution) (AC : eligible direct costs)	
Integrated infrastructures initiative	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%		100% (up to 7% of the contribution) (AC : eligible direct costs)	100%
Coordination action			100% (FC indirect costs : flat rate(**))	100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))	100% (FC indirect costs : flat rate(**))
Specific support action				100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))	100% (FC indirect costs : flat rate(**))

(*) : Other specific activities means:

- for Network of Excellence : Joint Programme of Activities, except management of the consortium activities.
- for Integrated infrastructures initiative: any "specific activity" covered by Annex I, including transnational access to infrastructures
- for Coordination Action: Coordination activities, except management of the consortium activities
- for Specific support action: any "specific activity" covered by Annex I, including transnational access to infrastructures

(**) : Flat rate for FC indirect costs : 20% of all their eligible direct costs minus the eligible direct costs of sub-contracts.

Audit certificates

An **audit certificate** is required from each contractor at some point during the life of the project **to certify the costs** claimed. It is provided by the contractor's own external auditor (or in the case of public body it may be provided by a competent public officer). The costs are reimbursed via the management activity of the project (100% funding).

For integrated projects and networks of excellence, audit certificates are provided each year by each contractor.

The submission of an audit certificate does not waive the right of the Commission to carry out its own audits, which may be launched at any time and up to 5 five years after the end of the project.

5 - Subcontracts

Contractors are expected to have the resources necessary to carry out the work required by the project. In certain circumstances, though, it is more economic or efficient to subcontract some aspects of the work. When work is to be subcontracted it must be identified in the technical annex to the contract (Annex I). Subcontracts must be awarded by means of competitive tender following the national legislation in force. This means that, depending on the size and nature of the subcontract, the public tendering procedure may take different forms ranging from the simplest to more complex (e.g. negotiated, restricted; open; competition). In a very simplified procedure, at least three different offers have to be received and evaluated against common established criteria, to ensure that each of them is treated fairly and equitably. Any

subcontract that is not identified in the technical annex to the contract must be limited to minor services and supplies, to which the public tendering rules apply.

6 - Collective responsibility

All contracts with more than one contractor impose technical collective responsibility on the partners to carry out the work of the project.

Most contracts impose financial collective responsibility (all actions except SME specific actions, fellowships and certain specific support actions) upon the contractors to make good the breach of a contractor if the others are not willing to complete the project and respect their contractual obligations. If a contractor breaches the contract and the consortium does not make good this breach, the Commission may, as a last resort and after having explored with the consortium all other viable solutions, hold participant liable for the defaulting contractor. Public bodies are exempt from financial collective responsibility.

In cases of termination for breach of contractual obligations or irregularity, and where the contractor does not honour its obligation to reimburse any amount due to the Commission, the latter will impose the provisions of financial collective responsibility on the consortium. The consortium will be obliged to reimburse the amount due to the Commission. The financial collective responsibility does not apply to the liquidated damages that may be imposed by the Commission to one or more contractors, neither does it apply to any obligation to reimburse funds as the result of an audit.

7 - Sanctions and recoveries

Any amount unduly paid by the Commission to a contractor has to be reimbursed to the Commission on the terms and date specified by it. In addition, in certain circumstances overclaims may be penalised by means of the imposition of liquidated damages. This means that the amount overclaimed must be reimbursed to the Commission and, in addition, a penalty amounting to a percentage of the overclaim must also be paid.

Further, a contract can be terminated for reasons of irregularity or for violation of fundamental ethical principles.

INTRODUCTION: RATIONALE AND NATURE OF THE GUIDELINES

The financial guidelines of the Sixth Framework Programmes (**FP6 Financial Guidelines**) are intended to provide to the participants in FP6 projects, as well as to the Commission services, in a single and, as far as possible, complete document:

- information on the financial aspects of the main indirect actions of the Sixth Framework Programmes (**FP6**^{14 & 15}). The indirect actions implemented by means of the provisions of Article 169 of the EU Treaty, R&TD activities under the priority thematic area “Fusion Energy Research”¹⁶, Actions to promote human resources and mobility (Marie Curie actions)¹⁷ and Experts¹⁸ all have provisions specific to them. For these indirect actions, their specific provisions are included in annexes to these guidelines ;
- relevant references to the applicable legal framework;
- concrete examples, as well as suggestions for good financial practices to be applied when carrying out EC-funded RTD projects.

FP6 projects are governed by the principles established by the following legal framework¹⁹:

- the Sixth Framework Programme of the European Community (**FP6 – EC**) ;
- the Sixth Framework Programme of the European Atomic Energy Community (**FP6 – EURATOM**) ;
- the Sixth Framework Programmes Specific Programmes (**SP**^{20, 21 & 22}) ;
- the Sixth Framework Programmes rules for participation and dissemination of results (**RP**^{23 & 24}) ;

¹⁴ OJ L232, 29.08.2002, p. 1 – Decision N° 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the Sixth Framework Programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006). (http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_232/l_23220020829en00010033.pdf)

¹⁵ OJ L232, 29.08.2002, p. 34 – Council Decision N° 2002/668 of 3 June 2002 concerning the Sixth Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities, also contributing to the creation of the European Research Area (2002 to 2006). (http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_232/l_23220020829en00340042.pdf)

¹⁶ See Annex A (6.A) to these guidelines.

¹⁷ See Annex B (6.B) to these guidelines.

¹⁸ See Annex C (6.C) to these guidelines.

¹⁹ Please note, that according to the fact that there are two framework programmes (European Community [EC] and European Atomic Energy Community [EURATOM]), where the provisions are identical in the basic acts (Framework Programme, Specific Programmes or rules for participation and Dissemination of Results) there is no mention of the relevant Community. By opposition, where the provisions are different, the mention “EC” or “EURATOM” is added to the basic act concerned (e.g.: FP-EURATOM ; RP-EC ; ...).

²⁰ OJ L294, 29.10.2002, p. 1 – Council Decision of 30 September 2002 adopting a specific programme for research, technological development and demonstration: "Integrating and strengthening the European Research Area" (2002-2006). (http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_294/l_29420021029en00010043.pdf)

²¹ OJ L294, 29.08.2002, p. 44 – Council decision of 30 September 2002 adopting a specific programme for research, technological development and demonstration: "structuring the European Research Area" (2002-2006). (http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_294/l_29420021029en00440059.pdf)

²² OJ L294, 29.08.2002, p. 74 – Council Decision of 30 September 2002 adopting a specific programme (Euratom) for research and training on nuclear energy (2002-2006). (http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_294/l_29420021029en00740085.pdf)

- the Sixth Framework Programmes model and derived contracts adopted by the Commission²⁵ (**FP6 model contract**);
- the Financial Regulation applicable to the general budget of the European Communities (**FR**²⁶) and its Implementing Modalities (**IM**²⁷).

FP6 indirect actions are characterised by the use of instruments that provide greater responsibility, autonomy and flexibility to the consortia in comparison with former Framework Programmes.

Within this new framework, the FP6 financial guidelines should provide actors inside and outside the Commission with a tool that can be consulted at any point in the process of submission, evaluation, negotiation or implementation of FP6 projects to guide them in financial management issues.

Participants, although not legally bound by these guidelines, are invited to follow them when establishing their **budget for the indirect action** and when preparing **financial reports**.

The Commission services will follow these guidelines in all their dealings with the projects, as will any auditor appointed by the Commission.

To facilitate access to the legislative framework, Internet addresses (whenever available) of the legal documents and/or references are included with the extracts of the relevant texts provided in these guidelines. In addition, a set of Frequently Asked Questions (FAQ), particularly on financial issues, is available. **(Insert web site address)**.

DG Research has set up a special mailbox where questions can be sent about legal and financial issues concerning the implementation and management of FP6 that have not been addressed by the FP6 Financial Guidelines or the FAQ. The address of this mailbox is RTD-A03-questions-juridiques@cec.eu.int. Check both the Financial Guidelines and the FAQ to see if your question is already answered there before sending a question to the mailbox.

²³ OJ L355, 30.12.2002, p. 23 – Regulation (EC) N° 2321/2002 of 16 December 2002 of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006).

(http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_355/l_35520021230en00230034.pdf)

²⁴ OJ L355, 30.12.2002, p. 35 – Council Regulation N° 2322/2002 (Euratom) of 5 November 2002 concerning the rules for the participation of undertakings, research centres and universities in the implementation of the sixth framework programme of the European Atomic Energy Community (2002 to 2006).

(http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_355/l_35520021230en00350044.pdf)

²⁵ Where the FP6 model contract is mentioned in these guidelines, it refers to the standard model contract for FP6 instruments, except for actions to promote human resources and mobility. For the latter, there is a specific model contract.

http://europa.eu.int/comm/research/fp6/working-groups/model-contract/index_en.html

²⁶ OJ L248, 16.09.2002, p. 1 – Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities. Entry into force: 01.01.2003.

(http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_248/l_24820020916en00010048.pdf)

²⁷ OJ L357, 31.12.2002, p. 1 – Commission Regulation (EC, Euratom) N° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) N° 1605/ 2002 on the Financial Regulation applicable to the general budget of the European Communities. Entry into force: 01.01.2003.

(http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_357/l_35720021231en00010071.pdf)

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DRAFT

1- GENERAL FINANCIAL PRINCIPLES

As a general rule, except where the basic act(s)²⁸ stipulate(s) differently, the Community financial contribution to an FP6 indirect action must follow the principles established by the FR and its IM.

Therefore, the **Community financial contribution to indirect actions in the 6FP can take one of the two following forms:**

- **Public procurement**, by means of a call for tenders
- **Grant (or Subvention)**, generally by means of a call for proposals

1.1- FORMS OF THE COMMUNITY FINANCIAL CONTRIBUTION

1.1.1- Public procurement

Title V (“Procurement”) of both the FR²⁹ and IM³⁰ establish the legal framework for public procurement by the Commission.

Public procurement is clearly defined by the first paragraph of article 88 of the FR:

“Public [procurement] contracts are contracts for pecuniary interest concluded in writing by a contracting authority within the meaning of Articles 104 and 167, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services [to the Commission]. These contracts comprise:

- (a) contracts for the purchase or rental of a building;*
- (b) supply contracts;*
- (c) works contracts;*
- (d) service contracts.”*

1.1.2- Grant (or Subvention)

Title VI (“Grants”) of both the FR³¹ and IM³² establish the legal framework for grants. Grants are defined by the first paragraph of Article 108 of the FR:

“Grants are direct financial contributions, by way of donation, from the budget in order to finance:

- (a) either an action intended to help achieve an objective forming part of a European Union policy;*
- (b) or the functioning of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy.*

They shall be covered by a written agreement.”

²⁸ As far as FP6 is concerned, the basic acts are the FP6s, the SPs and the RPs.

²⁹ FR: Part one “Common provisions” – Title V “Procurement” – Articles 88 to 107.

³⁰ IM: Part one “Common provisions” – Title V “Procurement” – Articles 116 to 159.

³¹ FR: Part one “Common provisions” – Title VI “Grants” – Articles 108 to 120.

³² IM: Part one “Common provisions” – Title VI “Grants” – Articles 160 to 184.

1.1.3- Main differences between Public Procurement and Grant

The following table shows the main differences between public procurement and a grant³³.

Public Procurement	Grant
Subject	
<ul style="list-style-type: none"> The proposed project entails the purchase of goods or services which the Commission needs for its own operation. 	<ul style="list-style-type: none"> The proposal entails the promotion and encouragement of an action recognised as useful by the Commission, but which falls primarily within the scope of the beneficiary's activities.
Regulatory Framework	
<ul style="list-style-type: none"> FR (Articles 88 to 107); IM (Articles 116 to 159). Basic Acts (for FP6: FP6, SPs and RPs). 	<ul style="list-style-type: none"> FR (Articles 108 to 120). IM (Articles 160 to 184). Basic Acts (for FP6: FP6, SPs and RPs).
Financial contribution	
<ul style="list-style-type: none"> Generally, 100% of a price. 	<ul style="list-style-type: none"> Contribution up to 100% of the eligible costs. Rule of non-profit. Rule of co-financing. Or, in certain specific cases: Flat-rate financing (set amounts)
Ownership of the outcomes/results	
<ul style="list-style-type: none"> Since it is purchased and paid for by the Commission, the outcome/result belongs to the Commission in its entirety. 	<ul style="list-style-type: none"> In principle, except otherwise mentioned in the basic acts, the outcome/result belongs to the contractors; usually the contractor(s) generating the results.
Selection procedure	
<ul style="list-style-type: none"> Call for tender 	<ul style="list-style-type: none"> Call for proposals, except otherwise mentioned in the basic acts.

1.2- FORMS OF THE FP6 COMMUNITY FINANCIAL CONTRIBUTION

In general, the Community financial contribution to indirect actions under FP6 will be by means of a **grant** or subvention.

Only in the case of purchases of goods or services will the **public procurement** route be used and this is limited to some **Specific Support Actions**^{34 & 35}.

All other instruments (other specific support actions [SSA]³⁶, integrated projects [IP]³⁷, networks of excellence [NoE]³⁸, specific targeted research or innovation projects [STReP]³⁹,

³³ Please note that this table is not exhaustive. For a complete overview please consult the Titles V and VI of the FR and IM.

³⁴ RP – Article 9 (“Submission of proposals for indirect actions”) – paragraph 2 – indent (b):

“ 1. *Proposals for indirect actions shall be submitted under the terms of calls for proposals. These terms shall be set out in the work programmes. (...)*

2. *Paragraph 1 shall not apply to: (...)*

(b) *specific support actions consisting of a purchase or service governed by the terms applicable to public procurement procedures;*”

³⁵ RP – Article 14 (“Community financial contribution”) – paragraph 1 – indent (b):

“1. *In accordance with Annex III to the Sixth Framework Programme, and within the limits of the Community framework for State aid for research and development, the Community financial contribution may take the following forms: (...)*

(b) *For some actions to promote human resources and mobility and some specific support actions, except for the indirect actions covered by Article 9(2)(b), it may take the form of a lump-sum payment.”*

³⁶ For a complete overview of the purpose of an SSA, please consult the relevant background document at the following internet address: **TO BE PROVIDED**

specific research projects for SMEs [Collective Research⁴⁰ and Cooperative Research⁴¹], integrated infrastructure initiatives [I³]⁴², coordination actions [CA]⁴³ and actions to promote and develop human resources and mobility [Marie Curie Actions]⁴⁴) will be financed by means of a **grant** or subvention.

When the Community contribution is provided by means of a grant, it can take one of the following forms:

- **Flat rate financing (or lump sum)**⁴⁵ ;
- **Reimbursement of costs**^{46 & 47} ;

1.2.1- Flat rate financing (or Lump sum grant)

The use of lump sum grants or fixed-rate financing is limited to actions such as scholarships or prizes, training actions, the use of scale of unit costs (where rates are fixed according to certain terms and conditions across the board for all users), and actions where the EC contribution is less than €5 000 (see Article 181 of IM).

The use of lump sums is limited to some specific support actions (SSA) and some actions to promote human resources and mobility (Marie Curie Actions) (see indent (b) of the first paragraph of Article 14 (“Community financial contribution”) of the RP):

³⁷ For a complete overview of the purpose of an IP, please consult the relevant background document at the following internet address:

http://europa.eu.int/comm/research/fp6/pdf/ip_provisions_120503final.pdf

³⁸ For a complete overview of the purpose of an NoE, please consult the relevant background document at the following internet address:

http://europa.eu.int/comm/research/fp6/pdf/noe_120503final.pdf

³⁹ For a complete overview of the purpose of a STReP, please consult the relevant background document at the following internet address:

http://europa.eu.int/comm/research/fp6/pdf/strep_120503final.pdf

⁴⁰ For a complete overview of the purpose of a Specific Collective Research Project for SMEs, please consult the relevant background document at the following internet address: **TO BE PROVIDED**

⁴¹ For a complete overview of the purpose of a Specific Cooperative Research Project for SMEs, please consult the relevant background document at the following internet address: **TO BE PROVIDED**

⁴² For a complete overview of the purpose of an I³, please consult the relevant background document at the following internet address: **TO BE PROVIDED**

⁴³ For a complete overview of the purpose of a CA, please consult the relevant background document at the following internet address: **TO BE PROVIDED**

⁴⁴ For a complete overview of the purpose of the Marie Curie Actions, please consult the relevant background documents at the following internet address:

<http://www.cordis.lu/fp6/mobility.htm>

⁴⁵ IM: Article 181 – first paragraph:

“In addition to cases of scholarships and prizes, the basic act may authorise flat-rate financing for contributions of less than EUR 5 000 or the use of scales of unit costs.

In order to ensure compliance with the principles of co-financing, no-profit and sound financial management, those flat-rate amounts and scales shall be reviewed at least every two years by the authorising officer responsible. The amounts shall be approved by the Commission.”

See also footnote n°22.

⁴⁶ FR: Article 109- first and second paragraph:

“1. The award of grants shall be subject to the principles of transparency and equal treatment. They may not be cumulative or awarded retrospectively and they must involve co-financing.

2. The grant may not have the purpose or effect of producing a profit for the beneficiary.”

⁴⁷ FR: Article 113 – first paragraph:

“The grant may not finance the entire costs of the action, subject to Title IV of part two [External actions].

The grant may not finance the entire operating expenditure of the beneficiary body.”

1. In accordance with Annex III to the Sixth Framework Programme, and within the limits of the Community framework for State aid for research and development, the Community financial contribution may take the following forms:

(...)

(b) For some actions to promote human resources and mobility and some specific support actions, except for the indirect actions covered by Article 9(2)(b), it may take the form of a lump-sum payment.”

As a consequence, the vast majority of indirect actions under FP6 will be financed by means of grants in the form of reimbursement of eligible costs.

1.2.2- Reimbursement of costs

1.2.2.1- General principles

When the Community contribution is provided by means of a grant consisting in the reimbursement of costs, it must conform to the principles and rules established by the FR, its IM, FP6 and its RP, and especially fulfill the two following conditions:

- the principle of non-profit^{48 & 49}
- the principle of co-financing^{50 & 51}

These principles must be followed at the level of the project itself.

The application of these principles means that, as a general rule, **when the Community contribution is provided by means of a grant consisting in the reimbursement of costs**:

- **it can not exceed 100% of the total costs of the indirect action** (non-profit);
- **it can never be equal to 100% of the total costs of the indirect action**⁵² (co-financing).

⁴⁸ FR: Article 109 – second paragraph (see footnote 33).

⁴⁹ IM: Article 165 – first paragraph:

“1. The grant may not have the purpose or effect of producing a profit for the beneficiary. Profit shall be defined as:

(a) a surplus of receipts over the costs of the action in question when the request is made for final payment of a grant for an action, subject to the second subparagraph;

(b) a surplus balance on the operating budget of a body in receipt of an operating grant.”

⁵⁰ FR: Article 109 – first paragraph (see footnote 30).

⁵¹ FP6-EC – Annex III (“INSTRUMENTS AND RULES FOR FINANCIAL PARTICIPATION BY THE COMMUNITY”) – Section 2 (“DETAILED RULES FOR FINANCIAL PARTICIPATION BY THE COMMUNITY”) – fifth paragraph: *“Financial participation by the Community will be granted in compliance with the principle of co-financing, with the exception of financing for studies, conferences and public tenders.”*

⁵² Except for Coordination Actions (CA), as clearly established in the first footnote of the table of the Section 2 (“DETAILED RULES FOR FINANCIAL PARTICIPATION BY THE COMMUNITY”) of Annex III (“INSTRUMENTS AND RULES FOR FINANCIAL PARTICIPATION BY THE COMMUNITY”) of FP6 - EC:

However, it should be noted that **flat-rate financing or lump-sum mechanism can be used to cover the indirect costs of the participants** in certain cases (in accordance with the IM⁵³ and the second indent of Article 14 of the RP⁵⁴).

When the Community contribution is provided by means of a grant consisting in the reimbursement of costs (as established in Annex III to FP6 - EC⁵⁵ and in the first paragraph of Article 14 of the RP), it can take two forms:

- a **Grant for Integration**
- a **Grant to the Budget**

1.2.2.2- Grant for Integration

For Networks of Excellence the Community financial contribution shall take the form of a fixed grant for integration to attain the planned lasting integration within the objectives of the joint programme of activities (JPA) (as established in the indent (a) of the first paragraph of Article 14 of the RP):

1. In accordance with Annex III to the Sixth Framework Programme, and within the limits of the Community framework for State aid for research and development, the Community financial contribution may take the following forms:

(a) For networks of excellence, it shall take the form of a fixed grant for integration on the basis of the joint programme of activities. The amount of that grant shall be calculated taking into account the degree of integration, the number of researchers that all participants intend to integrate, the characteristics of the field of research concerned and the joint programme of activities. It shall be used to complement the resources deployed by the participants in order to carry out the joint programme of activities.

This grant shall be paid out on the basis of results, following the ongoing execution of the joint programme of activities, and on condition that its expenses, which are to be certified by an external auditor, or in the case of public bodies, a competent public officer, are greater than the grant itself."

"(1) As a general principle, the Community financial contribution cannot cover 100 % of the expenditure of an indirect action with the exception of proposals covering a purchase price governed by the terms applicable to public procurement procedures or taking the form of a pre-defined lump sum pre-set by the Commission.

However, the Community financial contribution may bear up to 100 % of the expenditure of an indirect action if they complement those otherwise borne by the participants. Also, in the specific case of coordination actions, it covers up to 100 % of the budget necessary for the coordination of activities funded by the participants themselves."

⁵³ IM: Article 181 – second paragraph:

"2. The grant agreement may authorise flat-rate cover:

(a) of the beneficiary's overheads up to a maximum of 7 % of total eligible costs for the action, save where the beneficiary is in receipt of an operating grant financed from the Community budget;

(b) of certain mission expenses on the basis of a per diem scale approved annually by the Commission.

The ceiling provided for in point (a) of the first subparagraph may be exceeded by reasoned decision of the Commission."

⁵⁴ RP: Article 14 – second paragraph – second indent:

"By way of derogation from the actual cost principle and with the agreement of the participants, the contract may lay down average rates of Community financial participation by type of expenditure or pre-set lump sums, as well as a value by activity which shall approximate to the expenses envisaged."

⁵⁵ See the last column of the table of Section 2 of Annex III to FP6 - EC.

Therefore, even though the Community financial contribution for a Network of Excellence is not calculated on the basis of a provisional budget of estimated costs, its disbursement is conditioned upon the participants incurring costs that must be superior to the amount of the grant itself.

In other words, for a Network of excellence, the Community financial contribution could reimburse up to 100% of the eligible costs incurred by the participants, but the eligible costs must be greater than the maximum Community financial contribution established in the contract as the Grant for Integration.

1.2.2.3- Grant to the Budget

For the other instruments of FP6, with the exception of those that require the procurement procedure (some SSA), the Community financial contribution shall take the form of a grant to the budget (as established in indent (c) of the first paragraph of Article 14 of the RP):

1. In accordance with Annex III to the Sixth Framework Programme, and within the limits of the Community framework for State aid for research and development, the Community financial contribution may take the following forms:

(c) For integrated projects and the other instruments, except for those covered by points (a) and (b) and indirect actions covered by Article 9(2)(b), it shall take the form of a grant to the budget, calculated as a percentage of the budget established by the participants to carry out the indirect action, adapted according to the type of activity and taking into account the cost model used by the participant concerned."

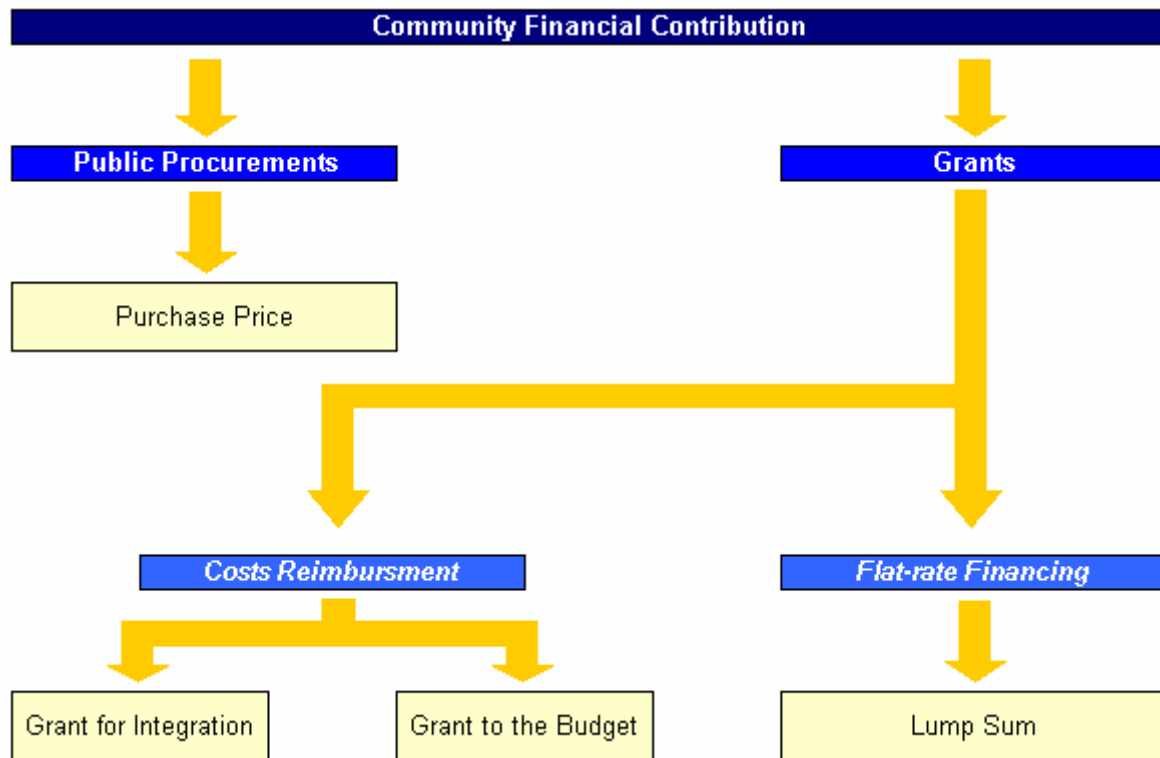
The expenses needed to implement the indirect action shall be certified by an external auditor or, in the case of public bodies, a competent public officer."

When the Community financial contribution is a Grant to the Budget, it is calculated and paid taking into account:

- the **type of activities** (Research and technological development or innovation activities ; Demonstration activities ; Training activities ; Management of the consortium activities ; other specific activities) ;
- the **cost reporting model** used by the participant (full cost – FC, full cost with a flat rate for indirect costs – FCF or additional cost with a flat rate for indirect costs– AC);
- the **maximum reimbursement rates** of eligible costs according to the type of activity and the cost reporting model used;
- any **specific provisions** of the FP6 instrument concerned

1.2.3- General overview of the forms of the Community financial contribution in the FP6

The two following tables summarise the forms of the Community financial contribution in FP6:

Scheme 1 – Forms of the Community financial contribution in the FP6**Scheme 2 – Forms of the Community financial contribution per type of instruments in the FP6**

	Grants			Public Procurements
	Costs Reimbursement		Flat Rate Financing	Purchase Price
	Grant for Integration	Grant to the Budget	Lump Sum	
Networks of Excellence	•			
Integrated Projects		•		
Specific Targeted Projects		•		
Integrated Initiatives for Infrastructures		•		
Specific Research Projects for SMEs		•		
Actions to promote and develop Human Resources and Mobility		•	•	
Coordination Actions		•		
Specific Support Actions		•	•	•

2- FRAMEWORK OF ELIGIBLE COSTS FOR FP6 GRANTS WHICH REIMBURSE COSTS

The notion of eligible costs is defined by four levels:

- the definition of **eligible costs** itself;
- the restrictions introduced by the definitions of **direct and indirect eligible costs**, including specifics to some instruments;
- the restrictions introduced by the **type of activities** proposed per type of instruments;
- the restrictions introduced by the type of **cost reporting models** used by the participant.

2.1- ELIGIBLE COSTS

The notion of eligible costs is established:

- in the second paragraph of Article 14 of the RP ;
- in Article 19 of Annex II (General conditions) to the FP6 model contract adopted by the Commission the 17/03/2003.

Unlike former Framework Programmes, **no eligible cost categories** are established. The **usual accounting principles of the participants** are the basis for the determination of their costs.

Therefore, the definition of the eligible costs is based:

- on the exclusion of any costs identified in the **list of non-eligible costs** ;
- and
- **on cumulative conditions of eligibility of the remaining costs.**

2.1.1- Non-eligible costs

Non-eligible costs are (based on principles established by the second paragraph of Article 109 of the FR⁵⁶, the first paragraph of Article 165 of the IM⁵⁷, indent (d) of the second paragraph of Article 14 of RP⁵⁸, and the second paragraph of Article II.19 of Annex II (General conditions) to the FP6 model contract):

⁵⁶ See footnote n°33.

⁵⁷ See footnote n°36.

⁵⁸ RP: Article 14 – second paragraph – indent (d):

2. Eligible expenses shall be defined in accordance with the first subparagraph of Article 12(2) and must meet the following conditions:

(...)

“2. The following non- eligible costs may not be charged to the project :

- a) any identifiable indirect taxes, including VAT or duties;*
- b) interest owed;*
- c) provisions for possible future losses or charges;*
- d) exchange losses;*
- e) costs declared, incurred or reimbursed in respect of another Community project;*
- f) return on capital;*
- g) debt and debt service charges;*
- h) excessive or reckless expenditure;*
- i) any cost which does not meet the conditions established in Article II.19.1.[definition of eligible costs]”*

In addition, as the costs must be actual (see 2.1.2), non-eligible costs also include costs calculated in accordance with other conventions (e.g. "current costs"⁵⁹, "notional rents"⁶⁰, "opportunity costs"⁶¹, etc.) Therefore, no notional costs can be charged (e.g. in respect of revaluation of buildings or capital equipment, estimated or imputed interest, estimated rentals, etc.).

2.1.2- General eligibility conditions for costs

The FP6 model contract defines **eligible costs** (based on indents (a)⁶² and (c)⁶³ of the first paragraph, the second paragraph⁶⁴ of Article 14 of the RP, and the first paragraph of Article II.19 of Annex II (General conditions) to the FP6 model contract) as follows:

1. Eligible costs incurred for the implementation of the project must fulfil all of the following conditions:

- a) they must be actual, economic and necessary for the implementation of the project; and*
- b) they must be determined in accordance with the usual accounting principles of the contractor; and*
- c) they must be incurred during the duration of the project as identified in Article 4.2⁶⁵ except for the costs incurred in drawing up the final reports referred to in*

(d) they shall be exclusive of indirect taxes, duties and interest and may not give rise to profit.”

⁵⁹ This convention permits to determine the purchasing power loss during a period of inflation.

⁶⁰ Those paid in respect of a landlord's rent, whether that landlord be in or out of the practice, come instead from a Non Cash Limited Allocation.

⁶¹ It is a measure of the income which would have been earned in case of allocation of the resources to another target. This notion is used when, due to insufficient resources available, a decision should be taken concerning their allocation to a certain activity that precludes the performance of other activities.

⁶² See 1.2.2.2.

⁶³ See 1.2.2.3.

⁶⁴ RP: Article 14 – second paragraph:

“2. Eligible expenses shall be defined in accordance with the first subparagraph of Article 12(2) and must meet the following conditions:

- (a) they must be actual, economic and necessary for the implementation of the indirect action;*
- (b) they must be determined in accordance with the usual accounting principles of the individual participant;*
- (c) they must be recorded in the accounts of the participants or, in the case of the resources of third parties referred to in the third subparagraph of Article 8(2), in the corresponding financial documents of those third parties*
- (d) they shall be exclusive of indirect taxes, duties and interest and may not give rise to profit.”*

Article II 7.4, which may be incurred during the period of up to 45 days after the end of the project or the date of termination whichever is earlier; and

d) they must be recorded in the accounts of the contractor that incurred them, no later than at the date of the establishment of the audit certificate referred to in Article II.26. The accounting procedures used in the recording of costs and receipts shall respect the accounting rules of the State in which the contractor is established as well as permit the direct reconciliation between the costs and receipts incurred for the implementation of the project and the overall statement of accounts relating to the overall business activity of the contractor, and

e) in the case of contributions made by third parties established on the basis of an agreement between the contractor and the third party existing prior to its contribution to the project, and for which the tasks and their execution by such a third party are clearly identified in Annex I [Technical annex], the costs must be:

- i) incurred in accordance with the usual accounting principles of such third parties and the principles set out in paragraph d) above;
- ii) meet the other provisions of this Article and this Annex; and
- iii) be recorded in the accounts of the third party no later than the date of the establishment of the audit certificate referred to in Article II.26.

2.1.2.1- The meaning of “actual, economic and necessary”

The following explanations will help in identifying better the nature of actual, economic and necessary features of the eligible costs.

Actual: Costs must be actually incurred (real costs). That is they must be real and not estimated, budgeted or imputed. They must be recorded in the accounts or tax documents and be identifiable and controllable. This rule ensures that fictitious costs are avoided such as internal invoices, subjective estimations or opportunity costs.

To be actual costs must be incurred during the lifetime of the project. Costs will not be eligible if they are incurred before the beginning or after the end of the duration of the project, except for the costs incurred in drawing up the final reports which may be incurred during the period of up to 45 days after the end of the project or the date of termination whichever is earlier.

Economic: refers to the standard of “good housekeeping” in spending public money effectively. Economy can be understood as minimising the costs of resources used for an activity (input), having regard to the appropriate quality and can be linked to efficiency, which is the relationship between the outputs, in terms of resources used to produce them. Effectiveness is concerned with measuring the extent to which the objectives have been achieved and the relationship between the intended impact and the actual impact of an activity. Cost-effectiveness means the relationship between project costs and outcomes, expressed as costs per unit of outcome achieved.

⁶⁵ The earlier starting date of a contract is the day of the deadline of a call for proposals. However, in this case, in order to avoid any misunderstanding, it is recommended to mention in the second paragraph of article 4 of the core-contract the date of the first day following the deadline of this call for proposals.

Costs must be reasonable and comply with the principles of sound financial management and with the objectives of the project and with the formal aspects in the reporting of these expenditures, including the follow-up of the budget in terms of budget allocation and schedule of the cost.

Finally costs must be in relation with the normal behaviour of the participant (e.g.: if it is in the normal habit of a participant that its Director General travels in business class, this cost could be considered to be economic, as it answers to the economic environment of the participant. However, this does not mean that the Director general from another contractor, carrying out tasks under the project, can use the same principles. Normal behaviour relates to the behaviour of that contractor).

Necessary: the costs must be necessary for carrying out the project and directly linked to the subject matter and scope foreseen in it. The cost must be coherent with the terms of reference and also must be present in the budget included in the contract or in the description of activities (Annex I) annexed to the contract.

2.1.2.2- The use of usual accounting principles

Eligible costs “*must be determined in accordance with the usual accounting principles of the contractor*” (indent (b) of the first paragraph of Article II.19 of Annex II (General conditions) to the FP6 model contract).

As there is no longer a definition of eligible cost categories, each contractor must apply, in accordance with the provisions of the contract⁶⁶, its usual definition of types of eligible costs. For example, a contractor would declare the depreciation costs of equipment bought for the purpose of the project as a direct eligible cost. The calculation of the depreciated valued would be based on its own depreciation system. Such a system could be based on a linear depreciation approach, a degressive depreciation approach or even a cash-based approach. For example, consumables might be considered to be any item less than a particular monetary value. Again, this must depend on the principles established by the contractor’s own accounting system (and assuming that they meet recognised standards).

Therefore, although the participants have the freedom to use their usual accounting principles, it does not mean that they have the freedom to create specific accounting principles for FP6 indirect actions. If in their usual accounting principles a particular cost is always considered as an indirect cost they have to consider it also as an indirect cost in an FP6 indirect action⁶⁷.

A set of examples of potential eligible costs is provided in Annex 1 (6.1) to these guidelines.

⁶⁶ Especially the definitions of direct and indirect cost, as well as the definition of the cost reporting models.

⁶⁷ In the respect, of course, of the definition of indirect costs provided in article II.21 of the Annex II of the FP6 model contract (except for actions to promote human resources and mobility).

2.1.2.3- The particular case of resources made available by third parties on the basis of a prior agreement**[To be checked by DG RTD – Unit A3]**

Unlike the Fifth Framework Programme, resources made available by third parties on the basis of a prior agreement are eligible as costs of the project and potentially to reimbursement by means of the Community financial contribution. (third indent of the second paragraph of Article 8 of the RP⁶⁸ and indent (c) of the second paragraph of Article 14 of the RP⁶⁹). This provision explains the purpose of indent (e) of the first paragraph of Article II.19 of Annex II (General conditions) to the FP6 model contract⁷⁰.

The purpose of this provision is **not** to reduce the number of contractors⁷¹, but to take into consideration the particularities of some entities such as Joint Research Units⁷², and other similar organisations.

Two different situations must be taken into consideration:

- contributions in kind or financial contributions provided to the participant by a third party on the basis of **a prior agreement elaborated specifically for the project itself.**

In this case, those resources are considered as **eligible costs and also receipts** of the indirect action, and must be declared by the participants as such (see Article 165 of the IM⁷³ and indents (a) and (b) of Article II.23⁷⁴ of Annex II (General conditions) to the FP6 model contract).

- contributions in kind or financial contributions provided to the participant by a third party on the basis of **a prior agreement existing with or without the involvement of the participant in the project supported by the Community (no direct link with the project).**

In this case those resources are considered as **eligible costs** and not automatically as receipts of the indirect action, and must be declared by the participants as such (Article 165 of the IM and indents (a) and (b) of Article II.23 of Annex II (General conditions) to the FP6 model contract).

In both cases:

⁶⁸ RP: Article 8 (“Conditions relating to technical competence and resources”) – second paragraph – third indent:

“The resources needed to carry out the indirect action are understood to be human resources, infrastructure, financial resources and, if necessary, intangible property and other resources made available by a third party on the basis of a prior commitment.”

⁶⁹ See footnote n°51.

⁷⁰ See 2.1.2.

⁷¹ It must be recalled that as a general rule only contractors have rights and obligations towards the contract with the Community. Third parties have no rights and no obligations. As a consequence, their costs are by definition non-eligible, except in the particular case covered here.

⁷² A Joint Research Unit means a partnership with no legal status as such, generally formed between entities of the same nationality and meeting the following conditions:

- scientific and economic unity;
- lasting a certain length of time;
- recognised by a public authority.

⁷³ See footnote n°36.

⁷⁴ See 3.1.3.3.

- the prior agreement stipulating that resources are made available by third parties to the participant must be submitted to the Commission during the negotiation phase and accepted by the Commission ;
- those third parties and their resources made available to the participant on the basis of the aforementioned agreement must be identified in the technical annex (Annex I) of the contract:
 - for those covered by a prior agreement elaborated specifically for the project itself, it will be clearly stated in Annex I that those resources are eligible costs and receipts and must be declared as such in the Financial Statement per Activity (Form C)⁷⁵.
 - for those covered by a prior agreement not elaborated specifically for the project itself (agreement existing with or without the involvement of the participant in the project), it will be clearly stated in Annex I that those resources are eligible costs (and not receipts) and must be declared as such in the Financial Statement per Activity (Form C)⁷⁶.
- the conditions of eligibility of costs applies for the third parties. As a consequence, even though they are incurred by the third party, these eligible costs will be declared by the participant⁷⁷ and certified by an external auditor⁷⁸.

N.B. In order to determine the eligibility, nature and value of any costs of third party resources made available to the contractor, the relevant cost reporting model (according to the conditions mentioned in Article II.22 of Annex II (General conditions) to the FP6 model contract and presented in point 2.4.3 of these guidelines) must be used. (see sub-indent i) and ii) of indent e) of the first paragraph of article II.19 of Annex II (general conditions) to the FP6 model contract).

2.1.2.4- The particular case of single legal entities composed of several independent legal entities

[To be checked by DG RTD – Unit A3]

The costs incurred by the members of an EEIG (or any other common legal entity created by several independent legal entities), whose statutes clearly mentions that the members have made available some of their resources to the common legal entity, are eligible (see the fourth paragraph of Article 5 of the RP⁷⁹ and the special condition n° ...⁸⁰ to the FP6 model contract).

⁷⁵ See 3.2.3.1.1.2. and Annex 5 to those guidelines.

⁷⁶ See 3.2.3.1.1.2. and Annex 5 to those guidelines.

⁷⁷ See 3.2.3.1.1.2. and Annex 5 to those guidelines.

⁷⁸ See 3.2.3.1.2. and Annexes 6 and 7 to those guidelines.

⁷⁹ RP – Article 5 – fourth paragraph:

“4. An EEIG or any legal entity established in a Member State or associated State according to its national law and which is made up of independent legal entities meeting the criteria of this Regulation may be the sole participant in an indirect action, provided that its composition is in accordance with the conditions fixed pursuant to the provisions of paragraphs, 1 and 2.”

⁸⁰ **Special clause n° ... - TO BE PROVIDED**

2.1.2.5- The restriction on the eligibility of any premium paid for a loan guarantee

The costs of any premium paid by a participant for a loan guarantee may be eligible so long as:

- that participant is an SME; and
- the guarantee covers only up to 80% of the value of the loan; and
- the costs of the loan guarantee premium meet the eligibility criteria established in the FP6 model contract.

(see the fourth paragraph of Article II.19 of Annex (General conditions) to the FP6 model contract)

“4- SMEs may claim under the research and technological development/innovation or demonstration activities the costs of any premium it must pay for a loan guarantee. However the proportion of the loan that is guaranteed may not exceed 80% of the loan, where the costs of such a loan guarantee meet the other criteria established by paragraph 1 of this Article.”

2.2- DIRECT AND INDIRECT ELIGIBLE COSTS

In addition to the definition of eligible costs, the FP6 model contract also distinguishes between **direct eligible costs** and **indirect eligible costs**.

2.2.1- Direct eligible costs

Direct costs are defined in general terms as those items of cost, referred to a specific cost objective that are specifically **traced or caused** by that cost objective.

Therefore direct costs are those costs **directly related to the project**, which can be clearly identified and justified by the **accounting rules and principles of the contractor**. (first paragraph of Article II.20 of Annex (General conditions) to the FP6 model contract) :

“1 - Direct costs are all those costs which meet the criteria established in Article II.19 above [Eligible costs of the project], can be identified by the contractor in accordance with its accounting system, and can be attributed directly to the project.”

2.2.1.1- The particular case of subcontracting

Subcontracts may be, by definition, a form of direct eligible costs.

However, it must be highlighted that, as a general rule contractors must have the capacity to carry out the work themselves. (see the first sentence of the first paragraph of Article II.6 of the Annex II (General conditions) to the FP6 model contract):

Contractors shall ensure that the work to be performed, as identified in Annex I [Technical annex], can be carried out by them.

In other words, **subcontracting is a derogation** to the general rule that stipulates that the tasks of a project are to be realised by the contractors.

The specific conditions for subcontracting are:

- A subcontract is defined by indent 26 of Article II.1 of Annex II (General conditions) to the FP6 model contract:

“Subcontract: means an agreement to provide services relating to tasks required for the project and which cannot be carried out the contractor itself, concluded between a contractor and one or more subcontractors for the specific needs of the project.”

In other words, a **sub-contract relates to the production of a service**. It should be clear then that any intellectual property results from any subcontracted work belongs to the contractor and must be at the entire disposal of the contractor.

- In addition, the conditions for awarding subcontracts are (first sentence of the second paragraph of Article II.6 of Annex II (General conditions) to the FP6 model contract):

“Any subcontract, the costs of which are to be claimed as an eligible cost, must be awarded following competitive tender to the subcontractor offering best value for money (best price-quality ratio), under conditions of transparency and equal treatment.”

In other words:

- **any subcontract**, the costs of which will be claimed under the project, **must be selected through a competitive tender** in full compliance with the national legislation of the contractor concerned.

A public legal entity must apply its internal rules for selection of service – providers (public call for tender) and a private legal entity must at least require submission of several quotes (usually a minimum of three).

- **The competitive tender must ensure conditions of transparency and equal treatment.**

At the request of the Commission and especially in the event of an audit, contractors must be able to demonstrate that they have respected the conditions of transparency and equal treatment.

In other words, contractors must be able to prove that:

- ✓ the criteria and conditions of submission and selection are clear and identical for any legal entity answering to the competitive tender ;
- ✓ there is no possibility of conflict of interest in the selection of the proposals ;
- **The selection criteria must be based on the best value for money** given the quality of the service proposed (best price-quality ratio).

In other words:

- ✓ it is not necessary to select the lowest offer of price;
- ✓ the criteria defining “quality” must be clear and coherent according to the purpose of the task needed a subcontract, in order to provide a good analysis of the ratio price/quality;
- Clearly subcontracts may relate only to a limited part of the project (indent (a) of the second paragraph of Article II.6 of Annex II (General conditions) to the FP6 model contract):

“they may only cover the execution of a limited part of the project” ;

And they are carried out only by third parties (indent 27 of Article II.1 of Annex II (General conditions) to the FP6 model contract) :

“Subcontractor: means a third party carrying out tasks identified in Annex I or minor tasks not relating to the core work of the project, by means of a subcontract with one or more of the contractors.”

This means that subcontracting between contractors is not possible, except in very particular cases. (It might be the case where a different independent department of one contractor, not involved in the project, has provided a service to another contractor. However, this should be avoided to the extent possible.).

Therefore, generally **core elements of the project can not be subcontracted**. If it is proposed to subcontract a core element of the project:

- either the prior approval by the Commission must be obtained regarding the nature of the services to be provided (and they must be clearly identified in Annex I to the contract) ;
- or the subcontractor should participate as a contractor ;
- or the tasks concerned must be redistributed among the contractors.

For example the totality of the tasks of the management of the consortium activities⁸¹ can not be subcontracted, since each contractor will have to have some share in these activities by virtue of the audit certificates and management of the consortium is an activity present in each type of instrument.

However, some tasks, like the organisation of a consortium conference, might be subcontracted. The financial, legal and administrative management of the project can not be subcontracted, and more especially the tasks which are legal obligations of the coordinator. (third paragraph of Article II.3 of Annex II (General conditions) to the FP6 model contract⁸²).

⁸¹ See 2.3.4.

It must be noted that, according to the provisions of article II.26 of Annex II (General conditions) to the FP6 model contract, as there is no conditions other than its capacity for the choice of an auditor able to deliver auditor certificates, the provisions relating to subcontracting do not apply for the selection of such auditor.

⁸² FP6 model contract – Annex II – Article II.3 – third paragraph:

“The coordinator shall:

a) ensure that the tasks identified in Article 2 of the contract regarding accession to the contract are carried out in a timely manner.
b) be the intermediary for communication between the contractors and the Commission in accordance with the provisions of Article 11, with the exceptions foreseen in the contract.

- As established in indent (b) of the second paragraph of article II.6 of Annex II (General conditions) to the FP6 model contract:

“recourse to the award of subcontracts must be justified having regard to the nature of the action and what is necessary for its implementation;”

In other words:

- ✓ If the tasks to be subcontracted can be carried out by the contractors, the proposed subcontract must be refused ;
- ✓ If the tasks to be subcontracted do not concern the provision of a service or concern the provision of a service that is not necessary for the project, the proposed subcontract must also be refused ;
- ✓ If the tasks to be subcontracted concern a core element of the project, the proposed subcontract must be refused, unless there has been justification in the proposal accepted by the Commission and included clearly in Annex I to the contract;
- ✓ **If the tasks to be subcontracted:**
 - ❖ **can not be realised by the contractors ; and**
 - ❖ **concern the production of a service necessary for the good implementation of the project; and**
 - ❖ **do not constitute a core element of the project ;****they can be subcontracted. The modalities for subcontracting must also be applied (competitive tender ; etc).**

However, some minor services may be subcontracted without going through the procedures indicated above (third sentence of the first paragraph of Article II.6 of Annex II (General conditions) to the FP6 model contract) :

“During the implementation of the project, contractors may subcontract other minor services, which do not represent core elements of the project work, which cannot be directly assumed by them and where this proves necessary for the performance of their work under the project.”

In other words:

- **as a general rule, the tasks to be subcontracted need the prior agreement of the Commission.** As those tasks are mentioned in the technical Annex, their necessity (and therefore the necessity of their costs) is already accepted by the Commission (second paragraph of article II.6 of Annex II (General conditions) to the FP6 model contract):

“the tasks concerned must be set out in Annex I [Technical

c) receive all payments made by the Commission to the consortium and administer the Community contribution regarding its allocation between contractors and activities in accordance with this contract and the decisions taken by the consortium. The coordinator shall ensure that all the appropriate payments are made to contractors without unjustified delay.

d) keep accounts making it possible to determine at any time what portion of the Community funds has been paid to each contractor for the purposes of the project. The coordinator shall inform the Commission of the distribution of the funds and the date of transfers to the contractors.”

annex].⁸³

- **By derogation to this general rule, contractors are free to subcontract tasks that are not identified as such in the technical annex but with the additional obligation to justify the necessity of those subcontracts at the relevant periodic justification.**
- Even though certain subcontracted services may be performed by a subcontractor, the contractor maintains full responsibility for its actions and must ensure that certain the provisions of the model contract are reflected in the agreement with the subcontractor (indent (d) of the second paragraph of Article II.6 of Annex II (General conditions) to the FP6 model contract):

“the contractor shall retain sole responsibility for carrying out the action and for compliance with the provisions of the agreement. The contractor must undertake to make the necessary arrangements to ensure that the subcontractor waives all rights in respect of the Commission under the contract”

(indent (e) of the second paragraph of Article II.6 of Annex II (General conditions) to the FP6 model contract):

“the contractor must undertake to ensure that the conditions applicable to it under Articles II.9, II.10, II.11, II.12, II.28.8 and II.29 of the contract are also applicable to the subcontractor.”

In other words:

- It is the entire responsibility of the contractors to ensure that all tasks are carried out, including subcontracted tasks, whatever the reasons might be⁸⁴;
- In its agreement with the subcontractor (the subcontract), the contractor must ensure that:
 - the subcontractor waives all rights in respect of the Commission under the contract ;
 - the following provisions of Annex II (General conditions) to the FP6 model contract applies also to the subcontractor:
 - ✓ Confidentiality (Article II.9)
 - ✓ Communication of data for evaluation, impact assessment, standardisation purposes and communication of information beyond the research community (Article II.10)
 - ✓ Information to be provided to Member States or Associated States (Article II.11)

⁸³ The same information is also provided in the second sentence of the first paragraph of article II.6 of Annex II (General conditions) to the FP6 model contract:

“However, where it is necessary to subcontract certain elements of the work to be carried out, this should be clearly identified in Annex I.”

⁸⁴ The same information is also provided in the third paragraph of article II.6 of Annex II (General conditions) to the FP6 model contract (except for actions to promote human resources and mobility):

“Where the contractors enter into subcontracts to carry out some parts of the tasks related to the project, they remain bound by their obligations to the Commission under the contract.”

- ✓ Publicity (Article II.12)
- ✓ Payment modalities (suspension of payments) (Article II.28.8)
- ✓ Controls and audits (Article II.29)

For controls and audits (Article II.29), it is important to note that the auditing rights of the Commission and Court of Auditors must be extended to the subcontractors (as established by its seventh paragraph):

“Contractors shall ensure that the rights of the Commission and the Court of Auditors to carry out audits are extended to the right to carry out any such audit or control on any subcontractor or third party whose costs are reimbursed in full or in part by the Community financial contribution, on the same terms and conditions as indicated in this Article.”

The contractor must ensure that its agreement with the subcontractor, mentions in particular that:

- the Commission may, at any time during the contract and up to five years after the end of the project, arrange for audits to be carried out, either by outside scientific or technological reviewers or auditors, or by the Commission departments themselves including OLAF ;
- The European Court of Auditors shall have the same rights as the Commission, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.

As a consequence, in addition to the tasks subcontracted, it is recommended to identify to the Commission the name of the subcontractors carrying out any subcontracted tasks identified in the technical Annex of the contract (Annex I) as soon as they are known.

Finally, it is strongly recommended to bring to the attention of the Commission services, at the time of negotiation, the intention or possibility of engaging with subcontractors established in a third country whose participation and/or funding conditions, according to article 6 of the RP, depend on a Commission ad hoc decision stipulating that it is essential for carrying out the indirect action. The exception would be where the contractor proposing to subcontract to subcontractors established in that third country is also established in the same third country.

2.2.2- Indirect eligible costs

Indirect costs are elements of costs that **are associated with or caused by** two or more cost objectives jointly, but they are not directly traced to each of them individually. The nature of an indirect cost is such that it is not possible, or at least not feasible, to measure directly how much of the cost is attributable to a single cost objective.

Therefore, indirect costs are those costs that are **not directly related to the project**, not identified as direct costs, and which do not include any costs already directly charged to

the project. They are determined in accordance with the accounting principles of the contractor and are in direct relationship with the direct eligible costs of the project.

Article II.21 of Annex II (General conditions) to the FP6 model contract stipulates that:

“Indirect costs are all those costs, which meet the criteria established in Article II.19 [Eligible costs of the project], which cannot be identified by the contractor as being directly attributed to the project but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the project.

Indirect costs may be charged to the project under the full cost model, to the extent that they represent a fair apportionment of the overall overheads of the organisation.”

Under certain conditions, some participants (see 2.3) may charge a lump sum (flat rate) deemed to cover their indirect costs (Article 181 of the IM⁸⁵ and the second indent of Article 14 of the RP⁸⁶).

In the case of FP6 projects, this applies to those contractors using the additional cost model with a flat rate for indirect costs (AC) or the full cost model with a flat rate for indirect costs (FCF).

Subject to the accounting principles of the contractors, the following items may be considered as indirect eligible costs:

- costs related to general administration and management;
- costs of office or laboratory space, including rent or depreciation of buildings and equipment, and all related expenditure such as water, heating, electricity, maintenance, insurance and safety costs;
- communication expenses, network connection charges, postal charges and office supplies;
- common office equipment such as PC's, laptops, office software;
- miscellaneous recurring consumables ;
- ...

providing they can be identified and justified by the accounting system of the participant as being incurred in direct relationship with the eligible direct costs attributed to the project.

Such costs are deemed to be covered by the flat rate contribution to indirect costs for those contractors using the FCF and AC cost models.

For those using the FC cost model, indirect eligible costs must be:

- Eligible costs
- Reasonable and capable of verification, i.e. based on factual elements which can be proven by the contractor and verified by the Commission (for example global

⁸⁵ See footnote n°40.

⁸⁶ See footnote n°41.

assumptions or existing commercial practice statements, or any other unsupported statements will not be accepted).

- Not included under direct eligible costs

And, the following principles should be respected:

- Indirect eligible costs must be in accordance with normal accounting conventions of the contractor.
- Indirect eligible costs should be extracted from or reconciled with the official accounts
- Indirect eligible costs that do not relate to EC research should not be included in indirect costs for EC-funded projects.

By definition, different methods and keys may be used for the distribution of the indirect eligible costs, in compliance with the usual accounting principles of the participant. However, it must be noted that:

- No subjective or arbitrary keys can be accepted ;
- Participants charging actual indirect eligible costs (FC) will be requested to justify their indirect costs ;
- Participants charging a flat rate for their indirect eligible costs will use the flat rate proposed in the cost model they use (FCF and AC). However, where their internal rules require the use of a lower percentage, or if it is their request, they may request a lower flat-rate. This should be raised during contract negotiation with the Commission services in order to introduce the relevant special clause in the contract⁸⁷.

2.3- TYPE OF ACTIVITIES

Direct and indirect eligible costs must be declared by each participant according to the type of activities in which it is involved in the project.

Five types of activities are proposed in the instruments of the FP6 (Article II.2⁸⁸ of Annex II (General conditions) to the FP6 model contract).

2.3.1- Research and technological development or innovation activities

⁸⁷ **Special clause n° ... - TO BE PROVIDED**

⁸⁸ FP6 model contract – Annex II – Article II.2 (“Activities):

“The project includes, as indicated in the table of indicated breakdown of resources and activities in Annex I one or more of the following activities.

- 1. Research and technological development or innovation activities*
- 2. Demonstration activities*
- 3. Training activities*
- 4. Management of the consortium activities (...)*
- 5. Other specific support activities”*

2.3.1.1- Research and technological development activities

Research and technological development activities may include:

- research designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives⁸⁹;
- research of critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services⁹⁰.

2.3.1.2- Innovation activities

Consortia are encouraged to include **innovation-related activities** in their project, and such activities will be supported by EC funding under the same conditions as R&D activities.

Typical examples of innovation-related costs include:

- **intellectual property protection:** protection of the knowledge resulting from the project (including patent searches, filing of patent (or other IPR) applications, etc.);
- **dissemination activities** beyond the consortium: publications, conferences, workshops and Web-based activities aiming at disseminating the knowledge and technology produced;
- **studies on socio-economic aspects:** assessment of the expected wider societal impact of the knowledge and technology generated, as well as analysis of the factors that would influence their exploitation (e.g. standardisation, ethical and regulatory aspects, etc.);
- **activities promoting the exploitation of the results:** development of the plan for the use and dissemination of the knowledge produced, feasibility studies for the creation of spin-offs, etc., "take-up" activities to promote the early or broad application of state-of-the-art technologies. Take-up activities include the assessment, trial and validation of promising, but not fully established, technologies and solutions, and easier access to and the transfer of best practices for the early use and exploitation of technologies. In particular, they will be expected to target SMEs.

In addition, innovation activities cover also those activities carried-out by "organisations that possess specific competence in management, dissemination and transfer of knowledge" which are allowed to participate in FP6 projects, even if they don't carry out any R&D activity⁹¹.

⁸⁹ **Fundamental research** as defined by Annex I of the Community framework for state-aid for research and development (OJ C 45, 17.2.1996, p 5).

⁹⁰ **Industrial research** as defined by Annex I of the Community framework for state-aid for research and development (OJ C 45, 17.2.1996, p 5).

⁹¹ It is important to recall that as clearly established in the Chapter II of the RP, any legal entity may participate to the indirect actions of the FP6.

2.3.2- Demonstration activities

“Demonstration” meaning shaping the results of industrial research into a plan, arrangement of design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. It does not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements⁹².

Demonstration activities cover those activities of the project, finalised at validating at laboratory or pre-industrial scale single or set of technologies in order to prove their viability for future applications and commercialisation. They may include (but are not limited to):

- Prototype design and assembly;
- Test bench validation;
- Large infrastructure use for testing prototypes;
- Pre-certification for testing purpose;
- Etc.

2.3.3- Training activities

The purpose of training activities is to provide advanced training of researchers and other key staff, research managers, industrial executives (in particular for SMEs), and potential users of the knowledge produced within the project. Such training activities should contribute to the professional development of the persons concerned.

NB: training activities do not cover the research training of a doctoral student or post-doctoral researcher. The cost of those people, if they are involved in the project, is declared under the type of activities in which they are involved.

However, salary costs of those being trained are not eligible: (Article II.25 of the Annex II (General conditions) to the FP6 model contract):

“For training activities, the salary costs of those being trained are not eligible costs under this activity.”

Training also covers activities carried-out by specialist training organisations which may participate in FP6 projects as contractors, even if they do not carry out specific RTD tasks⁹³.

2.3.4- Management of the consortium activities

⁹² **Precompetitive development activity** as defined by Annex I of the Community framework for state-aid for research and development (OJ C 45, 17.2.1996, p 5).

⁹³ See footnote n°78.

Management of the consortium activities cover actions that can be carried out by every contractor or in some cases are limited to only a few contractors (except for the audit certificates) include the following tasks (fourth paragraph of Article II.2 of Annex II (general conditions) to the FP6 model contract):

- *obtaining audit certificates by each of the contractors.*
- *implementation of competitive calls by the consortium for the participation of new contractors, in accordance with the provisions of the contract.*
- *maintenance of the consortium agreement if it is obligatory*
- *obtaining any financial security such as bank guarantees when requested by the Commission ;*
- *any other management activities at the consortium level not covered by any other activity, such as:*
 - *coordination of the technical activities of the project;*
 - *the overall legal, contractual, ethical, financial and administrative management;*
 - *coordination of knowledge management and other innovation-related activities;*
 - *overseeing the promotion of gender equality in the project;*
 - *overseeing science and society issues related to the research activities conducted within the project;*
- *any other management activities foreseen by the annexes.”*

The costs of these management activities are reimbursed at a rate of 100% to all contractors regardless of their cost model, up to a limit of 7% of the Community financial contribution to the project: (third paragraph of Article 14 of the RP⁹⁴, and Article II.25 of Annex II (general conditions) to the FP6 model contract):

“The costs relating to management activities identified in Article II.2 [Definitions] may be charged, up to the maximum level of Community reimbursement for management activities [7% of the Community financial contribution- see table of Article II.25]. Where the costs incurred for management activities exceed the limit of 7% of the Community financial contribution, such costs may be charged to the other relevant activity to which they correspond if they meet the conditions of Articles II.19 [Eligible costs of the project], II.20 [Direct costs], and II.21 [Indirect costs] applicable to those activities.”

Once the limit of 7% of the Community financial contribution is reached, a management activity that is linked to another activity of the project can be charged under this activity.

The limitation of 7% of the Community financial contribution does **not** apply to **each** individual contractor but to the project as a whole.

Finally, management of the consortium activities also cover activities carried-out by organisations specialised in project management which are allowed to participate in FP6 projects, even if they do not carry out specific RTD tasks⁹⁵.

⁹⁴ RP: Article 14 – third paragraph:

“3. Costs for management of the consortium shall be reimbursed up to 100 % of the costs incurred and shall include the cost of audit certificates. In this case legal entities which participate in the indirect action on an additional cost basis may claim the full costs they have incurred for management, in so far as they can produce detailed evidence of them. The contracts shall lay down a maximum percentage of management costs in relation to the Community contribution. A share of no more than 7 % shall be reserved for management costs by the consortium.”

⁹⁵ See footnote n°78.

2.3.5- Other specific activities

Other specific activities refer to any activity other than those described above, specific to some instruments and foreseen in any Annex of the contract (especially Annex I: technical annex):

- For a Network of Excellence (NoE), it is the Joint Programme of Activities ;
- For an Integrated Infrastructures Initiative (I³), it is:
 - As an obligation, the coordination / networking activities;
 - As a possibility:
 - ✓ International access to research infrastructures;
 - ✓ Connectivity activities
 - ✓ Any other specific activities

Therefore, an I³ must be composed of:

- ✓ an obligatory coordination / networking activity;
- ✓ and one or more of the following activities:
 - ❖ research and technological development or innovation activities
 - ❖ demonstration activities
 - ❖ other specific activities
- For a Coordination Action (CA), it is the coordination / networking activities;
- For a Specific Support Action (SSA), it is by definition the specific activities of the action, including, in some cases, international access to research infrastructures

2.3.6- Overview of the type of activities proposed per type of instruments

The following table indicates the different types of activity proposed per type of instruments:

Scheme 3 – Type of activities per types of instruments of the FP6

Types of instruments and/or actions / Types of activities		Research and technological development or innovation activities	Demonstration activities	Training activities	Management of the consortium activities	Other specific activities
Network of excellence					•	•
Integrated project		•	•	•	•	
Specific targeted research or innovation project		•	•		•	
Specific research project for SMEs	Cooperative research	•			•	
	Collective research	•		•	•	
Integrated infrastructures initiative		•	•		•	•
Coordination action	Classical			•	•	•
	For Infrastructures				•	•
Specific support action					•	•

It must be mentioned that, according to the special clause n° ...⁹⁶, no training activities are permitted for coordination actions related to infrastructures.

2.4- COST REPORTING MODELS

Direct and indirect eligible costs charged by the participant under the type of activities under which it is involved in the project must be declared according to a cost reporting model (Article 14 of the RP).

⁹⁶ Special clause n° ... - TO BE PROVIDED

2.4.1- Cost models applicability

- The cost models are applicable to all instruments in the FP6 where the Community financial contribution is a Grant for Integration (Networks of Excellence) or a Grant to the Budget (Integrated Projects, Specific Targeted Research or Innovation Projects, Specific Actions for SMEs, Integrated Infrastructure Initiatives, Coordination Actions, and Specific Support Actions that are not supported by means of lump sum grant).
- They do not apply to those instruments where the Community financial contribution is a lump sum grant (some Specific Support Actions and some Actions promoting human resources and mobility) or takes the form of public procurement (some Specific Support Actions).

2.4.2- Cost models proposed

Three cost models are proposed to the participants of indirect actions of the FP6 supported through Grant for Integration or Grant to the Budget (second paragraph of article 14 of the RP⁹⁷ and footnote n°3 of the table of Section 2 of Annex III of the FP6-EC)⁹⁸ as established by the model contract, (first paragraph of Article II.22 of the Annex II (General conditions):

- **Full Cost with actual indirect costs model (FC)**

In this model, **eligible direct and indirect costs** are charged by the contractor.

This model allows participants to charge all their eligible costs to the project (as established by indent (a) of the first subparagraph of the second paragraph of Article 14 of the RP)⁹⁹. As such, it is the **model by default** for virtually all types of legal entity¹⁰⁰.

- **Full Cost with flat rate for indirect flat costs model (FCF)**

In this model, eligible direct costs and a flat rate for indirect costs are charged by the contractor. The flat rate applied is a fixed contribution equal to 20% of all direct eligible costs minus the direct eligible costs of sub-contracts.

This model is proposed to a limited number of types of legal entities (second subparagraph of the second paragraph of Article 14 of the RP)¹⁰¹. As such, it is a **derogation model**.

⁹⁷ See footnotes n°41 and n°51.

⁹⁸ FP6-EC: Annex III – Section 2 – Table – Footnote n°3:

“(s) Subject to specific conditions specific legal entities, particularly public bodies, will receive funding of up to 100 % of their marginal/additional cost.”

⁹⁹ RP: Article 14 – second paragraph – first subparagraph – indent (a):

“2. Eligible expenses shall be defined in accordance with the first subparagraph of Article 12(2) and must meet the following conditions:

(a) they must be actual,(...)”

¹⁰⁰ Except for physical persons.

¹⁰¹ RP: Article 14 – second paragraph – second subparagraph:

• Additional direct Costs with flat rate for indirect costs model (AC)

In this model, eligible direct additional costs and a flat rate for indirect costs are charged by the contractor. The flat rate is a fixed contribution equal to 20% of all direct additional eligible costs minus the direct additional eligible costs of sub-contracts.

This model is proposed to a limited number of types of legal entities and is conditioned by certain provisions in the model contract (second subparagraph of the second paragraph of the article 14 of the RP¹⁰² and footnote n°3 of the table of Section 2 of the Annex III of the FP6-EC)¹⁰³. As such, it is also a **derogation model**.

Direct additional eligible costs are defined as follows (second paragraph of Article II.20 of Annex II (General conditions) to the FP6 model contract):

“2- Contractors using the additional cost model may charge to the project only those direct costs that are additional to their recurring costs. Any such direct additional costs specifically covered by contributions from third parties are excluded. Direct costs of personnel shall be limited to the actual costs of the personnel assigned to the project where the contractor has concluded with the personnel:

- a temporary contract for working on Community RTD projects ,*
- a temporary contract for completing a doctorate,*
- a contract which depends, in full or in part, upon external funding¹⁰⁴ additional to the normal recurring funding of the contractor. In that case, the costs charged to this contract must exclude any costs borne by the normal recurring funding”.*

NB: By derogation to the above definition of additional eligible costs, participants using the AC model may charge eligible direct costs (additional **and non-additional**) under the management of the consortium activities, providing they are able to calculate them and to produce detailed evidence of them (third paragraph of Article 14 of the RP¹⁰⁵ and as established by footnote n°10¹⁰⁶ of Annex II (general conditions) to the FP6 model contract).

Therefore, any contractor using the AC model may charge the cost of permanent staff involved in the project:

- for management of the consortium activities, providing that the contractor can identify and justify these costs precisely ;
- for other activities, providing such people have a contract which depends in full or in part upon external funding additional to the normal recurring funding of the contractor. In other words, if such permanent people receive the same salary with

“By way of derogation from the actual cost principle and with the agreement of the participants, the contract may lay down average rates of Community financial participation by type of expenditure or pre-set lump sums, as well as a value by activity which shall approximate to the expenses envisaged.”

¹⁰² See footnote n°88.

¹⁰³ See footnote n°85.

¹⁰⁴ Contracts dependant upon external funding may include contracts necessary to permit permanent personnel to carry out additional work required for the *project*, which is dependant upon external funding.

¹⁰⁵ See footnote n°81.

¹⁰⁶ FP6 model contract – Annex II – Footnote n°10:

“Permanent personnel which do not meet the criteria established in this Article may be charged to eligible costs incurred by contractors using the AC model under Management Activities identified in Article II.2, and within the limits established by Article II.28 where these costs can be identified with precision by the contractor.”

or without being involved in this indirect action of the Community, their costs are not additional even though they may have additional work.

2.4.3- Access conditions to the Costs models

As mentioned above, access conditions to a cost model depend on the type of legal entity concerned, and for some of them to their accounting capacity (Article II.22 of Annex II (General conditions) to the FP6 model contract):

- All legal entities can use the FC model with the exception of physical persons (Article II.22.2 - first sentence : *"All contractors, except for physical persons may use the full cost (FC) model."*) ;
- Physical persons¹⁰⁷ are obliged to use the AC model (Article II.22.3 - second paragraph : *"Contractors which must use the additional cost model are physical persons."*) ;

- Non-commercial or non-profit organisations established either under public law or private law and international organisations may choose one of the AC, FCF or FC models.

However, only those non-commercial or non-profit organisations established either under public law or private law and international organisations which do not have an accounting system that allows the share of their direct and indirect costs relating to the project to be distinguished may opt for the AC model (Article II.22.2: *"All contractors, except for physical persons may use the full cost (FC) model. Contractors that are SMEs, non-commercial or non-profit organisations established either under public law or private law, or international organisations may use the full cost model with a flat rate for overheads (FCF)."*) + (Article II.22.3 - first paragraph: *"Contractors which may use the additional cost model are non-commercial or non-profit organisations established either under public law or private law, or international organisations; which do not have an accounting system that allows the share of their direct and indirect costs relating to the project to be distinguished."*).

- Legal entities defined as SMEs¹⁰⁸ have the choice between the FC and FCF model (Article II.22.2 : *"All contractors, except for physical persons may use the full cost (FC) model. Contractors that are SMEs, non-commercial or non-profit organisations established either under public law or private law, or international organisations may use the full cost model with a flat rate for overheads (FCF)."*)

¹⁰⁷ Physical persons are not unipersonnel societies. These latter may be considered as SMEs.

¹⁰⁸ To be regarded as an SME, as established by the Commission Recommendation 96/280/EC [OJ L 107, 30.4.1996, p. 4.], an organisation must have:

- less than 250 full time equivalent employees, and
- an annual turnover not exceeding EUR 40 million or an annual balance sheet total not exceeding EUR 27 million, and
- must not be controlled by 25% or more by a company which is not an SME.

WARNING: this definition is modified by Commission Recommendation of 06.05.2003 concerning the definition of micro, small and medium-sized enterprises [Not yet published]. This new Recommendation will enter into force the 01.01.2005.

http://europa.eu.int/comm/enterprise/enterprise_policy/sme_definition/decision_sme_en.pdf

The following table summarises the access conditions to cost reporting models according to type of legal entity:

Scheme 4 – Cost reporting models per type of legal entities

Type of legal entities	Accounting capacity to distinguish direct and indirect costs	Cost reporting models		
		AC	FCF	FC
Physical persons	N.A. (*)	●		
Non-commercial or non-profit organisations established either under public law or private law and International organisations	No	●		
	Yes		●	●
Small and medium enterprises	N.A. (*)		●	●
Other legal entities	N.A. (*)			●

(*) N.A. : Not applicable

2.4.4- Use of a cost model

- A legal entity shall apply a cost reporting model according to its type and according to its accounting capacity to answer the definition of direct and indirect eligible costs (fourth paragraph of Article II.22 of Annex II (General conditions) to the FP6 model contract):

“Each contractor shall apply a cost reporting model in accordance with the principles established in Articles II.19 [Eligible costs of the project], II.20 [Direct costs], and II.21 [Indirect costs].”

- As a general principle, a legal entity shall apply the same cost reporting model in all FP6 contracts in which it will be involved, whatever the type of instrument:

“Where a legal entity may choose a cost reporting model it shall apply that model in all contracts established under the Sixth Framework Programme.”

However, by derogation to this general principle (first and second indents¹⁰⁹ of Article II.22 of Annex II (General conditions) to the FP6 model contract):

¹⁰⁹ FP6 model contract – Annex II – Article II.22 – Paragraph 4 – first and second sub-indents:

“- By derogation to the principle established above, any legal entity eligible to opt for the AC cost model may opt in this contract for the FCF or the FC reporting model even if it has initially opted for the AC reporting model in previous contracts. However, if it does so, it must use that reporting model consistently in subsequent contracts established under the Sixth Framework Programme.

- By derogation to the principle established above, any legal entity eligible to opt for the FCF cost model may opt in this contract for the FC reporting model even if it has opted earlier for the FCF reporting model in previous contracts. However,

- Any legal entity which is eligible to opt for the AC model in a first contract can change to the FCF or the FC model in a later contract. If it does so, it must then use the new cost reporting model in subsequent contracts ;
- any legal entity which is eligible to opt for the FCF model in a first contract can change to the FC model in a later contract. If it does so, it must then use the new cost reporting model in subsequent contracts.

In other words:

- an SME may choose the FCF model in a first contract, and opt for the FC model in a later contract.
- a non-profit or non-commercial public or private organisation which has developed its accounting system in order to be able to distinguish its direct costs from its indirect costs may go the FCF or the FC models in a later contract, even though its first experience under an FP6 contract was with the AC model.

However, when a legal entity changes its cost reporting model, this change applies to its new contracts. Generally speaking, the contracts signed using the original cost reporting model will be completed with that cost reporting model.

Finally, modification of the legal status or nature of an entity may also lead to the modification of its cost model for subsequent contracts.

2.4.5- The particular case of the specific activities aiming at providing transnational access to infrastructures

For **activities aimed at providing transnational access** to infrastructures (Article III.13 of Annex III (Specific conditions) for I³ and SSA for Infrastructures to the FP6 model contract):

- **Two cost models** are available to the participants:

- **The User Fee (UF)**

In this model, eligible direct costs and a flat rate for indirect costs are charged by the contractor (Article III.13.2 of Annex III to the contract (see the definition below). The flat rate is a fixed contribution equal to 20% of all direct eligible costs minus the cost of sub-contracts. In this sense it has similarities with the FCF model.

It is characterised by the fact that the eligible direct costs are calculated as follows:

- ✓ The access provider may identify its **eligible direct costs**, related to the access provided to the users given access to the infrastructure, on the basis of a user fee (UF), according to the following formula:

$$\text{user fee} = \text{unit cost} \times \text{actual quantity of access delivered within the project}$$
- ✓ The unit cost, negotiated with the access provider, shall be defined on the basis of the average annual direct costs of providing access to the infrastructure, divided by the total annual quantity of access provided to the researchers normally having access to the infrastructure (excluding the user groups supported for access by the Community). These direct costs may cover also preparatory work and specific training courses for the users but shall exclude all contributions to the capital investments of the infrastructure.

if it does so, it must use that reporting model consistently in subsequent contracts established under the Sixth Framework Programme.”

This unit cost shall be specified in Annex I (technical annex) to the contract and is to be used throughout the duration of the contract.

- ✓ Eligible direct costs may also include the travel and subsistence costs related to visits by users and to the user group selection panel, where necessary.
- ✓ To be eligible, these direct costs must be recorded in the accounts of the legal entity(ies), including the access provider, which contribute(s) resources to the project.
- ✓ When the infrastructure is composed of several research facilities with different access costs, a separate unit cost may be defined for each facility.

▪ **Additional Costs with flat rate for indirect costs (AC)**

In this model, eligible direct additional costs and a flat rate for indirect costs are charged by the contractor. The flat rate is as a fixed contribution equal to 20% of all eligible direct additional costs minus the eligible direct additional costs of sub-contracts.

This definition is the same as that established in Article II.22 of Annex II (General conditions) to the FP6 model contract.

As a consequence, a participant involved in an activity aimed at providing transnational access and involved in at least one other activity of an I³ or an SSA for Infrastructures, could potentially use two different cost models in the same indirect action.

- The **access conditions to the cost models** are the following:
 - All transnational access providers may use the user fee cost reporting model (UF), provided they have an accounting system that allows their direct costs relating to the project to be identified¹¹⁰.
 - Any access providers using one of the full cost reporting models (FC or FCF) for the other activities of the project must use the user fee cost reporting model (UF) for activities aimed at providing transnational access¹¹¹.
 - Access providers which may use the additional cost reporting model (AC) are:
 - ✓ non-commercial or non-profit organisations established either under public law or private law, or
 - ✓ international organisations,
 which do not have an accounting system that allows the share of their direct and indirect costs relating to the project to be distinguished¹¹².
- By using in a first contract a cost reporting model for activities aimed at providing transnational access, an access provider shall apply that model for the same type of activities in all contracts established under the Sixth Framework Programme¹¹³.

¹¹⁰ FP6 model contract – Annex III for I3 and SSA Infrastructures – Article III.13 – fourth paragraph.

¹¹¹ FP6 model contract – Annex III for I3 and SSA Infrastructures – Article III.13 – fifth paragraph.

¹¹² FP6 model contract – Annex III for I3 and SSA Infrastructures – Article III.13 – third paragraph.

¹¹³ FP6 model contract – Annex III for I3 and SSA Infrastructures – Article III.13 – sixth paragraph.

The following table summarises the access conditions to cost reporting models per type of legal entities in an I3 or an SSA for Infrastructures containing a specific activities aiming at providing transnational access:

Scheme 5 – Cost reporting models per type of legal entities for an I³ and an SSA for Infrastructures

Type of legal entities	Accounting capacity to distinguish direct and indirect costs	Cost reporting models for all activities except for transnational access			Cost reporting models for transnational access	
		AC	FCF	FC	AC	UF
Non-commercial or non-profit organisations established either under public law or private law and International organisations	No	•			•	• (*)
	Yes		•	•		•
Small and medium enterprises	N.A. (**)		•	•		•
Other legal entities	N.A. (**)			•		•

(*) Provided the contractor is able to justify its direct eligible costs relating to the project

(**) N.A. : Not applicable

2.4.6- The particular case of the limitation of the actual indirect eligible costs of the FC model in CA and SSA

For Coordination actions (CA) and Specific Support Actions (SSA), contractors using the full cost model (FC) may not claim their actual indirect costs.

In view of the principle of necessity of eligible costs to carry out the project, in these instruments a flat rate amount deemed to cover their eligible indirect costs is applied for all contractors. This flat rate amount is equal to a fixed contribution of 20% of their direct eligible costs (for AC contractors, their direct additional eligible costs) minus their direct eligible costs of sub-contracts (for AC contractors, their direct additional eligible costs of sub-contracts). (second paragraph of the article II.25 of the Annex II (General conditions) to the FP6 model contract):

"In those instruments where contractors using the FC cost model are limited to a claim of 20% of their direct costs as a contribution to overheads, this rate shall be based on all direct costs excluding the costs of subcontracts. For coordination actions and specific support actions indirect costs are reimbursed at 20% of direct costs (excluding the costs of subcontracts)."

2.4.7- The particular case of physical persons

Physical persons participating as contractors in the project are obliged to use the AC model and may not charge any labour costs for their personal contribution to the project (Article II.22 of Annex II (General conditions) to the FP6 model contract).

“Physical persons may not charge any labour cost in relation to their personal involvement in the project.”

In other words, the costs of the working hours of a physical person involved in an FP6 indirect action can not be charged as eligible costs.

DRAFT

3- MECHANISMS OF THE FP6 COMMUNITY FINANCIAL CONTRIBUTION

3.1- CALCULATION OF THE COMMUNITY FINANCIAL CONTRIBUTION

The calculation of Community financial contribution is based on different elements, especially where it takes the form of Grant for Integration or a Grant to the Budget (indents (a) (b) and (c) of the first paragraph of Article 14 of the RP)¹¹⁴. Where the Community financial contribution is a lump sum grant, there is not usually a calculation based on costs, reimbursement rates or other aspects.

3.1.1- Calculation of the Community financial contribution in a Grant taking the form of a lump sum

Where the Community financial contribution to an FP6 indirect action takes the form of a lump sum (for some Specific Support Actions and some Actions to promote human resources and mobility), there is no calculation of the Community financial contribution based on the estimated costs of carrying out the action.

As there is no specific mention of the amounts or methods to determine lump sum amounts in the basic acts¹¹⁵, article 181 of the IM must be applied. It stipulates that:

“ In addition to cases of scholarships and prizes, the basic act may authorise flat-rate financing for contributions of less than EUR 5 000 or the use of scales of unit costs. In order to ensure compliance with the principles of co-financing, no-profit and sound financial management, those flat-rate amounts and scales shall be reviewed at least every two years by the authorising officer responsible. The amounts shall be approved by the Commission.”

In other words, according to the content of the proposal, the Community financial contribution is negotiated between the consortium and the Commission, within the framework established by article 181 of the IM. In the case of many of the actions to promote human resources and mobility set rates have been established by the work programme for that part of the Specific Programme.

The negotiated amount of the Community financial contribution, as well as its form (“Lump sum”), is clearly indicated in article 5 of the core contract of the FP6 model contract.

The specific cases applicable to actions to promote human resources and mobility are indicated in Annex B (6.B) to these guidelines.

¹¹⁴ See 1.2.1, 1.2.2.2 and 1.2.2.3.

¹¹⁵ See footnote n°15.

3.1.2- Calculation of the Community financial contribution in a Grant for Integration

3.1.2.1- Principles

In a Grant for Integration, the Community financial contribution is calculated taking into account:

- the **degree of integration** proposed by the consortium ;
- the **number of researchers** (and doctoral students) that all participants intend to integrate ;
- the **characteristics of the field of research** concerned;
- the **joint programme of activities**

During the evaluation of the proposals, only those proposals that reach a pre-determined threshold for the criterion that covers the **degree of integration and the joint programme of activities**¹¹⁶ will be considered for selection. This threshold will be set at a high level to ensure that only networks with the potential to deliver the degree of integration required from a network of excellence will be selected.

The Community financial contribution to a Network of excellence will be calculated as follows (first and fourth paragraphs of Article III.1 and first paragraph of Article III.2 of Annex III (Specific provisions) for Network of Excellence to the FP6 model contract):

- The grant for integration shall be calculated by multiplying the sum of the average annual grant calculated in respect of the **number of researchers**^{117 & 118} and of any annual bonus calculated according to the **number of doctoral students**^{119 & 120} **intended to be integrated**, by the duration of the project¹²¹.

¹¹⁶ See Section 4.2 of the Background document for NoE mentioned in footnote n°25.

¹¹⁷ FP6 model contract – Annex III for NoE – Article III.1 – fourth paragraph:

“Researchers: means research staff with at least four years of research experience or those in possession of a doctoral degree. Additionally, a researcher must either be an employee of one of the contractors or be working under its direct management authority in the frame of a formal agreement between the contractor and that researcher’s employer.”

¹¹⁸ FP6 model contract – Annex III for NoE – Article III.1 – fourth paragraph:

“Number of researchers: means the headcount of those researchers that both (a) are identifiable by name at the time of the deadline for the submission to the Commission of the original proposal for this network of excellence and (b) constitute the research capacities of the contractors within the frame of the then proposed network of excellence.”

¹¹⁹ FP6 model contract – Annex III for NoE – Article III.1 – first paragraph:

“Doctoral students: means students who are enrolled on a recognised course of doctoral studies run by one of the contractors and who do not meet the conditions to be considered as a researcher.”

¹²⁰ FP6 model contract – Annex III for NoE – Article III.1 – first paragraph:

“Number of doctoral students: means the headcount of those doctoral students that are both (a) identifiable by name at the time of the deadline for the submission to the Commission of the original proposal for this network of excellence and (b) engaged on research activities within the frame of then proposed network of excellence.”

¹²¹ FP6 model contract – Annex III for NoE – Article III.2 – first paragraph – fourth subparagraph:

“The grant for integration shall be calculated by multiplying the average annual grant in respect of researchers, and any bonus for doctoral students, by the duration of the project.”

- The table below converts the number of researchers into an annual average grant to the project in respect of these researchers¹²²:

Number of researchers	Annual average grant (€)
50	1.000.000 €
100	2.000.000 €
150	3.000.000 €
250	4.000.000 €
500	5.000.000 €
1000 and above	6.000.000 €

(*): The grant for an intermediate number of researchers would be calculated by linear interpolation.

- The bonus for doctoral students is equivalent to €4,000/year multiplied by the number of doctoral students, up to a maximum of 10 % of the grant in respect of the number of researchers¹²³.
- Researchers and doctoral students of a contractor from a third country shall be included in the calculation of the number of researchers and number of doctoral students only when the contractor is to receive a Community financial contribution¹²⁴.

In other words, researchers and doctoral students of a contractor established in third countries other than those targeted by the specific activities for international cooperation (Mediterranean countries; Russia and New Independent States ; Countries of the Balkans and Developing countries) can only be included in the calculation of the number of researchers and number of doctoral students if it is mentioned in the relevant call for proposal and/or in the relevant work programme that legal entities established in those countries are eligible to receive Community financial contribution¹²⁵.

Some of the countries concerned are: Japan, United States of America, Canada, Australia, New-Zealand,¹²⁶

- The consortium, when taking into account aspects such as the characteristics of the field of research concerned, may request a lower grant for integration than that which would have resulted from applying the method described above. In such cases the lower amount shall be the maximum financial contribution of the Community as identified in the technical annex (Annex I)¹²⁷ to the contract and is reflected in the core contract.

¹²² FP6 model contract – Annex III for NoE – Article III.2 – first paragraph – second subparagraph.

¹²³ FP6 model contract – Annex III for NoE – Article III.2 – first paragraph – third subparagraph.

¹²⁴ FP6 model contract – Annex III for NoE – Article III.2 – first paragraph – fifth subparagraph.

¹²⁵ It may also be mentioned that, in compliance with the third indent of the first paragraph of article 6 of the RP, “*any legal entity established in a third country other than a country covered by the second subparagraph* [third countries targeted by the specific activities for international cooperation] *and taking part in the RTD activities referred to in the first subparagraph* [“Focussing and Integrating Community Research”], *may receive a Community financial contribution if provision is made for this purpose under an RTD activity or if it is essential for carrying out the indirect action* [Commission ad-hoc decision].”

¹²⁶ For a complete list, consult the list and maps of countries provided by the programme in charge of specific international cooperation activities:

<http://europa.eu.int/comm/research/iscp/countries.html>

¹²⁷ FP6 model contract – Annex III for NoE – Article III.2 – first paragraph – sixth subparagraph.

3.1.2.2- Examples

Three different examples (with three levels of complexity : low (n°1), medium n°2) and high (n°3)) of the calculation of the Community financial contribution for a Network of Excellence are provided here below.

3.1.2.2.1- Example 1 (level of complexity : low)

- **Hypothesis**

7 independent legal entities, respectively established in Germany (DE), Poland (PL), United Kingdom (UK), Russia (RU), Israel (IL), France (FR) and Netherlands (NL), intend to integrate in a Network of Excellence:

- 150 researchers
- 40 doctoral students

The distribution of the number of researchers and of doctoral students is the following one:

Participant n°	Organisation short name	Number of researchers to be integrated			Number of registered doctoral students in the network		
		Female	Male	Total	Female	Male	Total
1	DE Legal entity	5	8	13			0
2	PL Legal entity	10	4	14	7	12	19
3	UK Legal entity	8	22	30			0
4	RU Legal entity	11	18	29	5	4	9
5	IL Legal entity	6	12	18			0
6	FR Legal entity	8	14	22	2	3	5
7	NL Legal entity	15	9	24	5	2	7
8				0			0
9				0			0
10				0			0
Total or Subtotal 1		63	87	150	19	21	40

The duration of the project is equal to 60 months (5 years).

- **Calculation of the grant**

- The full number of researchers (150) and number of doctoral students (40) can be taken into consideration for the calculation of the grant (fifth subparagraph of the first paragraph of Article III.2 of Annex III (Specific provisions) for the Network of Excellence to the FP6 model contract).

Indeed, the consortium is composed of:

- ✓ 4 independent legal entities establish in a four different Members States (DE, UK, FR, NL) ;
- ✓ 1 independent legal entity establishes in an Associated Candidate Country (PL) ;
- ✓ 1 independent legal entity establishes in an Associated Country (IL) ;
- ✓ 1 independent legal entity establishes in an Third Country targeted by the specific activities of international co-operation (RU) ;

All those legal entities are able to receive a Community financial contribution (according to the second paragraph of Article 4¹²⁸ and the second

¹²⁸ RP: Article 4 – second paragraph:

“2. Any legal entity established in an associated State may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State, subject to Article 5.”

subparagraph of the first paragraph of Article 6¹²⁹ of the RP and the content of the relevant work programme).

- As a consequence:
 - ✓ According to the table, the average annual grant for the number of researchers to be integrated is equal to:
€3.000.000.
 - ✓ The average annual grant for the number of doctoral students, based on a annual bonus of €4.000/year/doctoral student is equal to:
40 doctoral students x €4.000 = **€160.000.**
This amount is **less than 10%** of the average annual grant for the number of researchers (10% x € 3.000.000 = € 300.000). As a consequence, this amount has not to be adapted.
- Since the duration of the project is 5 years, the Grant for Integration (the maximum financial contribution from the Community to a network of excellence) in this case is equal to:
(€3.000.000 + €160.000) x 5 = **€15.800.000.**
- Taking into account aspects such as the characteristics of the field of research concerned, the consortium decides to request the maximum Community financial contribution: **€ 15.800.000** with the following distribution of the grant per period:

Periods		Requested Grant for Integration	
N°	Month m - Month m'		
Period 1	M1 - M12	3.160.000	4.740.000
Period 2 - first half	M13 - M18	1.580.000	
Period 2 - second half	M19 - M24	1.580.000	3.160.000
Period 3 - first half	M25 - M30	1.580.000	
Period 3 - second half	M31 - M36	1.580.000	3.160.000
Period 4 - first half	M37 - M42	1.580.000	
Period 4 - second half	M43 - M48	1.580.000	3.160.000
Period 5 - first half	M49 - M54	1.580.000	
Period 5 - second half	M55 - M60	1.580.000	1.580.000
Total Requested Grant for Integration		15.800.000	15.800.000

There is no obligation for linear distribution. The annual distribution of the grant over the duration of the project is a result of the negotiation phase.

This maximum amount of the Community financial contribution is identified in the second paragraph of Article 5 of the core contract of the FP6 model contract. The form of the grant ("Grant for integration") is mentioned in the first paragraph of this article 5.

¹²⁹ RP: Article 6 – first paragraph – second subparagraph:

"Any legal entity established in a third country targeted by the specific international cooperation activities provided under the heading 'Focussing and Integrating Community Research' of the Sixth Framework Programme may receive a Community financial contribution within the limits of the budget allocated in Annex II to the Sixth Framework Programme for the action referred to in Article 164(b) of the Treaty."

- The following table summaries the above mentioned elements:

Requested Grant for Integration (in €) (1)			
Proposed Average annual Grant for N researchers to be integrated (a)	3.000.000	Proposed Average annual Grant for N' registered doctoral students	160.000
Not exceeding 10% of the proposed average annual grant for the researchers, the proposed average annual grant for registered doctoral students must not be adapted. As a consequence the average annual grants are confirmed.			
Average annual Grant for N researchers to be integrated (a)	3.000.000	Average annual Grant for N' registered doctoral students (b)	160.000
Duration of the project (in years) (c)	5	Grant for Integration [(a)+(b)]x(c)	15.800.000
Requested Grant for Integration		15.800.000	

- Similar tables are part of the Annex I (technical Annex) to the contract, with the full list of the names of the researchers and the doctoral students.

An example of the table(s) of the Annex I provided in Annex 2 (6.2) to these guidelines.

3.1.2.2.2- Example 2 (level of complexity : medium)

- Hypothesis

7 independent legal entities, respectively established in Germany (DE), Poland (PL), United Kingdom (UK), Russia (RU), Israel (IL), France (FR) and Netherlands (NL), intend to integrate in a Network of Excellence:

- 75 researchers
- 40 doctoral students

The distribution of the number of researchers and of doctoral students is the following one:

Participant n°	Organisation short name	Number of researchers to be integrated			Number of registered doctoral students in the network		
		Female	Male	Total	Female	Male	Total
1	DE Legal entity	5	4	9	2	2	4
2	PL Legal entity	1	4	5	1	1	2
3	UK Legal entity	8	8	16	7	5	12
4	RU Legal entity	7	7	14	5	4	9
5	IL Legal entity	5	6	11	2	1	3
6	FR Legal entity	6	5	11	2	3	5
7	NL Legal entity	4	5	9	4	1	5
8				0			0
9				0			0
10				0			0
Total or Subtotal 1		36	39	75	23	17	40

The duration of the project is equal to 60 months (5 years).

- Calculation of the grant

- The full number of researchers (75) and number of doctoral students (40) can be taken into consideration for the calculation of the grant (fifth subparagraph of the first paragraph of Article III.2 of the Annex III (Specific provisions) for the Network of Excellence to the FP6 model contract).

The consortium is composed of:

- ✓ 4 independent legal entities establish in a four different Members States (DE, UK, FR, NL) ;
- ✓ 1 independent legal entity establishes in an Associated Candidate Country (PL) ;
- ✓ 1 independent legal entity establishes in an Associated Country (IL) ;

- ✓ 1 independent legal entity establishes in an Third Country targeted by the specific activities of international co-operation (RU) ;

All those legal entities are able to receive a Community financial contribution (second paragraph of Article 4 and the second subparagraph of the first paragraph of Article 6 of the RP and the content of the relevant work programme).

■ As a consequence:

- ✓ According to the table, the average annual grant for the number of researchers to be integrated is equal to $[GA + (GB - GA) / (B - A) * (N - A)]$ with:

A – nearest lower given number;

B – nearest upper given number

GA – given grant for A researchers

GB – given grant for B researchers

$$[€ 1.000.000 + (2.000.000 - 1.000.000) / (100 - 50) * (75 - 50)] = € 1.500.000$$

- ✓ The average annual grant for the number of doctoral students, based on a annual bonus of €4.000/year/doctoral student is equal to:

$$40 \text{ doctoral students} \times €4.000 = €160.000.$$

However, this amount is **superior to 10%** of the average annual grant for the number of researchers ($10\% \times 1.500.000€ = 150.000€$). As a consequence, this amount must be adapted and reduced to a maximum of **€150.000** in order to respect the ceiling of 10%.

- Since the duration of the project is 5 years, the Grant for Integration, (the maximum financial contribution from the Community to a network of excellence) is equal to:

$$(1.500.000€ + 150.000€) \times 5 = €8.250.000.$$

- Taking into account aspects such as the characteristics of the field of research concerned, the consortium decides to request as the maximum Community financial contribution: **€ 8.250.000** with the following distribution of the grant per period:

Periods		Requested Grant for Integration	
N°	Month m - Month m'		
Period 1	M1 - M12	1.650.000	2.475.000
Period 2 - first half	M13 - M18	825.000	
Period 2 - second half	M19 - M24	825.000	1.650.000
Period 3 - first half	M25 - M30	825.000	
Period 3 - second half	M31 - M36	825.000	1.650.000
Period 4 - first half	M37 - M42	825.000	
Period 4 - second half	M43 - M48	825.000	1.650.000
Period 5 - first half	M49 - M54	825.000	
Period 5 - second half	M55 - M60	825.000	825.000
Total Requested Grant for Integration		8.250.000	8.250.000

There is no obligation for linear distribution. The annual distribution of the grant over the duration of the project is a result of the negotiation phase.

This amount is set in the second paragraph of Article 5 of the core contract of the FP6 model contract. The form of the grant ("Grant for integration") is mentioned in the first paragraph of Article 5.

- The following table summaries the above mentioned elements:

Requested Grant for Integration (in €) (1)			
Proposed Average annual Grant for N researchers to be integrated (a)	1.500.000	Proposed Average annual Grant for N' registered doctoral students	160.000
Exceeding 10% of the proposed average annual grant for the researchers, the proposed average annual grant for registered doctoral students must be adapted. As a consequence the average annual grants are the following:			
Average annual Grant for N researchers to be integrated (a)	1.500.000	Average annual Grant for N' registered doctoral students (b)	150.000
Duration of the project (in years) (c)	5	Grant for Integration [(a)+(b)]x(c)	8.250.000
Requested Grant for Integration		8.250.000	

- Similar tables are part of the Annex I (technical Annex) to the contract, with the exhaustive list of the names of the researchers and the doctoral students.

An example of the table(s) of the Annex I provided in Annex 2 (6.2) to these guidelines.

3.1.2.2.3- Example 3 (level of complexity : high)

- Hypothesis

8 independent legal entities, respectively established in Germany (DE), Poland (PL), United Kingdom (UK), Russia (RU), Israel (IL), France (FR), Netherlands (NL) and United States of America (US), intend to integrate in a Network of Excellence:

- 175 researchers
- 90 doctoral students

The distribution of the number of researchers and of doctoral students is the following one:

Participant n°	Organisation short name	Number of researchers to be integrated			Number of registered doctoral students in the network		
		Female	Male	Total	Female	Male	Total
1	DE Legal entity	15	21	36	6	8	14
2	PL Legal entity	2	5	7	1	2	3
3	UK Legal entity	12	15	27	7	8	15
4	RU Legal entity	5	7	12	5	4	9
5	IL Legal entity	7	4	11	2	1	3
6	FR Legal entity	17	28	45	12	15	27
7	NL Legal entity	3	12	15	2	5	7
8	US Legal entity	10	12	22	5	7	12
9				0			0
10				0			0
Total or Subtotal 1		77	104	175	40	50	90

The duration of the project is equal to 60 months (5 years).

- Calculation of the grant

- Only a part of the full number of researchers (175) and number of doctoral students (90) can be taken into consideration for the calculation of the grant (fifth subparagraph of the first paragraph of Article III.2 of the Annex III (Specific provisions) for the Network of Excellence to the FP6 model contract).

The consortium is composed of:

- ✓ 4 independent legal entities establish in a four different Members States (DE, UK, FR, NL) ;
- ✓ 1 independent legal entity establishes in an Associated Candidate Country (PL) ;
- ✓ 1 independent legal entity establishes in an Associated Country (IL) ;
- ✓ 1 independent legal entity establishes in an Third Country targeted by the specific activities of international co-operation (RU) ;
- ✓ 1 independent legal entity establishes in an Third Country which is not targeted by the specific activities of international co-operation (US) ;

The number of researchers and of doctoral student of the US legal entity can not be taken into consideration for the calculation of the grant (second paragraph of Article 4, second subparagraph of the first paragraph of Article 6, third subparagraph of the first paragraph of Article 6¹³⁰ of the RP, the content of the relevant work programme and call for proposals and the fifth subparagraph of the first paragraph of Article III.2 of the Annex III (Specific provisions) for the Network of Excellence to the FP6 model contract¹³¹). Legal entities established in United States of America are not normally eligible to receive a Community financial contribution (except in very exceptional and duly justified cases).

- As a consequence:
 - ✓ The number of researchers and doctoral students must be reduced to:
 - ❖ $175 - 22 = 153$ researchers
 - ❖ $96 - 12 = 78$ doctoral students

Therefore the distribution of the number of researchers and of doctoral students becomes the following one:

Participant n°	Organisation short name	Number of researchers to be integrated			Number of registered doctoral students in the network		
		Female	Male	Total	Female	Male	Total
1	DE Legal entity	15	21	36	6	8	14
2	PL Legal entity	2	5	7	1	2	3
3	UK Legal entity	12	15	27	7	8	15
4	RU Legal entity	5	7	12	5	4	9
5	IL Legal entity	7	4	11	2	1	3
6	FR Legal entity	17	28	45	12	15	27
7	NL Legal entity	3	12	15	2	5	7
8	US Legal entity	10	12	22	5	7	12
9				0			0
10				0			0
Total or Subtotal 1		71	104	175	40	50	90
Non eligible head counts		10	12	22	5	7	12
New Total or Subtotal 1		61	92	153	35	43	78

- ✓ According to the table, the average annual grant for the number of researchers to be integrated is equal to $[GA + (GB - GA) / (B - A) * (N - A)]$ with:

A – nearest lower given number;

B – nearest upper given number

GA – given grant for A researchers

¹³⁰ RP: Article 6 – first paragraph – third subparagraph:

“Any legal entity established in a third country other than a country covered by the second subparagraph, and taking part in the RTD activities referred to in the first subparagraph, may receive a Community financial contribution if provision is made for this purpose under an RTD activity or if it is essential for carrying out the indirect action.”

¹³¹ See footnote n°111.

GB – given grant for B researchers

$$[\text{€}3.000.000 + (\text{€}4.000.000 - \text{€}3.000.000)/(250-150) \times (153-150)] = \text{€}3.030.000$$

- ✓ The average annual grant for the number of doctoral students, based on a annual bonus of 4.000€/year/doctoral student is equal to:

$$78 \text{ doctoral students} \times 4.000\text{€} = \text{€}312.000.$$

However, this amount is **superior to 10%** of the average annual grant for the number of researchers ($10\% \times 3.030.000\text{€} = 303.000\text{€}$). As a consequence, this amount must be adapted and reduced to a maximum of **€303.000** in order to respect the ceiling of 10%.

- Therefore, as the duration of the project is equal to 5 years, the Grant for Integration, which constitutes the maximum financial contribution from the Community to a network of excellence, is equal to:

$$(\text{€}3.030.000 + \text{€}303.000) \times 5 = \text{€}16.665.000.$$

- Taking into account aspects such as the characteristics of the field of research concerned, the consortium decides to request a lower amount a the maximum Community financial contribution: **€12.500.000** with the following ventilation of the grant per periods:

Periods		Requested Grant for Integration	
N°	Month m - Month m'		
Period 1	M1 - M12	2.500.000	3.750.000
Period 2 - first half	M13 - M18	1.250.000	
Period 2 - second half	M19 - M24	1.250.000	2.500.000
Period 3 - first half	M25 - M30	1.250.000	
Period 3 - second half	M31 - M36	1.250.000	2.500.000
Period 4 - first half	M37 - M42	1.250.000	
Period 4 - second half	M43 - M48	1.250.000	2.500.000
Period 5 - first half	M49 - M54	1.250.000	
Period 5 - second half	M55 - M60	1.250.000	1.250.000
Total Requested Grant for Integration		12.500.000	12.500.000

There is no obligation for linear distribution. The annual distribution of the grant over the duration of the project is a result of the negotiation phase.

This amount is identified in the second paragraph of Article 5 of the core contract of the FP6 model contract. The form of the grant ("Grant for integration") is mentioned in the first paragraph of this Article 5.

- The following table summaries the above mentioned elements:

Requested Grant for Integration (in €) (1)			
Proposed Average annual Grant for N researchers to be integrated (a)	3.030.000	Proposed Average annual Grant for N' registered doctoral students	312.000
Exceeding 10% of the proposed average annual grant for the researchers, the proposed average annual grant for registered doctoral students must be adapted. As a consequence the average annual grants are the following:			
Average annual Grant for N researchers to be integrated (a)	3.030.000	Average annual Grant for N' registered doctoral students (b)	303.000
Duration of the project (in years) (c)	5	Grant for Integration [(a)+(b)]x(c)	16.665.000
Requested Grant for Integration		12.500.000	

- Similar tables are part of the Annex I (technical Annex) to the contract, with the exhaustive list of the names of the researchers and the doctoral students.

An example of the table(s) of the Annex I provided in Annex 2 (6.2) to these guidelines.

3.1.3- Calculation of the Community financial contribution in a Grant to the Budget

3.1.3.1- General Principles

When it is in the form of a grant to the budget, the Community financial contribution is calculated according to (indent (c) of the first paragraph¹³² and indent (d) of the first subparagraph of the second paragraph¹³³ of Article 14 of the RP):

- a **provisional budget of estimated eligible costs and receipts broken-down per type of activity and per participant** ;
- the **type of cost model used by the participants** ;
- the **maximum reimbursement rates of eligible costs per type of activity and cost model according to the instrument concerned**;
- And **within the limits of public funding established for research and technological or innovation activities and demonstration activities by the Community framework for State aid for research and development** ;

In addition to the concepts of **eligible costs** (including the notions of direct and indirect eligible costs), **type of activities** and **cost models** already defined in Part 2 of these guidelines, the calculation of the Community financial contribution in a Grant to the Budget integrates three other concepts that need to be clearly defined in order to be correctly taken into account by the participants:

- the **maximum reimbursement rates of eligible costs** ;
- the notion of **receipts** ;
- the **Community framework for State aid for research and development**.

3.1.3.2- The maximum reimbursement rates of eligible costs

Where the Community financial contribution is a Grant to the Budget (table of Section 2 of Annex III to the FP6 – EC), it is calculated according to the **maximum reimbursement rates of estimated eligible costs per type of cost model used by the participants and per type of activities**.

3.1.3.2.1- Maximum reimbursement rates of eligible costs per type of cost models and activities

¹³² See 1.2.2.3.

¹³³ See footnote n°51.

The type of cost model, the type of activity and the type of instrument determine the **maximum reimbursement rates of eligible costs**:

- For contractors using the **AC** model: **100%** of their additional costs¹³⁴ whatever those activities might be.
- For contractors using the **FC** or **FCF** models:
 - for **research and technological development or innovation activities**: **50%** of eligible costs;
 - for **demonstration activities** : **35%** of eligible costs ;
 - for **training activities** : **100%** of eligible costs ;
 - for **management of the consortium activities** : **100%** of eligible costs under certain conditions (see 2.3.4) ;
 - for **other specific activities** : **100%** of eligible costs.

Annex 3 (6.3) to these guidelines provides a complete table of the maximum reimbursement rates of eligible costs per type of costs models and activities.

3.1.3.2.2- The reasons for the notion of maximum

The reimbursement rate is a possible maximum rate because:

- the **receipts** of the project **must be taken into consideration** in determining the total amount of the Community financial contribution.
- the **limits of public funding established by international regulations and in particular by the Community framework for State aid for research and development**¹³⁵ **for certain activities and legal entities must also be taken into account** in determining the total amount of the Community financial contribution.

3.1.3.3- The notion of receipts

When it is a grant to reimburse eligible costs, the **Community financial contribution may not have the purpose or effect of producing a profit for the beneficiaries (the participants)** (the second paragraph of Article 109 of the FR¹³⁶, in indent (a) of the first paragraph of Article 165 of the IM¹³⁷, and as recalled in the fifth paragraph of Section 2 of Annex III to the Framework Programme Decision for FP6-EC¹³⁸ and in footnote (1)

¹³⁴ The exception is for management activities which may include the costs of permanent personnel if they can be calculated and proven to be real.

¹³⁵ [OJ N° C 45, 17.02.96, p. 5]

(http://europa.eu.int/comm/competition/state_aid/legislation/96c46_en.html)

¹³⁶ See footnote n°33.

¹³⁷ See footnote n°36.

¹³⁸ See footnote n°38.

of the table of this Section 2¹³⁹, as well as in indent (d) of the first subparagraph of the first paragraph of Article 14 of the RP¹⁴⁰).

The notion of **profit** is defined as “**the surplus of receipts over the costs of the action in question (...)**”.

As a consequence, since the Community financial contribution for a Grant to the Budget is calculated, among other criteria, on the basis of a provisional budget and according to maximum reimbursement rates of eligible costs, this provisional budget must be composed of estimated eligible costs as well as of **estimated receipts**.

3.1.3.3.1- Type of receipts¹⁴¹

Three kind of receipts must be taken into account (Article II.23 of Annex II (General conditions) to the FP6 model contract):

- **Financial transfers** or their equivalent to the contractor from third parties¹⁴² ;
- **Contributions in kind** from third parties¹⁴³;
- **Income** generated by the project¹⁴⁴.

In the first two cases (financial transfers or contributions in kind), these endowments are considered as receipts of the project if the third party has provided them specifically to be used in the project.

If, on the other hand, these endowments are at the discretion of the contractor they need not be considered as receipts¹⁴⁵.

In the last case of receipts (income generated by the project itself):

¹³⁹ See footnote n°39.

¹⁴⁰ See footnote n°45.

¹⁴¹ **NB: new to FP6.**

¹⁴² FP6 model contract – Annex II – Article II.23 – indent (a):

“Where there is a financial transfer from third parties :

- *made specifically to co-finance the project or specifically to finance a resource used by the contractor on the project, such transfers shall be considered as receipts of the project;*
- *where the use of the financing or the use of resources paid with the financial transfers are at the management discretion of the contractor and the contractor chooses to allocate that resource to the project, such transfers shall not be considered to be receipts of the project.”*

¹⁴³ FP6 model contract – Annex II – Article II.23 – indent (b):

“Contributions in kind from third parties that are used for the project constitute an eligible cost of the project, and:

- *shall also be considered a receipt of the project if they have been contributed by the third party specifically to be used on the project;*
- *shall not be considered a receipt of the project if their use is at the management discretion of the contractor.”*

¹⁴⁴ FP6 model contract – Annex II – Article II.23 – indent (c):

“Income generated by the project:

- *income generated by actions undertaken in carrying out the project and income from the sale of assets purchased under the contract up to the value of the cost initially charged to the project shall be considered as a receipt of the project;*
- *income generated for the contractor from the use of knowledge resulting from the project shall not be considered as a receipt of the project.”*

¹⁴⁵ It must be noted that, as established by Article II.23, where contributions from third parties are used for the project by the contractor, the latter is required to inform the third party of this use and in accordance with the national legislation or practice in force:

“Contractors shall ensure that third parties whose resources are made available to the project are informed of this use of their resources. Contractors shall do so in accordance with their national legislation and practices.”

- any income generated by the project itself, including the sale of assets bought for the project (limited to the initial cost of purchase) are considered as income to the project (eg: admission fee to a conference carried out by the consortium ; sale of the proceedings of the aforementioned conference ; sale of an equipment bought for the project ; ...);
- by derogation to the above mentioned principle, income generated in using the knowledge resulting from the project is not considered as a receipt. The use of the knowledge resulting from the project is often the main objective of any project supported by an FP6 Community financial contribution.

3.1.3.3.2- Implementation modalities per type of cost models

- Participants using a full cost model (**FC** or **FCF**) must declare all their **eligible costs** and all types of **receipts**.
- Participants using the additional cost model (**AC**):
 - **May only charge their additional direct eligible costs that are not covered by any other contribution** (financial contributions or contributions in kind) **by third parties** (the second sentence of paragraph 2 of Article II.20 of Annex II (General conditions) to the FP6 model contract)¹⁴⁶ ;
 - Must declare their **receipts taking the form of income** generated by the project itself.

As a consequence, if at the level of the proposal or at the level of the negotiation, a participant is sure that it will be the beneficiary of receipts, it must declare them in advance in order to assess with as much accuracy as possible the financial commitment for the project by the Commission, and to avoid the commitment of funds that cannot be disbursed.

3.1.3.3.3- Impact on maximum reimbursement rates of eligible costs

Taking into account the notion of receipts, the maximum reimbursement rates of eligible costs must be understood as limited by the difference between the eligible costs and the receipts.

As a consequence, the maximum Community financial contribution is equal to:

- For contractors involved in activities covered up to a maximum of 100%:
The difference between eligible costs and receipts
- For contractors using the FCF or the FC model involved in research and technological development or innovation activities
A maximum of 50% of their eligible costs, within the limit of the difference between their eligible costs and receipts.
- For contractors using the FCF or the FC model involved in demonstration activities

¹⁴⁶ FP6 model contract – Annex II – Article II.20 – second paragraph – second sentence:
“Any such direct additional costs specifically covered by contributions from third parties are excluded.”

A maximum of 35% of their eligible costs, within the limit of the difference between their eligible costs and receipts.

- For contractors involved in specific activities relating to connectivity services

A maximum of 50% of their eligible costs, within the limit of the difference between their eligible costs and receipts.

Example:

- A contractor using the FC model declares an amount of eligible costs of:
 - €500.000 for research and technological development or innovation activities
 - €100.000 for demonstration activities

It declares also an amount of receipts equal to:

- €150.000 for research and technological development or innovation activities
- €70.000 for demonstration activities
- Therefore, the Community financial contribution to its eligible costs is equal to:

- Research and technological development or innovation activities:

$500.000 \times 50\% (250.000)$ within the limit of $500.000 - 150.000 (350.000)$

=> **€250.000.**

- Demonstration activities:

$100.000 \times 35\% (35.000)$ within the limit of $100.000 - 70.000 (30.000)$

=> **€30.000.**

- Total: **€280.000**

3.1.3.3.4- Simultaneous funding from different origins (including other EC programmes)

For some participants only a part of the eligible costs are covered by the Community financial contribution (maximum reimbursement rates of eligible costs¹⁴⁷). The remaining eligible costs can be covered:

- either by the participant's own financial resources;
- or by receipts coming from third parties

Receipts can be either of public or private origin.

An FP6 indirect action may be the object of additional financial contribution from other EC programmes, under certain conditions (as established in the second, third and fourth paragraphs of Section 2 of Annex III to the Framework Programme Decision for FP6-EC):

"In the case of participation of bodies from regions lagging in development,

¹⁴⁷ See 3.1.3.2.

when a project receives the maximum intensity of co-financing authorised under this Programme or an overall grant, an additional contribution from the Structural Funds, pursuant to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds [OJ L 161, 26.6.1999, p. 1.], could be granted.

In the case of participation of entities from the candidate countries, an additional contribution from the pre-accession financial instruments could be granted under similar conditions.

In the case of participation of organisations from Mediterranean or developing countries, a contribution of the MEDA programme and of the financial instruments of the Community's aid to development could be envisaged."

However, it must also be noted that for some participants there are limits of public funding for some type of activities (as established by the first paragraph of Section 2 of Annex III to the Framework Programme Decision for FP6-EC). These limits are governed by is the Community framework for State aid for Research and Development.

3.1.3.4- The Community framework for State aid for research and development

One form of receipts is a public receipt, that is a financial contribution or contribution in kind from a public source.

The first paragraph of the Section 2 of the Annex III to the FP6 indicates that:

The Community will implement the financial instruments in compliance with the Community framework for state aid to research and development, as well as international rules in this area, and in particular the WTO Agreement on Subsidies and Countervailing Measures. In compliance with this international framework, it will need to be possible to adjust the scale and form of financial participation under this programme on a case by case basis, in particular if funding from other public sector sources is available, including other sources of Community financing such as the EIB and EIF.

3.1.3.4.1- The purpose of the Community framework for State aid for research and development

The Community framework for State aid for research and development establishes that:

- within an "industrial research action" (called "research and technological development or innovation activities" in FP6), the intensity of State aid, combined with Community support, cannot exceed including possible derogation, a maximum total of 75% of the eligible costs of the action.
- within an "pre-competitive development activity" (called "demonstration activities" in FP6), the intensity of State aid, combined with Community support, cannot exceed including possible derogation, a maximum total of 50% of the eligible costs of the action.

In conformity with this framework, the Vademecum of "Community Rules on State aid"¹⁴⁸ specifies that:

"Is not considered to constitute State Aid: Public financing of R&D activities by higher non-profit making public education or research Establishments ".

For entities other than non-profit-making higher education or research establishments, the Community framework for State aid for Research and Development establishes the following maximum public support (including Community support):

- Standard rates¹⁴⁹:
 - Research and technological development or innovation activities: **50%**
 - Demonstration activities: **25%**
- Possible increases of standard rates :
 - Legal entities meeting the definition of an SME: + **10%**
 - Legal entities established in a region covered by the article 87.3 (a) of the Treaty: + **10%**
 - Legal entities established in a region covered by the article 87.3 (a) of the Treaty : + **5%**
 - Project linked to EU R&D framework programme: + **15%**
 - Project involving cross-border co-operation: + **10%**

However, it must be noted that the cumulation of the standard rate and the above increases is subject to an **absolute limit of 75% for research and technological development or innovation activities and 50% for demonstration activities.**

3.1.3.4.2- Impact on FP6

The Community financial contribution may be adapted taking into account the limits of public support established by the Community framework for State aid for Research and Development (Annex III of the Framework Programme Decision for FP6-EC establishing the type of activities proposed per instrument):

- For entities other than non-profit-making higher education or research establishments
- Involved in research and technological development or innovation activities and/or in demonstration activities.

¹⁴⁸ Vademecum "Community Rules on States aid"

http://europa.eu.int/comm/competition/state_aid/others/vademecum/vademecum_en.pdf

¹⁴⁹ It must be noted that in addition to industrial research action and pre-competitive development activity, the Community framework for State aid for research and development mentions explicitly that "fundamental research action" can be supported up to 100%. However, according to the implementing rules for Intellectual Property Rights established in Community framework for State aid for research and development in comparison to those established in the RP of the FP6, it is obvious that FP6 does not cover "fundamental research actions".

As a consequence, only the following instruments are concerned:

- Integrated projects (IP) ;
- Specific targeted research or innovation projects (STReP) ;
- Specific research projects for SMEs (Cooperative and Collective Research Projects) ;
- Integrated infrastructures initiatives (I³)

Moreover, as those instruments are always characterised by a cross-border co-operation (minimum of at least three independent legal entities established in three different countries (paragraph 2 of Article 5 of the RP)¹⁵⁰, the maximum rates of public support are:

- Research and technological development or innovation activities: **75%** (in which a maximum of **50%** from the FP6 Community financial contribution) ;
- Demonstration activities: **50%** (in which a maximum of **35%** from the FP6 Community financial contribution).

Any contractors subject to the provisions laid down in the Community framework for State aid for Research and Development must ensure that they comply fully with those provisions (third paragraph of article II.24 of Annex II (General conditions) to the FP6 model contract):

“Contractors subject to the provisions of the state aid framework on the cumulation of public funding must ensure that they comply with its provisions.”

As a consequence:

- any situation leading to incompatibility with Community financial contribution should be declared by the participant ;
- the FP6 Community financial contribution to be requested must be adapted in order to respect the aforementioned limits of public funding.

3.1.3.5- Additional conditions and/or particularities for some instruments

3.1.3.5.1- Integrated projects

The implementation plan of an Integrated Project can describe tasks, work packages, activities, ... for which there is no contractor proposed at the time of submission of the proposal, nor at the negotiation level, in full compliance with

¹⁵⁰ RP – Article 5 – Paragraph 2:

“Subject to paragraph 3, the minimum number of participants established by the work programmes shall not be fewer than three independent legal entities established in three different Member States or associated States, of which at least two shall be Member States or associated candidate countries.”

the possibility for the consortium to select the relevant entity during the implementation of the project by means of competitive calls¹⁵¹.

As the calculation of a grant to the budget is dependent upon, among other conditions, the cost reporting model used by the contractors, the estimated eligible costs of the resources needed to implement those above mentioned tasks, work packages, activities, ... (the future estimated costs of new contractor(s)) must be declared according to a cost reporting model in relation with the type of legal entity envisaged for their implementation.

Therefore, as an example, if an SME is envisaged, the cost must be estimated:

- either with the use of the FCF model;
- or with the use of the FC model

In this last case (use of the FC model), it is recommended to estimate the indirect eligible costs according to the economic environment of the expected legal entity (labour intensive or capital intensive environment). A general rule could be to estimate such costs to:

- 20% of the eligible direct costs for labour intensive environment
- 80% of the eligible direct costs for capital intensive environment

[To be discussed]

3.1.3.5.2- Specific Research projects for SMES

[To be provided by DG RTD – Unit B3 – MG]

3.1.3.5.3- Integrated Infrastructures Initiatives

The maximum reimbursement rates of eligible costs under the specific activities of an I³ or an SSA aimed at providing **connectivity services** are not equal to 100% but to **50% irrespective of which cost reporting model** (AC, FCF or FC) is used¹⁵² (Article III.15 of Annex III (Specific provisions) for I³ and SSA for infrastructures to the FP6 model contract¹⁵³).

3.1.3.5.4- Coordination Action for Infrastructures

Special clause n° ... (which appears in Article 9 of the core-contract of the FP6 model contract for these actions)¹⁵⁴, indicates there are no training activities in a Coordination Action for Infrastructures.

¹⁵¹ See FP6 model contract – Annex II – Article II.2 – paragraph 4.

¹⁵² See also Annex 3 (6.3) to these guidelines.

¹⁵³ FP6 model contract – Annex III for I³ and SSA Infrastructures – Article III.15:

“As an exception to Article II.25, for the continued provision and upgrading of the required connectivity services as specified in Annex I, the maximum reimbursement rate shall be 50% of eligible costs, irrespective of which of the cost reporting models is used.”

¹⁵⁴ **TO BE PROVIDED**

3.1.3.6- Examples

The following are some simple examples indicating the means to calculate a Community financial contribution taking the form of a Grant to the Budget for an Integrated Project.

3.1.3.6.1- Example 1 (level of complexity : low)

- Hypothesis

- 4 independent legal entities, respectively established in Netherlands (NL), Poland (PL), United Kingdom (UK) and Russia (RU), constitute the consortium of an Integrated Project:
 - ✓ the Dutch participant is a non-profit public legal entity whose accounting system allows the share of its direct and indirect costs relating to the project to be distinguished. As a consequence it had the choice between the FCF and the FC model and chose the FC. Its eligible indirect costs are equal to 85% of its direct eligible costs ;
 - ✓ the Polish participant is an SME. As a consequence it had the choice between the FCF and the FC model and chose the FCF.
 - ✓ the British participant is a big enterprise. As a consequence it had no choice and applied the FC model. Its eligible indirect costs are equal to 50% of its direct eligible costs ;
 - ✓ the Russian participant is a non-profit public legal entity that has not an accounting system that allows the share of its direct and indirect costs relating to the project to be distinguished. As a consequence it had no choice and applied the AC model.
- All participants are involved in each activity of the project (e.g.: research and technological development or innovation activities; demonstration activities; training activities and management of the consortium activities).
- There is no subcontracting.
- There are no receipts expected, whatever the form might be (contributions in kind and financial contribution by third parties; incomes generated by the project).
- The resources involved by of each participant are the same. They are composed of :
 - ✓ Two persons involved full time in the project:
 - ❖ The first person is a permanent researcher, whose salary is not dependent from external funding. Its monthly direct cost is equal to €10.000. It is involved half time in research and 1/4 in demonstration and 1/4 in training
 - ❖ The second person is a researcher specifically employed for the project. Its monthly direct cost is also equal to €10.000. It is involved half time in research and half time in demonstration.

- ✓ A third person involved 1/20 of its time in the project only for the management of the consortium. Its monthly direct cost is also equal to €10.000. This person is a permanent staff, whose salary is not dependent from external funding.
- ✓ Travel and subsistence for the purpose of the project: €15.000 of direct costs for the whole duration of the project. All those costs are considered as costs linked to the management of the consortium.
- The duration of the project is 5 years.
- Calculation of the grant
 - Each participant is eligible to receive a Community financial contribution (Article 5 of the RP).

The consortium is composed of:

 - ✓ 2 independent legal entities established in two different Members States (NL, UK) ;
 - ✓ 1 independent legal entity established in an Associated Candidate Country (PL) ;
 - ✓ 1 independent legal entity established in an Third Country targeted by the specific activities of international co-operation (RU).
 - Providing they have respected the provisions relating to eligible costs, direct and indirect costs, types of activity and cost reporting models¹⁵⁵, and as far as there is no expected receipts¹⁵⁶, the participants will propose the following provisional budget:

Participant n°	Organisation short name	Cost model used	Estimated eligible costs and receipts		Type of activities					Total (6)=(1)+(2)+(3)+(4)+(5)
					Research and technological development or innovation activities (1)	Demonstration activities (2)	Training activities (3)	Management of the consortium activities (4)	Other specific activities (5)	
1	NL Legal entity (Organism of research)	FC	Eligible costs	Total eligible costs (a)+(b)	1.110.000	832.500	277.500	83.250		2.303.250
				Direct costs (a)	600.000	450.000	150.000	45.000		1.245.000
				of which subcontracting						0
				Indirect costs (b)	510.000	382.500	127.500	38.250		1.058.250
			Receipts	Total Receipts						0
2	PL Legal entity (SME)	FCF	Eligible costs	Total eligible costs (a)+(b)	720.000	540.000	180.000	54.000		1.494.000
				Direct costs (a)	600.000	450.000	150.000	45.000		1.245.000
				of which subcontracting						0
				Indirect costs (b)	120.000	90.000	30.000	9.000		249.000
			Receipts	Total Receipts						0
3	UK Legal entity (Big enterprise)	FC	Eligible costs	Total eligible costs (a)+(b)	900.000	675.000	225.000	67.500		1.867.500
				Direct costs (a)	600.000	450.000	150.000	45.000		1.245.000
				of which subcontracting						0
				Indirect costs (b)	300.000	225.000	75.000	22.500		622.500
			Receipts	Total Receipts						0
4	RU Legal entity (University)	AC	Eligible costs	Total eligible costs (a)+(b)	360.000	360.000	0	54.000		774.000
				Direct costs (a)	300.000	300.000		45.000		645.000
				of which subcontracting						0
				Indirect costs (b)	60.000	60.000	0	9.000		129.000
			Receipts	Total Receipts						0
Total eligible costs								6.438.750		

In this example, it appears clearly that, even though the four participants use the same type of resources with the same level of direct costs:

- ✓ The full cost participants (FC or FCF) are able to charge all their direct eligible costs (€1.245.000) but the AC participant may only charge its direct additional eligible costs (€ 600.000) plus its direct

¹⁵⁵ See part 2 – Framework of eligible costs for FP6 grants which reimburse costs

¹⁵⁶ See part 3 - Mechanisms of the FP6 Community financial contribution – Especially 3.1.2.2 and 3.1.2.4.

eligible costs (additional and non additional) relating to management of the consortium activities (€45.000) ;

- ✓ The total eligible costs between participants using a full cost model (FC or FCF) are different due to their different indirect costs;
- The requested maximum Community financial contribution is calculated as followed:

- ✓ For the AC participant(s) (Russian University):

100% of the total eligible costs within the limit of the difference between the estimated total eligible costs and the estimated receipts, whatever the type of activities:

Research activities: [(100% x 360.000) within the limit of (360.000 – 0)]

+ Demonstration activities: [(100% x 360.000) within the limit of (360.000 – 0)]

+ Training activities: [(100% x 0) within the limit of (360.000 – 0)]

+ Management of the consortium activities: [(100% x 54.000) within the limit of (54.000 – 0)]

= €774.000

- ✓ For the FC or FCF participant(s) (Dutch research organisation ; Polish SME and British/Big enterprise):

❖ Research activities: **50% of the total eligible costs within the limit of the difference between the estimated total eligible costs and the estimated receipts ;**

❖ Demonstration activities: **35% of the total eligible costs within the limit of the difference between the estimated total eligible costs and the estimated receipts ;**

❖ Training activities: **100% of the total eligible costs within the limit of the difference between the estimated total eligible costs and the estimated receipts ;**

❖ Management of the consortium activities: **100% of the total eligible costs within the limit of the difference between the estimated total eligible costs and the estimated receipts ;**

As an example for the Dutch research organisation it means:

- ◆ Research activities:

As this organisation is not subject to the limits established by the Community framework for State aid for Research and Development,

- If the difference between the estimated total eligible costs and the estimated receipts is inferior to 50% of the estimated total eligible costs: difference between the estimated total eligible costs and the estimated receipts ;
- If the difference between the estimated total eligible costs and the estimated receipts is equal or superior to 50% of the estimated total eligible costs: 50% of the estimated total eligible costs

$$1.110.000 - 0 > 50\% \times 1.110.000$$

$$\Rightarrow \text{€}555.000$$

◆ Demonstration activities:

As this organisation is not subject to the limits established by the Community framework for State aid for Research and Development,

- If the difference between the estimated total eligible costs and the estimated receipts is inferior to 35% of the estimated total eligible costs: difference between the estimated total eligible costs and the estimated receipts ;
- If the difference between the estimated total eligible costs and the estimated receipts is equal or superior to 35% of the estimated total eligible costs: 35% of the estimated total eligible costs

$$832.500 - 0 > 35\% \times 832.500$$

$$\Rightarrow \text{€}291.375$$

◆ Training activities:

$$[(100\% \times 277.500) - (277.500 - 0)] = \text{€}277.500$$

◆ Management of the consortium activities:

$$[(100\% \times 83.250) - (83.250 - 0)] = \text{€}83.250$$

◆ Community financial contribution :

$$(\text{€} 555.000 + \text{€} 291.375 + \text{€} 277.500 + \text{€} 83.250) = \text{€} 1.207.125$$

- As the requested Grant to the Budget for the management of the consortium activities as a whole does not exceed 7% of the total Community financial contribution, the latter is set to **€3.742.875**.

This amount is identified in the second paragraph of Article 5 of the core contract of the FP6 model contract (except for actions to promote human resources and mobility). The form of the grant ("Grant to the Budget") is mentioned in the first paragraph of Article 5.

- The following table summaries the above mentioned elements:

Participant n°	Organisation short name	Cost model used	Estimated eligible costs and receipts		Type of activities					Total (6)=(1)+(2)+(3)+(4)+(5)	Requested Grant to the Budget	
					Research and technological development or innovation activities (1)	Demonstration activities (2)	Training activities (3)	Management of the consortium activities (4)	Other specific activities (5)			
1	NL Legal entity (Organism of research)	FC	Eligible costs	Total eligible costs (a)+(b)	1.110.000	832.500	277.500	83.250		2.303.250	1.207.125	
				Direct costs (a)	600.000	450.000	150.000	45.000		1.245.000		
				of which subcontracting						0		
				Indirect costs (b)	510.000	382.500	127.500	38.250		1.058.250		
				Total Receipts						0		
2	PL Legal entity (SME)	FCF	Eligible costs	Total eligible costs (a)+(b)	720.000	540.000	180.000	54.000		1.494.000	783.000	
				Direct costs (a)	600.000	450.000	150.000	45.000		1.245.000		
				of which subcontracting						0		
				Indirect costs (b)	120.000	90.000	30.000	9.000		249.000		
				Total Receipts						0		
3	UK Legal entity (Big enterprise)	FC	Eligible costs	Total eligible costs (a)+(b)	900.000	675.000	225.000	67.500		1.867.500	978.750	
				Direct costs (a)	600.000	450.000	150.000	45.000		1.245.000		
				of which subcontracting						0		
				Indirect costs (b)	300.000	225.000	75.000	22.500		622.500		
				Total Receipts						0		
4	RU Legal entity (University)	AC	Eligible costs	Total eligible costs (a)+(b)	360.000	360.000	0	54.000		774.000	774.000	
				Direct costs (a)	300.000	300.000		45.000		645.000		
				of which subcontracting						0		
				Indirect costs (b)	60.000	60.000	0	9.000		129.000		
				Total Receipts						0		
Total eligible costs										6.438.750		
Total Requested Grant to the Budget										3.742.875		
in which for Management of the consortium activities										258.750	6,91%	
Not exceeding 7% of the total Community financial contribution, the Requested Grant to the Budget for the whole project must not be adapted. As a consequence, it is set to the following amount :												
Total Requested Grant to the Budget										3.742.875		
in which for Management of the consortium activities										258.750	6,91%	

- Similar tables are part of Annex I (technical Annex) to the contract. An example of the table(s) of the Annex I is provided in Annex 4 (6.4) to these guidelines.

3.1.3.6.2- Example 2 (level of complexity : medium)

- Hypothesis

[To be provided by DG RTD – Unit A3 – JDM]

Example with receipts and estimated eligible costs for management of the consortium activities over 7% of the requested Community financial contribution.

3.1.3.6.3- Example 3 (level of complexity : high)

- Hypothesis

[To be provided by DG RTD – Unit A3 – JDM]

Example with:

- receipts and State Aid Framework

- **estimated eligible costs for management of the consortium activities over 7% of the requested Community financial contribution**
- **unknown contractors to be selected through a competitive call**

3.2- PAYMENT MODALITIES OF THE COMMUNITY FINANCIAL CONTRIBUTION

3.2.1- General principles

The following general principles are applicable for any type of grant (Lump sum ; Grant for integration ; Grant to the budget).

3.2.1.1- Community financial contribution is a maximum amount

The **Community financial contribution** mentioned in the second paragraph of article 5 of the core-contract **is a maximum that can never be exceeded** (second paragraph of article II.28 of Annex II (General conditions) to the FP6 model contract).

“The total amount paid to the consortium by the Commission may not in any circumstances exceed the maximum amount of the grant laid down in Article 5, even if the total actual eligible costs exceed the estimated total eligible costs specified in Article 5 or in the table in Annex I.”

In addition to its right to terminate the contract, if the project is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for in line with the actual implementation of the project on the terms laid down in the contract¹⁵⁷.

Any reduction in the amount of the grant to be paid by the Commission shall be effected by:

- reducing the balance of the grant payable when the project ends;
- requesting the contractors to repay any amounts overpaid, if the total amount already paid by the Commission exceeds the final amount which it actually owes.¹⁵⁸

3.2.1.1.1- The particular case of additional Community financial contribution

However, it is also possible for the Community financial contribution to be increased (Article 16 of the RP):

The Commission may increase the Community financial contribution to an indirect action already under way in order to expand its scope to cover new

¹⁵⁷ FP6 model contract – Annex II – Article II.28 – paragraph 5.

¹⁵⁸ FP6 model contract – Annex II – Article II.28 – paragraph 6.

activities which may involve new participants.

It shall do so in the case of the indirect actions referred to in Articles 9(1) and 9(2)(c) by way of a call for supplementary proposals, which the Commission shall publish and advertise in accordance with Article 9(4) and which may be restricted, if necessary, to indirect actions already under way. The Commission shall evaluate and select such proposals in accordance with Article 10.

The Commission may decide, under certain circumstances, to launch calls for proposals restricted (or not) to on-going FP6 projects selected through a call for proposals (Integrated projects, Networks of excellence, Specific targeted research or innovation projects, Specific research project for SMEs, Integrated infrastructures initiatives, Coordination actions, Actions to promote human resources and mobility and some Specific support actions) and/or Specific support actions with particular characteristics and value to the objectives and the scientific and technological content of specific programmes, for which grant applications might be submitted to the Commission if so provided for in the work programme of the relevant specific programme and where such a request did not fall within the scope of an open call for proposals (“ad hoc grant”).

Such supplementary calls for proposals must have the purpose of either covering new activities and/or expanding the consortium.

Supplementary calls for proposals shall be published and advertised as any other call for proposals.

The evaluation and selection of such proposals must follow the relevant procedures based on Article 10 of the RP.

Only in this very particular case can on-going FP6 projects benefit from a Community financial contribution in addition to that already granted to the on-going project (and identified in the second paragraph of Article 5 of the core-contract).

3.2.1.2- Community financial contribution is paid to the consortium through the coordinator

The coordinator is responsible for receiving and ensuring the distribution of the Community financial contribution (first paragraph of Article 8 of the core-contract of the FP6 model contract, and in accordance with the second subparagraph of the first paragraph of article 13 of the RP)¹⁵⁹:

“The Community financial contribution to the project shall be paid to the coordinator on behalf of the contractors in accordance with the following provisions:

- a) the consortium shall determine the allocation of each tranche of the Community financial contribution between the contractors, in accordance with this contract and any relevant provisions in their consortium agreement.*
- b) the payment of the Community financial contribution to the*

¹⁵⁹ RP – Article 13 – first paragraph – second subparagraph:

“The Community financial contribution shall be paid to the coordinator. The coordinator shall administer the Community financial contribution regarding its allocation between participants and activities in accordance with the contract and with decisions taken by the consortium according to the internal procedures established in the consortium agreement.”

coordinator discharges the Commission from its obligation to make this payment to the contractors.

c) the coordinator shall distribute the Community financial contribution without unjustified delay. [However, the initial pre-financing shall not be distributed to the contractors until the minimum number of contractors required by the Rules for Participation have acceded to the contract.]¹⁶⁰

Therefore, it must be kept in mind that:

- The **coordinator receives the Community financial** contribution on behalf of the consortium ;
- **The coordinator has an obligation to distribute** (indent (c) of the third paragraph of Article II.3¹⁶¹ of the Annex II (General conditions) to the FP6 model contract). **without unjustified delays, this Community financial contribution to the participants, in accordance with the provisions of the contract and the relevant decisions of the consortium as established in the consortium agreement**

Unlike the previous Framework Programmes, the Community financial contribution:

- **is paid to the consortium only through the coordinator. Then, according to the internal rules of the consortium, the Community financial contribution is allocated to the contractors by the coordinator.** This could be on the basis of the costs claimed and accepted by the Commission and/or any other method established by the consortium.
- **is not paid to each contractor;**

The one exception is for the Community financial contribution to the Joint Research Centre (JRC) of the Commission, which will be paid by means of budget transfer according to administrative agreements between the JRC and the Commission (See relevant document).

Therefore, where the JRC is one of the contractors, the coordinator, on behalf of the consortium, has to inform the Commission, prior to any pre-financing or payment, of the relevant share of the Community financial contribution for the JRC.

3.2.1.3- A system of periodic pre-financing (advances)

The Community financial contribution is distributed to the coordinator on behalf of the consortium through periodic pre-financings in order to assure

¹⁶⁰ This last sentence applies only where the pre-financing is paid upon signature of the coordinator only.

¹⁶¹ FP6 model contract – Annex II – paragraph II.3 – third paragraph – indent (c):

“The coordinator shall:

(...)

c) receive all payments made by the Commission to the consortium and administer the Community contribution regarding its allocation between contractors and activities in accordance with this contract and the decisions taken by the consortium. The coordinator shall ensure that all the appropriate payments are made to contractors without unjustified delay.”

greater financial certainty to the consortium (second paragraph of article 8 of the core-contract of the FP6 model contract).

Whatever the form of the grant (mentioned in the first paragraph of Article 5 of the core-contract of the FP6 model contract), **the pre-financing** for the first (or in certain cases the single) period **is transmitted to the coordinator on behalf of the consortium within 45 calendar days** according¹⁶² to one of the following:

- the date of entry into force of the contract, **or** ;
- the date of the accession to the contract of the last contractor required to constitute the minimum number of participants established by the Rules for Participation (as detailed in the call for proposals to which the project is related), **or** ;
- the last date of accession to the contract of all the contractors identified in Article 1.2 of the core-contract.

The choice of one of the above mentioned possibilities is at the discretion of the Commission services. They must inform the consortium of their choice during the negotiation phase and the exact provision will be included in the contract.

In the case of projects with several periods, each period will be covered by pre-financing, subject to certain conditions mentioned below.

All pre-financing remains the property of the Communities until it is accepted as a final payment (first sentence of the first paragraph and fourth paragraph of Article 3 of the IM¹⁶³).

In other words:

- a pre-financing is not a definitive payment (final payment);
- a pre-financing is a potential debt of the contractors towards the Commission representing the European Communities.

3.2.1.4- Payments based on the approval of periodic reports

The Community financial contribution is paid upon approval of the relevant reports referred to in article II.7 of Annex II (General conditions) to the contract (as established by the second paragraph of Article 8 of the core-contract of the FP6 model contract and the first paragraph of Article II.28 of Annex II (General conditions) to that contract)¹⁶⁴.

¹⁶² As mentioned in the indent (a) of the second paragraph of article 8 of the core-contract of the FP6 model contract (except for actions to promote human resources).

¹⁶³ IM: Part one – Title II – article 3 – first paragraph – first sentence:
“Pre-financing within the meaning of Article 105 shall remain the property of the Communities, unless the basic act, within the meaning of Article 49(1) of the Financial Regulation, provides otherwise.”
 FP6 basic acts do not provide otherwise.

IM: Part one – Title II – article 3 – fourth paragraph:
“The rule referred to in paragraph 1 shall apply to prefinancing paid under contracts or agreements concluded after the entry into force of this Regulation.”
 IM entered into force the 01/01/2003.

¹⁶⁴ FP6 model contract – Annex II – paragraph II.283 – third paragraph – first paragraph:
“Without prejudice to Article II.29, the Commission shall adopt the amount of the final payment to be made to the contractor on the basis of the documents referred to in Article II.7 which it has approved.”

The periodicity of the required relevant reports is provided in Article 6 and, if relevant¹⁶⁵, in the second paragraph of Article 7 of the core-contract of the FP6 model contract.

In any grant, the reports must be provided electronically but the originals must be sent by registered mail with acknowledgement of receipt (fifth paragraph of article II.7 of Annex II (General conditions) to the FP6 model contract). The date of arrival of the latter is deemed to be the official date of reception:

“The consortium shall transmit these documents to the Commission by electronic means in accordance with the provisions of Article 11.2 [mailbox address of the Commission]. However, the originals of each of these documents and the audit certificates shall be submitted in accordance with the provisions of Article 11.1 [Physical address of the Commission]. In such cases, the date of reception pursuant to Article 11.1 prevails. The layout and content of the reports shall conform to the instructions and guidance notes established by the Commission¹⁶⁶. The reports for publication should be of a suitable quality to enable direct publication.”

3.2.1.5- The particular case of interest yielded by pre-financing provided by the Commission

Pre-financing remains the property of the Community and any interest earned by the co-ordinator from that pre-financing must be taken into account in determining the final Community financial contribution (Article II.27 of Annex II (General conditions) to the FP6 model contract, reflecting the fourth paragraph of Article 5 of the FR¹⁶⁷ and Articles 3¹⁶⁸ and 4¹⁶⁹ of the IM).

- 1. In accordance with the provisions of the Financial Regulation, pre-financing granted to the coordinator on behalf of the consortium remains the property of the Community.*
- 2. The contractor shall inform the Commission of the amount of any interest or*

¹⁶⁵ The second paragraph of article 7 of the core-contract of the FP6 model contract (except for actions to promote human resources and mobility) does not apply for contract supported through a lump sum grant and for IP and NoE.

¹⁶⁶ Except for Financial Statement per Activity (Forms C) which are a part of the contract (Annex VI), the layout and detailed content of the reports will be provided in Commission guidance notes, and especially in the “Management of FP6 Projects Guidelines”. **TO BE PROVIDED**

¹⁶⁷ FR – Part one – Title II – Article 5 – fourth paragraph:

“Subject to Articles 18 and 74, interest yielded by the funds which are the property of the European Communities shall be entered in the budget as miscellaneous revenue.”

¹⁶⁸ See footnote n°145.

¹⁶⁹ IM: Part one – Title II – article 4 – first paragraph:

“Where pre-financing which remains the property of the Communities in accordance with Article 3 yields interest or equivalent benefits, these shall be paid to the general budget of the European Communities (hereinafter ‘the budget’) as miscellaneous revenue.”

IM: Part one – Title II – article 4 – second paragraph – indent (b):

Authorising officers shall ensure that, under contracts and agreements concluded with beneficiaries:

(...)

(b) the beneficiaries inform the authorising officer responsible of the amount of any interest or equivalent benefits yielded by those funds at least once a year if such interest represents significant amounts and in any event whenever requests are made for interim payments or payments of balances that clear the pre-financing.

equivalent benefits yielded by the pre-financing it has received from the Commission. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request for interim payments and the request for payment of the balance of the grant is made.

In other words, in the relevant periodic report¹⁷⁰ the coordinator (and only the coordinator) must declare to the Commission any interest or equivalent benefits yielded by the pre-financing that it has received by the Commission on behalf of the Commission.

As interest yielded by pre-financing provided by the Commission remains the property of the Community, the amount of periodic interest declared by the coordinator will be considered as additional pre-financing and will be added to the total amount of the relevant periodic pre-financing.

Example:

If, for a specific period, the consortium has received a pre-financing equal to €1.000.000 and if, in the relevant periodic report, the coordinator declared that the amount of interest (or any equivalent benefits) yielded by this pre-financing it has received on behalf of the consortium is equal to €3.250, the total pre-financing received by the consortium is equal to €1.013.250.

This must be taken into account in determining the next payment of the Community financial contribution for the subsequent period.

The consortium and individual contractors have the freedom to organise the financial management of the project in the best way they judge appropriate. However in order to facilitate the financial follow-up of the project, particularly regarding interest generated by the pre-financing, it would be advisable and strongly recommended to the coordinator to open a specific bank account for the specific project supported by the Community.

The reference to the bank account are identified in the third paragraph of Article 11 of the core-contract of the FP6 model contract¹⁷¹.

3.2.2- Payment modalities for a Lump sum

For Lump sum grants (some Specific support actions and some actions to promote human resources and mobility), the Community financial contribution is paid to the coordinator on behalf of the consortium as follows:

3.2.2.1- A single pre-financing

¹⁷⁰ The Financial Statement per Activity (Form C) for a grant to the budget and grant for integration ; the activity report for certain lump sum grant.

¹⁷¹ FP6 model contract – Core contract – Article 11 – third paragraph:
*“The bank account of the coordinator to which all payments of the Community financial contribution shall be made is:
 Name of holder:
 Account reference: IBAN/sort code and number”*

A single pre-financing is transmitted to the coordinator on behalf of the consortium within 45 calendar days (indent (a) of the second paragraph of Article 8 of the core-contract of the FP6 model contract¹⁷²) following one of the below:

- the date of entry into force of the contract, **or**;
- the date of the accession to the contract of the last contractor required to constitute the minimum number of participants established by the Rules for Participation (as detailed in the call for proposals to which the project is related), **or** ;
- the last date of accession to the contract of all the contractors identified in Article 1.2 of the core-contract.

The choice of one of the above mentioned possibilities is at the discretion of the Commission services. They must inform the consortium of their choice during the negotiation phase and the specific provisions will be identified in the contract.

The amount of the pre-financing is established during negotiation and is mentioned in indent (a) of the second paragraph of Article 8 of the core-contract of the FP6 model contract.

The amount of this **pre-financing can not normally exceed 80% of the amount of the maximum Community financial contribution (mentioned in the second paragraph of article 5 of the core-contract)** (Article 182 of the IM¹⁷³ particularly paragraphs 2, 3 and 5). This percentage can be exceeded if, **subject to the assessment and acceptance of the authorising officer responsible and taking into account the type of legal entities involved in the consortium:**

- **the contractor(s) has(ve) lodged a bank guarantee.**
- **there exists an obligation of financial collective responsibility on the part of the contractors of a level¹⁷⁴ sufficient to secure the protection of the Community financial interests.**

¹⁷² FP6 model contract – Core contract – Article 8 – second paragraph - Option C1 – indent (a):

“[amount of XXXX Euro] pre-financing within 45 days following [the date of entry into force of the contract][the date of the accession of the last contractor required to constitute the minimum number of participants established by the Rules for Participation, and as detailed in the call for proposals to which the project is related][the last date of accession to the contract of all the contractors identified in Article 1.2].”

¹⁷³ IM – Part one – Title VI – Article 182 – paragraph 2 – first paragraph:

“Where pre-financing represents over 80 % of the total amount of the grant, payment may not be made until after the beneficiary has lodged a guarantee subject to the assessment and acceptance of the authorising officer responsible.”

IM – Part one – Title VI – Article 182 – paragraph 3:

“The guarantee shall be provided by an approved bank or financial institution established in one of the Member States.

The guarantee may be replaced by a joint and several guarantee by a third party or by the joint guarantee of the beneficiaries of an action who are parties to the same grant agreement.

The guarantee shall be denominated in euro.

It shall have the effect of making the bank or financial institution, third party or the other beneficiaries stand as irrevocable collateral security, or first-call guarantor of the grant beneficiary's obligations.”

IM – Part one – Title VI – Article 182 – paragraph 5 – first paragraph:

“The authorising officer responsible may waive the obligation laid down in paragraph 2 for public-sector bodies and the international organisations referred to in Article 43.”

¹⁷⁴ For more information on the notion of sufficient level of financial collective responsibility of the contractors, see Part 4 of those guidelines (“Controls”).

3.2.2.2- Conditions for the payment of the grant

The Community financial contribution is paid as followed (in accordance with indent (b) of the second paragraph of Article 8¹⁷⁵, the first paragraph of Article 7¹⁷⁶ and the Article 6¹⁷⁷ of the core-contract and with the first¹⁷⁸ and sixth¹⁷⁹ paragraphs of Article II.7 and Article II.8 of Annex II (General conditions) to the FP6 model contract):

- the coordinator, on behalf of the consortium, must submit to the Commission by electronic means and by mail¹⁸⁰ within 45 calendar days¹⁸¹ following the end of the single reporting period¹⁸² (mentioned in Article 6 of the core-contract) the following reports:
 - a **final activity report** covering all the work, objectives, results and conclusions, and the final plan for using and disseminating the knowledge, including a summary of all these aspects;
 - any **supplementary final reports** required by any Annex of the contract, especially by the technical Annex (Annex I)
 - a **report on the distribution of the Community financial contribution between contractors** made during that single reporting period¹⁸³.
 - a **payment request** for the outstanding balance.
The outstanding balance is equal to: $A - (B+C)$

With:

A: Maximum Community financial contribution mentioned in the second paragraph of Article 5 of the core-contract of the FP6 model contract

¹⁷⁵ FP6 model contract – Core contract – Article 8 – second paragraph - Option C1 – indent (b):

“the outstanding balance shall be paid within 45 days following the approval by the Commission of the reports referred to in II.7.4.a and c. This payment shall be considered as final, subject to the results of any audit or review, which may be carried out pursuant to the provisions of Article II.29.”

¹⁷⁶ FP6 model contract – Core contract – Article 7 – first paragraph:

“Reports referred to in Article II.7.2 shall be submitted for each reporting period identified in Article 6 within 45 days of the end of the period in question.”

¹⁷⁷ FP6 model contract – Core contract – Article 6:

*“The project is divided into **reporting periods** of the following duration:*

*- P1: from month 1 to month X
- P2: from month X+1 to month Y
- P3: from month Y+1 to month Z
- (...)
- [final]: from month [N+1] to the last month of the project”*

¹⁷⁸ FP6 model contract – Annex II – Article II.7 – first paragraph:

“All reports and deliverables shall be submitted within 45 days following the end of the respective periods identified in Articles 6 and 7.”

¹⁷⁹ FP6 model contract – Annex II – Article II.7 – sixth paragraph:

“Where the Community financial contribution is a lump sum the references to financial statements above are replaced by payment requests. None of the provisions in the contract relating to eligible costs apply in such cases.”

¹⁸⁰ See 3.2.1.4.

¹⁸¹ It must be noted that, as established in the second sentence of the third paragraph of article 7 of the core-contract of the FP6 model contract (except for actions to promote human resources and mobility):

“this delay may be increased by 45 days at the request of the consortium”.

¹⁸² It must be noted that, as established in the third sentence of the third paragraph of article 7 of the core-contract of the FP6 model contract (except for actions to promote human resources and mobility):

“Where the work is completed before the end of the duration of the project, the related activity and financial reports shall cover the period up to that date.”

¹⁸³ It must be noted that, even though this report is not mentioned explicitly under the fourth paragraph of article II.7 of the Annex II (General conditions) to the FP6 model contract (except for actions to promote human resources and mobility) but in its second paragraph, the fourth paragraph makes a clear reference to the reports of this second paragraph.

B: Pre-financing mentioned in the indent (a) of the second paragraph of Article 8 of the core-contract of the FP6 model contract

C: Amount of interest (or equivalent benefits) yielded by the pre-financing declared by the coordinator in the final activity report.

- The Commission evaluates the reports submitted by the consortium in accordance with the provisions of the contract and especially Article II.8 of Annex II (General conditions) to the FP6 model contract.

This evaluation will normally be completed within 45 calendar days following the receipt¹⁸⁴ of the requested reports. However, the Commission services may continue to review the reports during the period up to 90 days after receipt¹⁸⁵.

- If the reports are approved:
 - the pre-financing is requalified as a definitive payment (final payment);
 - the outstanding balance shall be paid to the coordinator, on behalf of the consortium, within 45 calendar days following this approval¹⁸⁶.

The payment of the Community financial contribution is considered as final, subject to the results of any audit or review which may be carried out up to five years after the end of the project¹⁸⁷.

- In addition, within 60 calendar days after receipt of the outstanding balance, the coordinator must submit to the Commission **a report on the distribution of the Community financial contribution between contractors**, as established in indent (d) of the fourth paragraph of article II.7 of Annex II (General conditions) to the FP6 model contract¹⁸⁸.

Where the lump sum grant is disbursed over more than one period, then the provisions of the contract regarding periodic payments apply, except for the last period, when the above procedures apply.

3.2.3- Payment modalities for a Grant consisting in reimbursement of eligible costs

3.2.3.1- General principles

¹⁸⁴ The date of the receipt is established by the date of reception of the originals of the reports sent to the physical address of the Commission provided in article 11.1 of the core-contract of the FP6 model contract . See also 3.2.1.4.

¹⁸⁵ FP6 model contract – Annex II – Article II.8 – third paragraph – first sentence:
“The Commission undertakes to evaluate all other reports submitted within 45 days of receipt thereof.”

¹⁸⁶ It must be noted that from the date of reception of the requested reports to the date of the payment of the outstanding balance, there is a maximum delay of 90 calendar days (except in relevant case of suspension). Therefore, even if the delay for approval is exceeded, the total delay of 90 calendar days must be respected (it means a corresponding reduction of the delay for the payment).

¹⁸⁷ FP6 model contract – Annex II – Article II.29 – first paragraph – first sentence:
“The Commission may, at any time during the contract and up to five years after the end of the project, arrange for audits to be carried out, either by outside scientific or technological reviewers or auditors, or by the Commission departments themselves including OLAF.”

¹⁸⁸ FP6 model contract – Annex II – Article II.7 – fourth paragraph – indent (d):
“a report on the distribution between contractors made after the end of the project of the Community financial contribution, which shall be submitted 60 days after receipt of the final tranche of the Community financial contribution to the consortium.”

Where the Community contributes to the project through a Grant to the Budget or Grant for Integration¹⁸⁹ (Article II.24¹⁹⁰ of Annex II (General conditions) to the FP6 model contract), the Community financial contribution is made to the consortium according to the following cumulative conditions:

- the **reimbursement of eligible costs claimed by contractors**¹⁹¹; and
- the **maximum reimbursement rates of eligible costs per type of activity**¹⁹²; and
- **in accordance with the cost reporting models used by each contractor**¹⁹³; and
- the **approval of requested periodic reports**¹⁹⁴; and
- subject to the **submission of an audit certificate** of the contractors' financial statements (when and where required by the provisions of the second paragraph of Article 7 of the core-contract of the FP6 model contract)¹⁹⁵; and
- **taking into account any interest or equivalent benefits yielded by the pre-financing of the project**¹⁹⁶ (only for the coordinator); and
- **taking into account the receipts of the project** to avoid any profit for the contractors¹⁹⁷; and
- within the **limits of public funding established by international regulations and in particular by the Community framework for State aid for research and development for certain activities**¹⁹⁸.

In addition to **eligible costs** (including the notions of direct and indirect eligible costs), **maximum reimbursement rates, type of activities, cost reporting models, interest (or equivalent benefits) yielded by the pre-financing of the project and limits of public funding established by international regulations and in particular by the Community framework for State aid for research and development for certain activities**¹⁹⁹, the conditions for payment of the Community financial contribution (Grant to the Budget or Grant for Integration) require two other aspects:

- **reporting periods and reports;**
- **audit certificates**

¹⁸⁹ As mentioned in the second paragraph of article 5 of the core-contract of the FP6 model contract (except for actions to promote human resources and mobility).

¹⁹⁰ See paragraphs 1, 2, 3 and 5.

¹⁹¹ FP6 model contract – Annex II – Article II.24 – first paragraph – indent (a).

¹⁹² FP6 model contract – Annex II – Article II.24 – first paragraph – indent (b).

¹⁹³ FP6 model contract – Annex II – Article II.24 – first paragraph – indent (c).

¹⁹⁴ FP6 model contract – Annex II – Article II.24 – first paragraph – indent (d).

¹⁹⁵ FP6 model contract – Annex II – Article II.24 – first paragraph – indent (e).

¹⁹⁶ FP6 model contract – Annex II – Article II.24 – first paragraph – indent (f) and fifth paragraph.

¹⁹⁷ FP6 model contract – Annex II – Article II.24 – second paragraph.

¹⁹⁸ FP6 model contract – Annex II – Article II.24 – third paragraph.

¹⁹⁹ See especially 2.1, 2.2, 2.3, 2.4, 3.1.3.2, 3.1.3.3, 3.1.3.4 and 3.2.1.4.

3.2.3.1.1- Reporting periods and reports

3.2.3.1.1.1- Reporting periods

Article 6 of the core-contract of the FP6 model contract states that:

*The project is divided into **reporting periods** of the following duration:*

- P1: from month 1 to month X
- P2: from month X+1 to month Y
- P3: from month Y+1 to month Z
- (...)
- [final]: from month [N+1] to the last month of the project]

According to the type of instrument, it may have one single or several reporting periods (this will be established in the second paragraph of Article 8 and mentioned in Article 6 of the core-contract of the FP6 model contract).

3.2.3.1.1.2- Reports

The coordinator, on behalf of the consortium must submit to the Commission, by electronic means and by mail,²⁰⁰ within 45 calendar days following the end of each reporting period (mentioned in Article 6 of the core-contract) the following **periodic reports**²⁰¹ (first paragraph of Article 7 of the core-contract and the first, second and fifth paragraphs of Article II.7 of Annex II (General conditions) to the FP6 model contract):

- a **periodic activity report** containing an overview of the activities carried out by the consortium during that period, a description of progress toward the objectives of the project, a description of progress towards the milestones and deliverables foreseen, the identification of any problems encountered and corrective action taken. An updated plan for using and disseminating the knowledge shall be included as a separate part of this report²⁰²;
- a **periodic management report**²⁰³ on that period **including**:
 - a **justification of the resources deployed** by each *contractor*, linking them to activities implemented and justifying their necessity;

Contractors using the additional cost model (AC) must identify **all** the resources employed on the project and provide a global estimate of all their costs (not just the additional eligible costs which are reported in the financial statement, but also their non additional or recurring costs) (indent

²⁰⁰ See 3.2.1.4.

²⁰¹ Except for Financial Statement per Activity (Forms C) which are a part of the contract (Annex VI), the layout and detailed content of the reports will be provided in Commission guidance notes, and especially in the "Management of FP6 Projects Guidelines". **TO BE PROVIDED**

²⁰² FP6 model contract – Annex II – Article II.7 – second paragraph – indent (a).

²⁰³ FP6 model contract – Annex II – Article II.7 – second paragraph – indent (b).

(d) of the first paragraph of Article II.24 of Annex II (General conditions) to the FP6 model contract²⁰⁴).

Each financial statement should possess the following qualities that render the information useful to any reader, including the external auditor and the auditors of the Commission. Therefore, they must be:

- ✓ Understandable. Excessive detail and overly complex reporting formats should be avoided. Information should be presented fully, but clearly and precisely.
- ✓ Relevant. Relevant information is timely and covers the full nature and extent of the financial activities presented. Information is relevant if it helps those who use it to carry out their activities.
- ✓ Reliable. Reliable information represents what it purports to represent. It is accurate within acceptable tolerances, free from bias, complete and verifiable.
- ✓ Timely. Information cannot be out of date and must reflect the most recent information available.
- ✓ Consistent. Financial reporting should be presented on the same accounting basis, to the extent possible. If the basis of accounting and presentation has changed from one accounting period to the next because, for example, a more appropriate accounting policy or standard has been adopted, this fact and the effects on the financial report resulting therefrom should be highlighted and explained clearly.
- ✓ Comparable. As with consistency, the basis of accounting and presentation and the effects of any changes from one period to the next, should be highlighted and clearly explained.
- ✓ Material. Insignificant events may be disregarded, but there must be full disclosure of all important information. Therefore an item is material if its disclosure is likely to lead the user of accounting information to act differently.

■ **Form C (Financial statement per activity)** (the model format is set out in Annex VI to the contract) **provided by each contractor for that period:**

- ✓ The eligible costs declared by the contractors in Forms C must be declared in EURO (footnote n°7 of Annex II (General conditions) to the FP6 model contract).

Therefore, costs incurred²⁰⁵ in currencies other than the Euro shall be reported in Euro on the basis of:

- ❖ the conversion rate that would have applied on the date that the actual costs were incurred

²⁰⁴ FP6 model contract – Annex II – Article II.24 – first paragraph – indent (d):

(...) *the Community shall make its contribution to the consortium under the following cumulative conditions:*

(...)

(d) *on the basis of financial statements provided by each contractor and, for contractors using the full cost models, which identify the sources of all co-financing provided by the contractor for the project, including its own resources, any financial transfers from third parties, or any contributions in kind. Contractors using the additional cost model must also identify in their periodic technical reports all the resources employed on the project and provide a global estimate of all their costs (not just the additional eligible costs which are reported in the financial statement);"*

²⁰⁵ As well as receipts.

or

- ❖ the rate applicable on the first day of the month following the end of reporting period.

The relevant basis for the conversion rate used must be indicated by the contractor in Form C when submitting costs claims. The choice of one basis must be applied for the whole duration of the project.

The conversion rates may be obtained at the following internet address: <http://www.ecb.int/stats/eurofxref/> or in the relevant OJ of the Communities.

- ✓ Even though the **structure** of Form C is **identical** whatever the instrument and type of action might be, the **content** is often **different according to the type of instrument and action concerned**.

The main parts of the Form are the following:

- ❖ **General information**

Information on the contract, the contractor, the costs model used, the reporting period, ...

- ❖ **Box 1: Resources (Third party(ies))**

Declaration (if relevant) of third parties having made resources available to the contractor on the basis of a prior agreement²⁰⁶.

- ❖ **Box 2: Declaration of eligible costs**

Declaration of eligible costs per type of activities according to the cost model used.

- ❖ **Box 3: Declaration of receipts**

- ❖ **Box 4: Declaration of interest generated by the pre-financing**

Only for the coordinator

- ❖ **Box 5: Request for FP6 Financial contribution**

- ❖ **Box 6: Audit certificates**

Declaration (if relevant) of the reporting periods covered by the audit certificates, name of the auditor(s) and cost per audit certificate.

- ❖ **Box 7: Conversion rates**

Declaration of the basis of the conversion rate used.

- ❖ **Box 8: Contractor's certificate**

Certification (declaration and signatures) that all information provided in the Form C is complete and true, in conformity with the provisions of the contract and that full supporting documentation to justify that information is available at any moment at the request of the Commission and in the event of an audit by the Commission and/or by the Court of Auditors and/or their authorised representatives

²⁰⁶ See 2.1.2.3.

- ✓ Information provided in a Financial statement per activity must be linked to the activity reports and justification of the resources deployed.
- ✓ A general overview of the different Forms C per type of instruments and type of actions is provided in Annex 5 (6.5) to these guidelines.
- a **summary periodic financial report** consolidating the claimed costs of all the contractors in an aggregate form, based on the information provided in Form C.
- a **report on the distribution made between contractors of the Community financial contribution during that period**²⁰⁷.
- any **supplementary reports required by any Annex** to the contract, especially Annex I (technical annex) and Annex III (specific provisions).

The coordinator, on behalf of the consortium, must submit to the Commission, by electronic means and by mail,²⁰⁸ within 45 calendar days²⁰⁹ following the end of the last reporting period (in Article 6 of the core-contract) the following **final reports**²¹⁰ (third paragraph Article 7 of the core-contract and the first, fourth and fifth paragraphs of Article II.7 of Annex II (General conditions):

- a **final activity report** covering all the work, objectives, results and conclusions, and the final plan for using and disseminating the knowledge, including a summary of all these aspects²¹¹;
- a **final management report** covering the full duration of the project including a summary financial report consolidating the claimed costs of all the contractors in an aggregate form covering the entire duration of the project, based on the information provided in Form C by each contractor²¹²;
- any **supplementary reports required by any Annex** to this contract, especially Annex I (technical annex) and Annex III (specific provisions)²¹³;

The coordinator, on behalf of the consortium must submit to the Commission, by electronic means and by mail,²¹⁴ within 60 calendar days following the date of reception of the last payment of the Commission the following report²¹⁵ (third

²⁰⁷ FP6 model contract – Annex II – Article II.7 – second paragraph – indent (c).

²⁰⁸ See 3.2.1.4.

²⁰⁹ It must be noted that, as established in the second sentence of the third paragraph of article 7 of the core-contract of the FP6 model contract (except for actions to promote human resources and mobility):
“this delay may be increased by 45 days at the request of the consortium”.

²¹⁰ Except for Financial Statement per Activity (Forms C) which are a part of the contract (Annex VI), the layout and detailed content of the reports will be provided in Commission guidance notes, and especially in the “Management of FP6 Projects Guidelines”. **TO BE PROVIDED**

²¹¹ FP6 model contract – Annex II – Article II.7 – fourth paragraph – indent (a).

²¹² FP6 model contract – Annex II – Article II.7 – fourth paragraph – indent (b).

²¹³ FP6 model contract – Annex II – Article II.7 – fourth paragraph – indent (c).

²¹⁴ See 3.2.1.4.

²¹⁵ Except for Financial Statement per Activity (Forms C) which are a part of the contract (Annex VI), the layout and detailed content of this report will be provided in Commission guidance notes, and especially in the “Management of FP6 Projects Guidelines”. **TO BE PROVIDED**

paragraph of Article 7 of the core-contract and fourth and fifth paragraphs of Article II.7 of the Annex II (General conditions):

- a **report on the distribution of the Community financial contribution between contractors made after the end of the project**²¹⁶

It must be noted that in the case of one single reporting period, covering the whole duration of the indirect action, only the final reports (including the report on the distribution of the Community financial contribution between contractors made after the end of the project) are to be provided by the coordinator on behalf of the consortium.

3.2.3.1.2- Audit certificates

It should be clarified that **an audit certificate is a certification of the costs claimed under the project. It is not an audit** that the Commission may launch at any time and up to 5 five years after the end of the project (last sentence of Article II.26 of Annex II (General conditions) to the FP6 model contract)²¹⁷.

The audit certificate is a document provided by external auditor (or in the case of public body it may be provided by a competent public officer) certifying that the costs claimed during a specific period meet the contractual requirements established by the FP6 contract.

The Commission has the right to conduct its own audits, either by using its own services or any representative authorised by it.

The submission of an audit certificate does not waive this right of the Commission to carry out audits.

Each contractor continues to remain responsible to the Commission for the costs it has claimed even after payment by the Commission and even after submission of an audit certificate (last sentence of Article II.26 of Annex II (General conditions) to the FP6 model contract)²¹⁸.

3.2.3.1.2.1- General purpose of an audit certificate

At least one audit certificate per contractor covering the whole duration of an indirect action must be provided for projects supported through a Grant to the Budget or a Grant for Integration (indents (a) and (c) of the first paragraph of Article 14 of the RP).

1. In accordance with Annex III to the Sixth Framework Programme, and within the limits of the Community framework for State aid for research and development, the Community financial contribution may take the following

²¹⁶ FP6 model contract – Annex II – Article II.7 – fourth paragraph – indent (d).

²¹⁷ FP6 model contract – Annex II – Article II.26 – last sentence:

“Certification by external auditors according to this Article does not diminish the liability of contractors according to this contract nor the rights of the Community arising from Article II.29 [Controls and audits].”

²¹⁸ See footnote n°204.

forms:

(a) For networks of excellence, it shall take the form of a fixed grant for integration on the basis of the joint programme of activities. The amount of that grant shall be calculated taking into account the degree of integration, the number of researchers that all participants intend to integrate, the characteristics of the field of research concerned and the joint programme of activities. It shall be used to complement the resources deployed by the participants in order to carry out the joint programme of activities.

This grant shall be paid out on the basis of results, following the ongoing execution of the joint programme of activities, and on condition that its expenses, which are to be certified by an external auditor, or in the case of public bodies, a competent public officer, are greater than the grant itself."

(...)

(c) For integrated projects and the other instruments, except for those covered by points (a) and (b) and indirect actions covered by Article 9(2)(b), it shall take the form of a grant to the budget, calculated as a percentage of the budget established by the participants to carry out the indirect action, adapted according to the type of activity and taking into account the cost model used by the participant concerned."

The expenses needed to implement the indirect action shall be certified by an external auditor or, in the case of public bodies, a competent public officer."

The general purpose of an audit certificate is to give to the Commission reasonable assurance²¹⁹ that eligible costs (and, if relevant, the receipts) charged under the project are calculated and claimed by the contractors in accordance with the relevant legal and financial provisions of the FP6 legal texts, including contractual provisions.

Without an audit certificate, a financial statement approved by the Commission (Form C) can not lead to the requalification of the relevant part of the pre-financing as a final payment²²⁰ (second paragraph of Article 180 of the IM, indents (a) and (c) of the first paragraph of Article 14 of the RP and the second paragraph of Article 8 of the core-contract of the FP6 model contract). That is, any subsequent payment after an initial pre-financing will be considered to be a further pre-financing unless an audit certificate is provided for that period.

Example:

A consortium has received a first pre-financing of € 1.000.000 and the Commission has accepted its periodic reports in the first reporting period, in which a Community financial contribution of €750.000, is justified. :

- if an audit certificate is provided by each contractor, the consortium is considered to have received:

a pre-financing of €250.000 (1.000.000 – 750.000) and a final payment of € 750.000. For the next period the pre-financing can be increased in accordance with the contractual provisions.

- if no audit certificate is provided, the consortium is considered to have received:

²¹⁹ It means a true and fair view.

²²⁰ Subject to the results of any audit or review which may be carried out up to five years after the end of the project.

a pre-financing of €1.000.000 (of which €750.000 are already accepted as eligible costs but are waiting for audit certificates to be declared as final payment). For the next period the pre-financing can be increased if the total amount of the pre-financing stays within the limits established by the FR, IM and the contract.

3.2.3.1.2.2- Auditors eligible to deliver audit certificates

An audit certificate can be delivered by (indents (a) and (c) of the first paragraph of Article 14 of the RP and the second and third paragraphs of Article II.26 of Annex II (General conditions) to the FP6 model contract):

- an **external auditor** ;
- or, for a public body a **public competent officer**^{221 & 222}.

Each contractor has the freedom to choose any qualified external auditor, including its usual external auditor (second paragraph of Article II.26 of Annex II (General conditions) to the FP6 model contract)²²³, provided that it meets the cumulative following professional requirements:

- the external auditor must be **independent** from the contractor;

Independence means that the auditor's work is carried out without direction or interference of any kind from the contractor concerned.

In the case of public bodies, a preliminary condition should be that the public competent public officer selected has not been involved in any way in the processing of the Financial Statement per Activity (Form C).

- the external auditor must be **qualified to carry out statutory audits of accounting documents** in accordance with the 8th Council Directive 84/253/EEC of 10 April 1984²²⁴ or similar national regulations.

Public bodies having opted for a competent public officer must prove that relevant national authorities have established the legal capacity of that competent public officer to audit the public body (third paragraph of Article II.26 of Annex II (General conditions) to the FP6 model contract)²²⁵.

²²¹ A public body, as established in paragraph 21 of article II.1 of the Annex II (General conditions) to the FP6 model contract, means:

"a public sector body, or a legal entity governed by private law with a public-service mission providing adequate financial guarantees."

²²² Public bodies have the choice between an external auditor or a public competent officer.

²²³ FP6 model contract – Annex II – Article II.26 – second paragraph:

"Each contractor is free to choose any qualified external auditor, including its usual external auditor, provided that it meets the cumulative following professional requirements:

a) the external auditor must be independent from the contractor;

b) the external auditor must be qualified to carry out statutory audits of accounting documents in accordance with the 8th Council directive 84/253/EEC of 10 April 1984 or similar national regulations."

²²⁴ [OJ L126; 12.05.1984; p.20]. See Annex 6 to these financial guidelines.

²²⁵ FP6 model contract – Annex II – Article II.26 – third paragraph:

"A contractor that is a public body may opt for a competent public officer to provide an audit certificate, provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that public body."

The Commission has the right to expect results of high professional level, when relying on the certification of costs by such auditor.

As a third party to the contract, the external auditor has a contractual relationship only with the contractor. It does not have a contractual relationship with the Commission, and the Commission will not intervene in any dispute between the auditor and the contractor concerned.

A list of independent auditors and information about audits in Member States and candidate countries can be found at the following internet address:
www.fee.be/members/countries.htm

3.2.3.1.2.3- Periodicity of submission of an audit certificate

The periodicity of submission of the audit certificate for each contractor (along with its periodic reports and including its Form C) is determined by the second paragraph of Article 7 of the core-contract of the FP6 model contract.²²⁶ (see also first sentence of the third paragraph of Article II.7 of Annex II (General conditions) of the model contract)²²⁷.

An audit certificate per contractor is always provided along with the periodic reports and always covers one or more reporting periods. However, it is not necessarily required for each reporting period. This aspect depends on the type of instrument²²⁸.

Even though an audit certificate may not be required for a specific period, **an audit certificate must always be provided by each contractor where the Community financial contribution requested by that contractor in its Form C exceeds €750,000 for that period** (indent (a)(i) of the second subparagraph of the second

²²⁶ FP6 model contract – Core-contract – Article 7 – second paragraph:

“[Option 1 : applicable to IPs and NoEs : Reports referred to in Article II.7.3 covering each period shall be submitted at the latest 45 days after the end of each reporting period]

[Option 2 (applicable to other instruments): Reports referred to in Article II.7.3 shall be submitted at the latest 45 days after the end of the following periods²²⁶:

P(x) covering reporting periods from P1 to P(x)

P(y) covering reporting periods from P(x+1) to P(y)

P(z) covering reporting periods from P(y+1) to P(z)

P(last) covering reporting periods from P(n+1) to the last reporting period of the project “

²²⁷ FP6 model contract – Annex II – Article II.7 – third paragraph – first sentence:

The consortium shall submit the audit certificates provided by each contractor in conformity with Article II.26 [Audit certificates] for each period for which the audit certificate is required.”

²²⁸ See 3.2.3.2.

paragraph, the last paragraph of Article 180 of the IM²²⁹ and the second sentence of the third paragraph of Article II.7 of Annex II (General conditions) to the FP6 model contract)²³⁰.

3.2.3.1.2.4- Scope and content of an audit certificate

An audit certificate is delivered from the external auditor (or the competent public officer) to the attention of the contractor (not to the attention of the Commission).

An audit certificate will certify (first paragraph of Article II.26 of Annex II (General conditions) to the FP6 model contract)²³¹:

- that the total eligible costs declared by the contractor in Box 2 of one (or several) Form(s) C comply with the following cumulative conditions:
 - they are determined according to the relevant cost reporting model for which this type of legal entity is eligible;
 - they fulfill the definition of eligible costs²³², except for the requirement of necessity in the allocation of resources by the contractor;

One of the conditions of eligible costs is that they must be actual. Actual means real costs. However average employment rates can be declared as actual if they are in conformity with the accounting principles of the contractor, where actual costs are not available at the time of establishment of the audit certificate. Any necessary adjustments to these average rates must be reported in the Financial Statement for the subsequent reporting period²³³. For the last reporting period, only actual costs can be declared.

For the two cost reporting models that incorporate a flat rate contribution deemed to cover indirect eligible costs (FCF and AC), this fixed contribution is considered by default to represent actual costs.

Eligible costs incurred by third parties identified in Annex I²³⁴ to the contract may be certified:

- ✓ either by their own external independent auditor;
- ✓ or by the auditor of the contractor concerned.

²²⁹ IM: Part one – Title VI – Article 180 – Second paragraph – second subparagraph:

“An external audit shall be compulsory:

(a) in the case of grants for an action, in respect of the following payments:

(i) pre-financing or interim payments the sum of which exceeds EUR 750 000 per financial year and per agreement;”

IM: Part one – Title VI – Article 180 – Last paragraph:

“In the case of an agreement linking the Commission and a number of beneficiaries, the thresholds referred to in points (a) and (b) of the second subparagraph shall apply to each beneficiary.”

²³⁰ FP6 model contract – Annex II – Article II.7 – third paragraph – second sentence:

“Even though an audit certificate is not required for a specific period, an audit certificate must be provided by each contractor where the Community financial contribution requested by that contractor exceeds € 750,000 for that period.”

²³¹ FP6 model contract – Annex II – Article II.26 – first paragraph:

“For each period for which an audit certificate is required, each contractor shall provide an audit certificate prepared and certified by an external auditor, certifying that the costs incurred during that period meet the conditions required by this contract. The certificate should expressly state the amounts that were subject to verification. Where third parties’ costs are claimed under the contract, such costs shall be audited in accordance with the provisions of this Article.”

²³² See especially Part 2.

²³³ See adjustment line in Form C.

²³⁴ See 2.1.2.3. Those third parties are not subcontractors.

The rules applying for the contractor relating to the calculation and payment of the grant (especially those concerning eligible costs and audit certificates) apply also for those third parties.

As a consequence, one or more audit certificates may be attached to one single Form C.

- the total amount of receipts declared by the contractor in Box 3 of one (or several) Form(s) C;
- the total amount of interest yielded by the pre-financing declared for the relevant period by the **coordinator** in Box 4 of one (or several) Form(s) C;
- the relevant basis for the conversion rate used of EURO
 - either the conversion rate of the date where the actual costs were incurred
 - or the rate applicable on the first day of the month following the end of reporting period

The certification must be signed (signature and stamp) and dated by the external auditor (or competent public officer).

By certifying the above mentioned elements, the external auditor (or competent public officer) confirms that the principles and factors concerning the quality of information are fulfilled and that the Financial Statement gives a true and fair view of the costs claimed corresponding with the underlying economic reality.

There is no standard format for an audit certificate. However, as far as possible, the external auditor should follow the model proposed by the Commission in Annex 7 (6.7) to these guidelines.

An audit certificate should be delivered in one of the official languages of the European Union²³⁵. The external auditor must attach a certified translation in one of these languages, preferably in English, where an audit certificate is not provided in one of these languages.

3.2.3.1.2.5- Reimbursement of the price of an audit certificate

The price of an audit certificate (excluding VAT) is a direct eligible cost under the “Management of the consortium activities” (second subparagraph of the first paragraph of Article II.26²³⁶ and paragraph 4 of Article II.2 of Annex II (General provisions) to the FP6 model contract).

3.2.3.2- Specific provisions

3.2.3.2.1- Reporting periods

²³⁵ 11 official languages in 2003.

²³⁶ FP6 model contract – Annex II – Article II.26 – first paragraph – second subparagraph:
“The cost of this certification is an eligible cost under the activity relating to Management of the consortium.”

3.2.3.2.1.1- Specific provisions for Integrated Projects and Networks of Excellence

For Integrated Projects and Networks of Excellence, the reporting periods mentioned in the FP6 model contract are always twelve months, except for the last reporting period:

- If the last reporting period is less than or equal to six months, it must be added to the penultimate reporting period. This means that the last period will be greater than twelve months and less than or equal to eighteen months.
- If the last reporting period is greater than six months, it is kept as a separate reporting period.

As an exception to this general principle, Integrated Projects lasting eighteen months or less have only one reporting period.

The practical application of this principle is provided in the following examples:

▪ **Example n°1:**

✓ Hypothesis:

An Integrated Project (or a Network of Excellence) has a duration of 60 months.

✓ Determination of reporting periods:

The duration is divided into five periods of 12 months.

Article 6 of the core-contract will state:

Article 6 – Reporting periods

The *project* is divided into reporting periods of the following duration:

- P1: from month 1 to month 12
- P2: from month 13 to month 24
- P3: from month 25 to month 36
- P4: from month 37 to month 48
- P5: from month 49 to month 60

▪ **Example n°2:**

✓ Hypothesis:

An Integrated Project (or a Network of Excellence) has a duration of 67 months.

✓ Determination of reporting periods:

The duration is divided into five periods of 12 months + a period of 7 months.

Article 6 of the core-contract will state:

Article 6 – Reporting periods

The *project* is divided into reporting periods of the following duration:

- P1: from month 1 to month 12
- P2: from month 13 to month 24
- P3: from month 25 to month 36
- P4: from month 37 to month 48
- P5: from month 49 to month 60
- P6: from month 61 to month 67

▪ **Example n°3:**

✓ Hypothesis:

An Integrated Project (or a Network of Excellence) has a duration of 65 months.

✓ Determination of reporting periods:

The duration is divided into four periods of 12 months + a period of 17 months.

Article 6 of the core-contract will state:

Article 6 – Reporting periods

The *project* is divided into reporting periods of the following duration:

- P1: from month 1 to month 12
- P2: from month 13 to month 24
- P3: from month 25 to month 36
- P4: from month 37 to month 48
- P5: from month 49 to month 65

▪ **Example n°4:**

✓ Hypothesis:

An Integrated Project has a duration of 18 months.

✓ Determination of reporting periods:

Article 6 of the core-contract will state:

Article 6 – Reporting periods

The *project* is divided into reporting periods of the following duration:

- P1: from month 1 to month 18

3.2.3.2.1.2- Specific provisions for other instruments

For other instruments, the duration of the reporting periods mentioned in article 6 of the core-contract is determined during the negotiation phase between contractors and Commission services and based on the project execution and expected milestones.

However, it is recommended, as far as possible:

- to avoid reporting periods of less than 6 months;
- to establish reporting periods equal to a multiple of 6 months (except for the last reporting period).

3.2.3.2.2- Additional reports (other than audit certificates) for Integrated Projects and Networks of Excellence

- **In addition to the above mentioned periodic reports the coordinator of an Integrated Project**, on behalf of the consortium, **must also submit an updated implementation plan.** (first paragraph of Article III.3²³⁷ and the second paragraph of Article III.1²³⁸ of Annex III (Specific provisions) for Integrated Projects to the FP6 model contract) This detailed implementation plan must provide a detailed description of the implementation plan for the eighteen months²³⁹ following the twelve-month period covered by the periodic reports. It must also include an estimate of eligible costs broken down by contractor and by activity over that period. If relevant, a revision of the overall implementation plan may also be added.

The updated implementation plan must be sent to the Commission by electronic means and by mail²⁴⁰ within 45 calendar days following the end of each reporting period identified in Article 6 of the core-contract.

- **In addition to the above mentioned periodic reports the coordinator of a Network of Excellence**, on behalf of the consortium, **must also submit an updated joint programme of activities** (first paragraph of Article III.4²⁴¹ and the third paragraph of Article III.1²⁴² of Annex III (Specific provisions) for Networks of

²³⁷ FP6 model contract – Annex III for IP – Article III.3 – first paragraph:

“The implementation plan shall be updated annually. These annual updates may concern only the detailed implementation plan. They shall be submitted in accordance with the principles foreseen in Article II.7 for the submission of reports.”

²³⁸ FP6 model contract – Annex III for IP – Article III.1 – second paragraph:

“Implementation plan: means the description of the work to be carried out in order to implement the project as set out in Annex I. It consists of two parts:

- **a detailed implementation plan:** providing a detailed description of the work to be carried out over the eighteen-month period¹ covered by one period as defined in Article 6 and the first six months of the following period, together with a detailed financial plan for the same eighteen-month period, containing estimates of eligible costs broken down by contractor and by activity.

- **an outline implementation plan:** providing an outline description of the work to be carried out throughout the duration of the project, including a nonconfidential action plan for the promotion of gender equality within the project.”

²³⁹ It must be noted that, by definition, the final updated detailed implementation plan (submitted for the penultimate reporting period) may cover a shorter period, according to the periods defined in article 6 of the core-contract.

²⁴⁰ See 3.2.1.4.

²⁴¹ FP6 model contract – Annex III for NoE – Article III.4 – first paragraph:

“The joint programme of activities shall be updated annually. These annual updates may concern only the detailed joint programme of activities. They shall be submitted in accordance with the principles foreseen in Article II.7 for the submission of reports.”

²⁴² FP6 model contract – Annex III for NoE – Article III.1 – third paragraph:

Excellence to the FP6 model contract). This detailed joint programme of activities must provide a detailed description of the work to be carried out for the eighteen months²⁴³ following the twelve-month period covered by the periodic reports above. In addition, it should provide a revised set of performance indicators. If relevant, a revision of the outline joint programme of activities may also be added.

The updated implementation plan must be submitted to the Commission by electronic means and by mail²⁴⁴ within 45 calendar days following the end of each reporting period mentioned in Article 6 of the core-contract.

- **Annex 8 to these guidelines provides an overview of the periodic and final reports requested per type of instrument.**
- **In addition to the approval of the above mentioned periodic reports** the Commission services shall arrange for a **review** of the work carried out under the project over the period concerned and shall examine the proposed update of the implementation plan/joint programme of activities (Article III.5 of Annex III (Specific provisions) for Networks of Excellence and Article III.4 of Annex III (Specific provisions) for Integrated projects to the FP6 model contract).

The **annual review** assesses the progress of the project and the prospects for achieving its overall objectives.

The Commission communicates to the consortium the results of the review and any recommendations. The consortium is to take into account these recommendations and submit a revised implementation plan/ joint programme of activities if necessary.

3.2.3.2.3- Periodicity of submission for audit certificates

3.2.3.2.3.1- Specific provisions for Integrated Projects and Networks of Excellence

Each contractor of an Integrated Project (or a Network of Excellence) must provide an audit certificate for each reporting period mentioned in article 6 of the core-contract (second paragraph of article 7 of the core-contract (Option 1)²⁴⁵ and first sentence of the third paragraph of Article II.7²⁴⁶ of Annex II (General conditions) to the FP6 model contract).

“Joint programme of activities: means the description of the work to be carried out in order to implement the project as set out in Annex I. It consists of two parts:

- a detailed joint programme of activities: providing a detailed description of the work to be carried out over the eighteen-month period¹ covered by one reporting period as defined in Article 6 and the first six months of the following period;*
- an outline joint programme of activities: providing an outline description of the work to be undertaken throughout the duration of the project, including a nonconfidential action plan for the promotion of gender equality within the project.”*

²⁴³ It must be noted that, by definition, the final updated detailed joint programme of activities (submitted for the penultimate reporting period) may cover a shorter period, according to the periods defined in article 6 of the core-contract.

²⁴⁴ See 3.2.1.4.

²⁴⁵ FP6 model contract – Core-contract – Article 7 – second paragraph:

“[Option 1 : applicable to IPs and NoEs :Reports referred to in Article II.7.3 covering each period shall be submitted at the latest 45 days after the end of each reporting period]”

²⁴⁶ FP6 model contract – Annex II – Article II.7 – third paragraph – first sentence:

As is the case for the periodic reports, the coordinator of an Integrated project (or a Network of Excellence) must submit one (or several)²⁴⁷ audit certificates **for each contractor** to the Commission by electronic means and by mail²⁴⁸ within 45 calendar days following the end of each reporting period.

3.2.3.2.1.2- Specific provisions for other instruments

For other instruments, the timing of submission of an audit certificate per contractor is at the discretion of the Commission services (second paragraph of Article 7 of the core-contract (Option 2)²⁴⁹ and first sentence of the third paragraph of Article II.7²⁵⁰ of Annex II (General conditions) to the FP6 model contract) (except for those cases where the contractor requests more than €750,000 for the period).

The coordinator must submit, on behalf of the consortium, one (or several)²⁵¹ audit certificates for each contractor to the Commission by electronic means and by mail²⁵² within 45 calendar days following the end of each period mentioned in the second paragraph of Article 7 of the core-contract.

In this context:

- there must be at least one audit certificate per contractor covering the whole duration of the project provided at the last reporting period (indents (a) and (c) of Article 14 of the RP²⁵³) ;
- it is highly recommended to require an audit certificate from each contractor in at least two reporting periods for project duration that is equal to or more than 24 months.

The following **example** provides three possibilities for the second paragraph of Article 7 of the core contract for an identical STReP.

▪ **Hypothesis**

A STReP has a duration of 36 months.

The reporting periods in Article 6 of the core-contract are:

- | |
|---|
| <ul style="list-style-type: none"> - P1: from month 1 to month 12 - P2: from month 13 to month 24 |
|---|

“The consortium shall submit the audit certificates provided by each contractor in conformity with Article II.26 [Audit certificates] for each period for which the audit certificate is required.”

²⁴⁷ See 3.2.3.1.2.

²⁴⁸ See 3.2.1.4.

²⁴⁹ FP6 model contract – Core-contract – Article 7 – second paragraph:

“[Option 2 (applicable to other instruments): Reports referred to in Article II.7.3 shall be submitted at the latest 45 days after the end of the following periods:

- *P(x) covering reporting periods from P1 to P(x)*
- *P(y) covering reporting periods from P(x+1) to P(y)*
- *P(z) covering reporting periods from P(y+1) to P(z)*
- *P(last) covering reporting periods from P(n+1) to the last reporting period of the project “*

²⁵⁰ See footnote n°232.

²⁵¹ See 3.2.3.1.2.

²⁵² See 3.2.1.4.

²⁵³ See 1.2.2.2 and 1.2.2.3.

- P3: from month 25 to month 36

✓ Submission periods for audit certificates

❖ *Possibility n°1 for the second paragraph of article 7*

Reports referred to in Article II.7.3 shall be submitted at the latest 45 days after the end of the following periods:

- P1
- P2
- P3

In this case, an audit certificate per contractor is requested for each reporting period. Therefore, three audit certificates per contractor during the life of the project.

❖ *Possibility n°2 for the second paragraph of Article 7*

Reports referred to in Article II.7.3 shall be submitted at the latest 45 days after the end of the following periods:

- P1
- P3 covering reporting periods from P2 to P3

In this case, an audit certificate per contractor is requested:

- ◆ For the first reporting period (P1);
- ◆ And for the last reporting period (P3) covering both the second (P2) and the last reporting period (P3).

That is two audit certificates per contractor during the life of the project.

❖ *Possibility n°3 for the second paragraph of Article 7*

Reports referred to in Article II.7.3 shall be submitted at the latest 45 days after the end of the following periods:

- P2 covering reporting periods from P1 to P2
- P3

In this case, an audit certificate per contractor is requested:

- ◆ For the second reporting period (P2), covering both the first (P1) and the second reporting period (P2).

◆ For the last reporting period (P3)

That is two audit certificates per contractor.

3.2.3.2.4- Maximum reimbursement rates of eligible costs

3.2.3.2.4.1- Specific provisions for Networks of Excellence

- The eligible costs of a reporting period will be covered at 100% only if they are at least equal to the annual distribution of the grant specified in the joint programme of activities (in Annex I to the contract) (second indent of the second subparagraph of the second paragraph of Article III.2 of Annex III²⁵⁴ (Specific provisions) for the Networks of Excellence to the FP6 model contract).
- The total eligible costs incurred in implementing the joint programme of activities over the full duration of a Network of Excellence must exceed the maximum Community financial contribution mentioned in the second paragraph of article 5 of the core-contract (third subparagraph of the second paragraph of Article III.2²⁵⁵).

If this is not the case, the payment for the last scientific period is limited to 95% of the eligible costs incurred in that period.

3.2.3.2.4.2- Specific provisions for Specific Support Actions

“For Specific Support Actions, where the total eligible costs claimed are lower than the grant foreseen in the contract, the reimbursement rate shall be 95% of the eligible costs, without prejudice to the limitations per activity established in this Article.” (fourth paragraph of Article II.25 of Annex II (General conditions) to the FP6 model contract):

If the total eligible costs are inferior to the maximum Community financial contribution mentioned in the second paragraph of Article 5 of the core-contract, the Community financial contribution is equal to 95% of the total eligible costs and not to 100%.

²⁵⁴ FP6 model contract – Annex III for NoE – Article III.2 – second paragraph – second subparagraph – second indent:
“The Commission shall pay the Community financial contribution in respect of a completed period provided that the following conditions are fulfilled:
 (...)

- that eligible costs, calculated in accordance with Part B of Annex II, of at least the Community financial contribution for the completed period were incurred in implementing the joint programme of activities.”

²⁵⁵ FP6 model contract – Annex III for NoE – Article III.2 – second paragraph – third subparagraph:
“At the end of the project, the eligible costs incurred in implementing the joint programme of activities over the full duration of the project must exceed the grant for integration. If this is not the case, the payment for the last scientific period shall be limited to 95% of the eligible costs incurred in that period.”

3.2.3.3- Conditions for payment(s)

Taking into account all the relevant principles and specific provisions mentioned above, the conditions for payment of the grant are:

3.2.3.3.1- Grant for Integration

The Community financial contribution to Grants for Integration (only Networks of Excellence) is paid to the coordinator on behalf of the consortium as follows:

[To be provided by DG RTD – Unit A3 – JDM]

3.2.3.3.2- Grant to the Budget**3.2.3.3.2.1- Project with one single reporting period**

The Community financial contribution to Grants to the Budget with one single reporting period, is paid to the coordinator on behalf of the consortium as follows:

- **A single pre-financing is transmitted to the coordinator on behalf of the consortium within 45 calendar days** (indent (a) of the second paragraph of Article 8 of the core-contract of the FP6 model contract)²⁵⁶ following one of the below:
 - the date of entry into force of the contract, **or** ;
 - the date of the accession of the last contractor required to constitute the minimum number of participants established by the Rules for Participation, and as detailed in the call for proposals to which the project is related, **or**;
 - the last date of accession to the contract of all the contractors identified in Article 1.2 of the core-contract.

The choice of one of the above mentioned possibilities is at the discretion of the Commission services. The consortium will be informed during the negotiation phase.

The amount of the pre-financing is established during negotiations and is mentioned in indent (a) of the second paragraph of Article 8 of the core-contract of the FP6 model contract.

²⁵⁶ FP6 model contract – Core contract – Article 8 – second paragraph - Option A – indent (a):

“[amount of XXXX Euro] pre-financing up to [80% to 85%] of the estimated Community financial contribution indicated in the table of estimated breakdown of costs for this period in Annex I within 45 days following [the date of entry into force of the contract][the date of the accession of the last contractor required to constitute the minimum number of participants established by the Rules for Participation, and as detailed in the call for proposals to which the project is related][the last date of accession to the contract of all the contractors identified in Article 1.2]”.

This **pre-financing can not exceed 80%** (Article 182 of the IM²⁵⁷ especially paragraphs 2, 3 and 5) **of the Community financial contribution identified in the second paragraph of Article 5** of the core-contract of the FP6 model contract. However, this percentage may be exceeded, **subject to the assessment and acceptance of the authorising officer responsible for the project, and taking into account the type of legal entities involved in the consortium if:**

- **the contractor(s) has(ve) lodged a bank guarantee.**
- **the contract imposes an obligation of financial collective responsibility on the part of the contractors of a sufficient level²⁵⁸ to secure the protection of the Community financial interests.**

The **percentage and total amount of pre-financing is established during negotiations and is mentioned in indent (a) of the second paragraph of Article 8** of the core-contract of the FP6 model contract.

- The Community financial contribution is paid (indent (b) of the second paragraph of Article 8²⁵⁹, the first paragraph of Article 7²⁶⁰ and Article 6²⁶¹ of the core-contract and the first²⁶² paragraph of Article II.7 and Article II.8 of Annex II (General conditions) to the FP6 model contract) as followed:
 - the coordinator must submit to the Commission, on behalf of the consortium, by electronic means and by mail²⁶³ within 45 calendar days²⁶⁴ following the end of the single reporting period²⁶⁵ (mentioned in Article 6 of the core-contract) the following reports:
 - ✓ a **final activity report** covering all the work, objectives, results and conclusions, and the final plan for using and disseminating the knowledge, including a summary of all these aspects;
 - a **final management report** covering the full duration of the project including:

²⁵⁷ See footnote n°160.

²⁵⁸ For more information on the notion of sufficient level of financial collective responsibility of the contractors, see Part 4 of those guidelines ("Controls").

²⁵⁹ FP6 model contract – Core contract – Article 8 – second paragraph - Option A – indent (b):
"the outstanding balance shall be paid within 45 days following the approval by the Commission of the reports referred to in Article II.7.3 and 4. This payment shall be considered as final, subject to the results of any audit or review, which may be carried out pursuant to the provisions of Article II.29."

²⁶⁰ See footnote n°163.

²⁶¹ See footnote n°164.

²⁶² See footnote n°165.

²⁶³ See 3.2.1.4.

²⁶⁴ It must be noted that, as established in the second sentence of the third paragraph of article 7 of the core-contract of the FP6 model contract (except for actions to promote human resources and mobility):
"this delay may be increased by 45 days at the request of the consortium".

²⁶⁵ It must be noted that, as established in the third sentence of the third paragraph of article 7 of the core-contract of the FP6 model contract (except for actions to promote human resources and mobility):
"Where the work is completed before the end of the duration of the project, the related activity and financial reports shall cover the period up to that date."

- ❖ a **justification of the resources deployed** by each contractor, linking them to activities implemented and justifying their necessity;
- ❖ the **Forms C (Financial statement per activity)** set out in Annex VI to the contract, **provided by each contractor** for that single period;
- ❖ the **audit certificates** attached to each Form C;
- ❖ a **summary financial report** consolidating the claimed costs of all the contractors in an aggregate form covering the entire duration of the project, and based on the information provided in Form C by each contractor
- ✓ any **supplementary final reports** required by any Annex of the contract, especially by the technical Annex (Annex I)
- ✓ a **report on the distribution of the Community financial contribution between contractors** made during that single reporting period.
- The Commission evaluates the reports submitted by the consortium in accordance with the provisions of the contract and especially Article II.8 of Annex II (General conditions) to the FP6 model contract.
This evaluation will normally be completed within 45 calendar days following the receipt²⁶⁶ of the requested reports. However, the Commission services may continue to review the reports during the period up to 90 days after receipt²⁶⁷.
- If the reports are approved, the payment of the Community financial contribution is paid in accordance with the rules for payments of Grants which reimburse eligible costs (including any specific provisions) according to the type of instrument concerned²⁶⁸.

Therefore:

- ✓ all or part of the pre-financing is requalified as a definitive payment (final payment) ;
- ✓ and, where appropriate and justified, the outstanding balance (the difference between the Community financial contribution to accepted costs and the pre-financing received (taking into account any interests yielded by the pre-financing declared by the coordinator in its Form C) shall be paid to the coordinator, on behalf of the consortium, within 45 calendar days following this approval²⁶⁹.

²⁶⁶ The date of the receipt is established by the date of reception of the originals of the reports sent to the physical address of the Commission provided in article 11.1 of the core-contract of the FP6 model contract (except for actions to promote human resources and mobility). See also 3.2.1.4.

²⁶⁷ FP6 model contract – Annex II – Article II.8 – third paragraph – first sentence:
“*The Commission undertakes to evaluate all other reports submitted within 45 days of receipt thereof.*”

²⁶⁸ See especially 3.2.3.1.

²⁶⁹ It must be noted that from the date of reception of the requested reports to the date of the payment of the outstanding balance, there is a maximum delay of 90 calendar days (except in relevant case of suspension). Therefore, even if the delay for approval is exceeded, the total delay of 90 calendar days must be respected (it means a corresponding reduction of the delay for the payment).

The payment of the Community financial contribution is considered as final, subject to the results of any audit or review which may be carried out up to five years after the end of the project²⁷⁰.

- Within 60 calendar days after receipt of the outstanding balance, the coordinator must submit to the Commission **a report on the distribution of the Community financial contribution between contractors** (indent (d) of the fourth paragraph of Article II.7 of Annex II (General conditions) to the FP6 model contract)²⁷¹.

3.2.3.3.2.2- Project with several reporting periods

The Community financial contribution to a Grant to the Budget with several reporting periods is paid to the coordinator, on behalf of the consortium, as follows:

[To be provided by DG RTD – Unit A3 – JDM]

3.2.3.4- Examples

3.2.3.4.1- Example 1 (level of complexity : low)

[To be provided by DG RTD – Unit A3 – JDM]

3.2.3.4.2- Example 2 (level of complexity : medium)

[To be provided by DG RTD – Unit A3 – JDM]

3.2.3.4.3- Example 3 (level of complexity : high)

[To be provided by DG RTD – Unit A3 – JDM]

3.2.4- Additional information relating to the payments (including pre-financing) of the Community financial contribution

²⁷⁰ FP6 model contract – Annex II – Article II.29 – first paragraph – first sentence:

“The Commission may, at any time during the contract and up to five years after the end of the project, arrange for audits to be carried out, either by outside scientific or technological reviewers or auditors, or by the Commission departments themselves including OLAF.”

²⁷¹ FP6 model contract – Annex II – Article II.7 – fourth paragraph – indent (d):

“a report on the distribution between contractors made after the end of the project of the Community financial contribution, which shall be submitted 60 days after receipt of the final tranche of the Community financial contribution to the consortium.”

3.2.4.1- Possibility of suspension

- The deadline for payment²⁷² (established in Article 8 of the core-contract), may be suspended by notification of the consortium (eight paragraph of Article II.28 of Annex II (General conditions) to the FP6 model contract) that one (or several) financial statement(s) per activity is(are) not acceptable²⁷³.

In this case, the payment delay is suspended until the date of reception of a corrected or revised financial statement per activity.

The Commission may suspend its payments at any time in the case of any contractor(s) failure to respect any contractual provision, particularly regarding the audit and control provisions in Article II.29 of Annex II. In such case, the Commission shall notify the contractor(s) directly by means of registered letter with acknowledgement of receipt²⁷⁴.

The Commission may suspend its payments at any time where there is a suspicion of irregularity committed by one or more contractor(s) in the performance of the contract. Only the portion of the payment destined for the contractor(s) suspected of irregularity will be suspended. The Commission shall notify the contractor(s) of the justification for the suspension of payment directly by means of registered letter with acknowledgement of receipt²⁷⁵.

- In addition, if a Network of Excellence project fails an annual review (Article III.6 of Annex III (Specific provisions) to the FP6 model contract), the Commission services may propose to the consortium to continue the project for a further period of twelve months on the basis of the consortium's proposed joint programme of activities, but without further pre-financing and without any finalisation of payment of the Community financial contribution in respect of the previous period.

At the end of this further period, the Commission shall arrange a new review:

- if the project passes this review, the Commission shall pay the Community financial contribution for both previous periods and the contract will continue as if the suspension of pre-financing had not taken place;
- if the project again fails this review, the Commission shall terminate the contract.

²⁷² The payment must be made within 90 calendar days after the date of reception of the periodic or final reports, providing that those reports are complete.

²⁷³ FP6 model contract – Annex II – Article II.28 – eight paragraph – first subparagraph:
“The periods identified in Article 8 regarding the delays for payment may be suspended by the Commission at any time by notification of the coordinator that the financial statement is not acceptable, either because it does not conform to the requirements of the contract or because it is not in conformity with the activity reports submitted for approval to the Commission. The delay for approval of the financial statement will be suspended until the submission of the corrected or revised version as requested and the balance of the delay for approval will start again upon receipt by the Commission of this information.”

²⁷⁴ FP6 model contract – Annex II – Article II.28 – eight paragraph – second subparagraph.

²⁷⁵ FP6 model contract – Annex II – Article II.28 – eight paragraph – third subparagraph.

3.2.4.2- Interests to be paid by the Commission in case of late payment

In the event of late payment by the Commission²⁷⁶ the contractor(s) may claim interest, within two months of receipt of the payment (seventh paragraph of Article II.28 of Annex II (General conditions) to the FP6 model contract).

Interest shall be calculated at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, plus three and a half percentage points.

Interest shall be payable for the time elapsed between expiry of the payment deadline and the date of payment.

Date of payment is the date upon which the Commission's account is debited.

Any such interest payment is **not** considered as part of the financial contribution of the Community (established in the second paragraph of Article 5 of the core-contract).

²⁷⁶ The payment must be made within 90 calendar days after the date of reception of the periodic or final reports, providing that those reports are complete.

4- CONTROLS

Two kinds of controls may be distinguished:

- **Ex-ante controls** (before the signature of the contract) ;
- **Ex-post controls** (during and after the implementation of the project)

4.1- EX-ANTE CONTROLS²⁷⁷

The purpose of ex-ante financial controls is to verify the financial capacity of the participants²⁷⁸.

4.1.1- General principles

- In general, for any instrument in which they are involved, the financial capacity of public bodies²⁷⁹ (including international organisations) does not have to be verified.
- For any other type of legal entity, the verification of its financial capacity (first, third and fifth indents of the fourth paragraph of Article 173 of the IM²⁸⁰, the second and third paragraphs and the first indent of the fourth paragraph of Article 176 of the IM²⁸¹, Article 182 of the IM²⁸² and

²⁷⁷ For exhaustive information please consult the FP6 Negotiation Guidelines.

²⁷⁸ The tools necessary to establish the financial capacity of a contractor are designed in the FP6 Negotiation Guidelines.

²⁷⁹ See footnote n°202.

²⁸⁰ IM: Part one – Title VI – Article 173 – fourth paragraph – first indent:

“For actions where the cost to be financed exceeds EUR 300 000 and for operating grants of over EUR 75 000, the application shall be accompanied by an external audit report produced by an approved auditor. That report shall certify the accounts for the last financial year available and give an assessment of the financial viability of the applicant within the meaning of Article 176(2).”

IM: Part one – Title VI – Article 173 – fourth paragraph – third indent:

“In the case of agreements linking the Commission and a number of beneficiaries, those thresholds shall apply to each beneficiary.”

IM: Part one – Title VI – Article 173 – fourth paragraph – fifth indent:

“The authorising officer responsible may, depending on his analysis of management risks, waive that obligation for public bodies, secondary and higher education establishments, the international organisations referred to in Article 43, and beneficiaries who have accepted joint and several liability in the case of agreements with a number of beneficiaries. required to complete the proposed action or work programme unless specifically provided otherwise in the basic act.”

²⁸¹ IM: Part one – Title VI – Article 176 – second paragraph:

“The applicant must have stable and sufficient sources of funding to maintain his activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. The applicant must have the professional competencies and qualifications required to complete the proposed action or work programme unless specifically provided otherwise in the basic act.”

IM: Part one – Title VI – Article 176 – third paragraph:

“Financial and operational capacity shall be verified in particular on the basis of an analysis of the supporting documents referred to in Article 173.”

IM: Part one – Title VI – Article 176 – fourth paragraph – first indent:

“The verification of financial capacity shall not apply to natural persons in receipt of scholarships nor to public bodies, nor to the international organisations referred to in Article 43.”

²⁸² See footnote n°160.

the second and third paragraphs of Article 13 of the RP²⁸³ and Article II.18 of Annex II (General conditions) to the FP6 model contract and provided that the contractor concerned is not in one of the situations listed in the first paragraph of article 93 of the FR)²⁸⁴ depends on the following factors:

- For instruments without financial collective responsibility of the contractors²⁸⁵ or with financial collective responsibility of the contractors but at a level that is insufficient to cover the full protection of the Community financial interest²⁸⁶:
 - ✓ financial verification is an obligation where the Community financial contribution to the estimated eligible costs of a contractor is superior to €300.000;
 - ✓ financial verification is strongly recommended for projects with several contractors where the average per contractor of the maximum Community financial contribution (mentioned in the second paragraph of Article 5 of the core-contract), is greater than €300.000;
 - ✓ financial verification is at the discretion of the Commission authorising officer, depending on his or her analysis of management risks, where the Community financial contribution to a contractor is less than €300.000;

However, in this last case, it is strongly recommended to verify the financial capacity of the coordinator.

Depending on the outcome of the financial check, a bank guarantee (or any other financial security) may be requested from a contractor.

In any event, a bank guarantee **must** be requested where the pre-financing received by a contractor (or several contractors) is more than 80% of the maximum Community financial contribution (mentioned in Article 5.2 of the core-contract). This is an obligation even though the results of the verification of its financial capacity are positive.

²⁸³ RP: Article 13 – second paragraph:

“Technical implementation of the indirect action shall be the collective responsibility of the participants. Each participant shall also be liable for the use of the Community financial contribution in proportion to his share of the project up to a maximum of the total payments he has received:

Should a participant breach the contract and should the consortium not make good this breach, the Commission may, as a last resort and if all other approaches have been explored, hold the participants liable under the following conditions:

(a) Independently of the appropriate action it shall take against the defaulting participant, the Commission shall require the remaining participants to implement the indirect action.

(b) Should implementation be impossible or should the remaining participants refuse to comply with subparagraph (a), the Commission may terminate the contract and recover the Community financial contribution. When investigating the financial disadvantage, the Commission shall take into account the work already undertaken and results obtained, thereby establishing the debt.

(c) As regards the part of the debt established in accordance with subparagraph (b) that is owed by the defaulting participant, the Commission shall distribute it among the remaining participants, on the basis of each participant's share of the expenses accepted and up to the amount of the Community financial contribution each participant is entitled to receive.

Where a participant is an international organisation, a public body or a legal entity whose participation in the indirect action is guaranteed by a Member State or an associated State, that participant shall be solely responsible for its own debt and shall not bear the debt of any other participant.”

RP: Article 13 – third paragraph:

“Paragraph 2 shall not apply to indirect actions implemented by means of instruments such as specific research projects for SMEs, actions to promote and develop human resources and mobility and, when duly justified, specific support actions.”

²⁸⁴ For more information, see the FP6 Negotiation Guidelines.

²⁸⁵ In addition to Actions to promote human resources and mobility, it concerns Specific Research Projects for SMEs (Cooperative and collective research) and some Specific Support Actions (when duly justified).

²⁸⁶ See 4.1.2.

- For instruments with a financial collective responsibility of the contractors of a sufficient level financial verification:
 - ✓ is not necessary for all the contractors but must be carried out for the coordinator.

4.1.2- The notion of insufficient financial collective responsibility of the contractors

The level of financial collective responsibility of the contractors is considered as insufficient in the following cases:

- All the contractors except one meet the definition of a public body²⁸⁷;
- There are several contractors (two or more) in the consortium that are not public bodies, and the requested Community financial contribution of one of them (as established in the table of estimated breakdown of eligible costs per activities and per contractors provided in Annex I to the contract), is greater than 50% of the requested Community financial contribution for all of them.

In all other cases, the level of financial collective responsibility of the contractors should be considered as sufficient.

The amount of the potential financial guarantee to be requested from the participant whose requested Community financial contribution is more than 50% of the requested Community financial contribution of participants that are not public bodies, is calculated as follows:

Amount of the requested Community financial contribution of the participant which is more than 50% of the requested Community financial contribution of those participants that are not public bodies – Sum of the amounts of requested Community financial contribution of other participants that are not public bodies.

Example:

In an Integrated Infrastructures Initiative, a consortium is composed of 5 independent legal entities established in 3 Members states and in 2 Associated Candidate Countries.

Two of them meet the definition of a public body.

The table of estimated breakdown of eligible costs per activity and per contractor provided in Annex I to the contract indicates that the requested Community financial contribution for the three contractors that are not public bodies is as follows:

²⁸⁷ See footnote n°208.

	Legal Entity A	Legal Entity B	Legal Entity C	Total A + B + C
Requested Community financial contribution (Amount)	1.500.000	800.000	500.000	2.800.000
Breakdown of Requested Community financial contribution (In %)	53,57%	28,57%	17,86%	100,00%

Therefore, if necessary following the financial capacity check, the potential financial guarantee to be requested from legal entity A is equal to:

$$1.500.000 - (800.000 + 500.000) = \text{€}200.000.$$

4.2- EX-POST CONTROLS

4.2.1- Regular controls during the implementation of the project

In addition to the above mentioned periodic/final reports and reviews established by the contract, the Commission services may:

- organise additional reviews;
- use independent external experts to assist them²⁸⁸;
- request additional information from the contractors relating to submitted reports and/or to the current implementation of the project.

4.2.2- Audits

- The Commission may, at any time during the contract, and up to five years after the end of the project, arrange for audits to be carried out (Article II.29 of Annex II (General conditions) of the FP6 model contract);

²⁸⁸ This provision is specifically mentioned for Networks of Excellence and Integrated Projects under indent b) of the second paragraph of article 11 of the RP:

“The Commission shall appoint the independent experts in accordance with one of the following procedures:

(...)

“(b) The independent experts appointed by the Commission to assist in the evaluation of proposals for networks of excellence and integrated projects and in the monitoring of the projects selected and carried out shall be individuals from the fields of science, industry and/or with experience in the field of innovation and also with the highest level of knowledge and who are internationally recognised authorities in the relevant specialist area”.

It must be noted that, if therefore the public procurement route for the selection of independent external experts for the monitoring and follow-up of IP and NoE is not to be used, public procurements procedures must be used for the selection of independent external experts for the monitoring and follow-up of any other type of FP6 instruments (STReP, I³, CRAFT, CA, SSA, ...).

- Any contractor in an FP6 indirect action may be subject to audits carried out by the Commission, an agent appointed by it, or the European Court of Auditors²⁸⁹.
- Some international organisations²⁹⁰, according to their statutes, can not be subjected to financial audits carried out by the Commission or its duly authorised representatives.

Even though the Commission may arrange for a financial audit of the participation of such an international organisation in an FP6 project, such an audit would be carried out by the internal auditors of that international organisation. This is covered by the provisions of a special clause (n° ...²⁹¹) inserted into each contract in which such an international organisation participates.

4.2.2.1- Purpose of the audit

- Audits are always carried out on a confidential basis and may cover:
 - scientific aspects;
 - technological aspects;
 - ethical aspects;
 - **financial aspects** (relating to costs);
 - **any other aspects (such as financial accounting and management principles)**, relating to the proper implementation of the project and the contract concerned.

- In addition, in order to protect the European Communities' financial interests against fraud and other irregularities, the Commission may carry out on-the-spot checks and inspections in accordance with:
 - 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 irregularities²⁹²;
 - Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)²⁹³;

²⁸⁹ Without prejudice of the European Court of Auditors own rules.

²⁹⁰ RP – Article 2 – Paragraph 11:

“International organisation means any legal entity arising from an association of States, other than the Community, established on the basis of a treaty or similar act, having common institutions and an international legal personality distinct from that of its Member States”

²⁹¹ Special clause n° ...:

TO BE PROVIDED

²⁹² [OJ L292, 15.11.1996, p. 2].

²⁹³ [OJ L136, 31.05.1999].

- Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)²⁹⁴.
- As a general rule, at least one contractor of each Network of Excellence and each Integrated Project will be subject to an audit during the auditing period covered by the contract.

4.2.2.2- Auditors

Audits may be carried out by:

- the Commission:
 - by its own departments (including OLAF);
 - by any of its duly authorised representatives²⁹⁵.
- the European Court of Auditors:
 - by its own departments;
 - by any of its duly authorised representatives.

4.2.2.3- Contractors' rights and obligations

- Any contractor subject to a scientific or technical audit has the right to refuse a scientific or technological auditor proposed as a duly authorised representative of the Commission on grounds of commercial confidentiality.
- In order to permit a complete, true and fair verification that the project and the contract is (has been) properly managed and performed, contractors are required to:
 - ensure that the Commission's departments, and/or any of its duly authorised representatives, have on the spot access to the contractor's offices or premises where the project is being carried out, at all reasonable times, and to all the information needed to carry out those audits;
 - keep the original or, in exceptional cases, duly substantiated, authenticated copies, of all documents relating to the contract for up to five years after the end of the project. These shall be put at the Commission's disposal where requested during any audit under the contract;
 - make available directly to the Commission all the detailed data that it may be requested.
 - ensure that the rights of the Commission and the European Court of Auditors to carry out audits are extended to the right to carry out any such

²⁹⁴ [OJ L136, 31.05.1999].

²⁹⁵ Auditors appointed by the Commission will also have additional guidelines (FP6 Audit Guidelines – Internal document).

audit or control on any subcontractor or third party whose costs are reimbursed in full or in part by the Community financial contribution, on the same terms and conditions.

4.2.2.4- Consequences of an audit

Any amounts due to the Commission as a result of the findings of an audit may be the subject of a recovery (under the terms of Article II.31 of Annex II (General conditions) of the FP6 model contract) and as explained in Part 5 of these guidelines.

In addition, potential sanctions may be applied.

DRAFT

5- RECOVERIES AND SANCTIONS

5.1- REIMBURSEMENT TO THE COMMISSION

Any amount unduly paid by the Commission to a contractor shall be reimbursed to the Commission according to the terms and date specified by it (first paragraph of Article II.31 of Annex II (General conditions) to the FP6 model contract)²⁹⁶.

5.1.1- Main cases

This situation may occur where:

Example n°1:

- the total pre-financing is greater than the total accepted Community financial contribution at the end of a project;

According to the final reports submitted by the consortium of a Coordination Action with a single reporting period, the total accepted eligible costs (where there are no receipts of the project and no interest yielded by the pre-financing) are €750.000.

However, the amount of the pre-financing transmitted to the consortium, 45 calendar days following the date of entry into force of the contract, was €800.000 (80% of the maximum Community financial contribution mentioned in Article 5.2 of the core-contract: €1.000.000).

Therefore, the outstanding balance is negative ($€750.000 - €800.000 = €-50.000$) and the consortium must repay €50.000 to the Commission.

Example n°2:

- a contractor has overstated expenditure and has consequently received an unjustified financial contribution from the Community;

Two years after the end of an Integrated Project, a contractor using the FC model is the subject of a financial audit.

The findings of the audit highlight that this contractor has:

- overstated its eligible costs relating to its involvement in research and technological development or innovation activities;
- not declared a substantial amount of receipts relating to its eligible costs for research and technological development or innovation activities.

²⁹⁶ FP6 model contract – Annex II – article II.31 – first paragraph:

“If any amount is unduly paid to the contractor or if recovery is justified under the terms of the agreement, the contractor undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.”

The following table presents the findings of this audit:

	As declared by the contractor (A)	As noted by the Commission's audit (B)	Difference (A) - (B) (*)
	Research and technological development or innovation activities	Research and technological development or innovation activities	Research and technological development or innovation activities
Eligible costs	1.254.030	1.150.000	104.030
Receipts	0	750.000	-750.000
Requested Community financial contribution	627.015	400.000	227.015

(*) :

if (A) - (B) > 0, Overstatement

if (A) - (B) = 0, OK

if (A) - (B) < 0, Potential payment from the Commission to the contractor

Therefore, taking into account an overstatement of eligible costs equal to €104.030, the non-declaration of an amount of receipts equal to €750.000 and the fact that this contractor has received a total financial contribution equal to €627.015, the Community financial contribution is recalculated as follows:

50% of eligible costs, within the limit of the difference between eligible costs and receipts = $\frac{€1.150.000}{2} \times 50\%$ (€575.000) within the limit of $€1.150.000 - 750.000$ (400.000) = €400.000.

Consequently, this contractor was entitled to receive only €400,000 rather than €627.015, and must repay €227.015 (€627.015 – 400.000) to the Commission, without prejudice to any additional sanctions.

5.1.2- General procedures²⁹⁷

A defaulting contractor has up to 30 calendar days after the effective date of termination of its participation to provide the Commission with:

- the periodic (or final) reports requested by the contract, relating to the work it has performed:
 - either from the beginning of the project up to the effective date of the termination of its participation;
 - or for the period covered since the last periodic reports approved by the Commission up to the effective date of the termination of its participation.
- an audit certificate²⁹⁸ for the costs it has incurred:
 - either from the beginning of the project up to the effective date of the termination of its participation;
 - or for the period after the last approved audit certificate.

²⁹⁷ It is recalled to the Commission services that only a part of the procedures are presented in these guidelines. However, they must apply the complete relevant procedures, especially according to articles 70 to 74 of the FR and articles 77 to 89 of the IM.

²⁹⁸ Except in the case of an SSA supported through a lump sum grant.

In the absence of receipt of such documents within the delays, the Commission shall consider that the defaulting contractor for the period(s) concerned incurred no costs and that by consequence no payment can be made for these periods.

The consortium has up to 30 calendar days after the effective date of termination of the defaulting contractor's participation to provide the Commission with information on the share of the contribution that was effectively transferred to the defaulting contractor since the beginning of the project.

In the absence of receipt of such information within the deadline, the Commission shall consider that the defaulting contractor owes no money to the Commission and that the Community financial contribution already paid is still at the disposal of the consortium and under its responsibility.

Based on documents and information mentioned above, the Commission establishes the debt owed by the defaulting contractor.

Therefore the Commission shall take one of the two actions below:

- either request the defaulting contractor (with a copy to the coordinator acting on behalf of the consortium) to transfer to the consortium the amount owed to the Commission within 30 calendar days.

In this case, the coordinator (on behalf of the consortium) shall inform the Commission at the latest 10 calendar days after the end of this delay if the amount was transferred to it.

If the contractor does not comply with this requirement, the Commission shall establish a recovery order for any amounts due by the contractor.

- **or** issue a recovery order (see infra);

For any amount unduly paid by the Commission to a contractor (as required by Article 71 of the FR)²⁹⁹:

- a **recovery order** to the Commission accounting officer must be established
- followed by a **debit note** sent to the contractor

both drawn up by the Commission authorising officer responsible.

²⁹⁹ FR: Part one – Title IV – Chapter 5 – Section 3 - Article 71:

“1. Establishment of an amount receivable is the act by which the authorising officer by delegation or subdelegation:

(a) verifies that the debt exists;

(b) determines or verifies the reality and the amount of the debt;

(c) verifies the conditions in which the debt is due.

2. The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.

3. Amounts wrongly paid shall be recovered.

4. The conditions in which interest on late payment is due to the Communities shall be laid down in the implementing rules.”

5.1.2.1- Establishment of the recovery order

A **recovery order** shall specify (first paragraph of Article 72 of the FR³⁰⁰, and as mentioned in Article 81 of the IM, for any amount unduly paid by the Commission to a contractor) :

- the financial year to which the revenue is to be booked;
- the references of the act or legal commitment which is the source of the debt and gives rise to the entitlement to recovery;
- the budget article and any other subdivision that may apply, including, where appropriate, the references of the corresponding budget commitment;
- the amount to be recovered, expressed in Euro;
- the name and address of the debtor (the contractor);
- the due date; and
- the possible method of recovery, including in particular recovery by offsetting or enforcement of any guarantee lodged (see infra).

The recovery order shall be dated and signed by the responsible Commission authorising officer, and is then sent to the Commission accounting officer.

5.1.2.2- Debit note

In accordance with Article 78 of the IM, in addition to a recovery order, a debit note must be established.

The Commission accounting officer sends the debit note to the debtor (the contractor) with a copy to the Commission accounting officer. The debit note shall inform the contractor that:

- the Communities have established the amount receivable;
- payment of the debt to the Communities is due on a certain date (“the due date”);
- failing payment by the due date, the debt shall bear interest at the rate referred to in Article 86 of the IM³⁰¹, without prejudice to any specific regulations applicable;
- wherever possible the institution shall effect recovery by offsetting against any other debt owed to that debtor, after the debtor (the contractor) has been informed;

³⁰⁰ FR: Part one – Title IV – Chapter 5 – Section 4 - Article 72 – first paragraph:

“The authorisation of recovery is the act whereby the authorising officer by delegation or subdelegation responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he/she has established.”

³⁰¹ IM: Part one – Title IV – Chapter 5 – Section 5 – Article 86 – second paragraph:

“The interest rate for amounts receivable not repaid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, increased by:

(a) seven percentage points where the obligating event is a public supply and service contract referred to in Title V;

(b) three and a half percentage points in all other cases.”

- failing payment by the due date the institution shall effect recovery by enforcement of any guarantee lodged in advance;
- if, after all those steps have been taken, if the amount has not been recovered in full, the Community shall effect recovery by enforcement of a decision secured either in accordance with Article 72(2) of the Financial Regulation or by legal action.

The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. He/She shall exercise due diligence to ensure that the Communities receive their revenue and shall see that their rights are safeguarded. (first paragraph of Article 73 of the FR)

The Commission informs the contractor in writing of its claim for reimbursement by means of a registered letter with acknowledgement of receipt.

The contractor has a period of **30 calendar days** to answer the Community's claim.

5.1.3- Default interest in case of late reimbursement

- If the contractor fails to pay by the due date set by the Commission, **the sum due shall bear interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, plus 3,5 (three and a half) percentage points** (in accordance with Article 86 of the IM and the second paragraph of Article II.31 of Annex II (General conditions) to the FP6 model contract);
- Interest on late payment shall **cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive;**
- Any partial payment **shall first be entered against charges and interest on late payment** and then against the principal.

5.1.4- Forms of the recovery

The forms of recovery may be the following:

- Either the contractor **reimburses the debt by means of (or several) payment(s) to the Commission;**
- Or, by **offsetting the sum owed to the Commission against any sums owed to the contractor** (in accordance with the second indent of the first paragraph of Article 73 of the FR³⁰²)

³⁰² FR: Part one – Title IV – Chapter 5 – Section 5 - Article 73 – first paragraph – second indent:

“The accounting officer shall recover amounts by offsetting them against equivalent claims that the Communities have on any debtor who himself/herself has a claim on the Communities that is certain, of a fixed amount and due.”

and Article 83 of the IM³⁰³), as mentioned in the third paragraph of Article II.31 of Annex II (General conditions) to the FP6 model contract.

In case of recovery by offsetting, it is important to highlight that the contractor must be informed but its prior consent is not required.

If the full amount of the debt has not been recovered by the due date specified in the debit note, including by the use of recovery by offsetting (Article 84 of the IM³⁰⁴ and the second paragraph of Article 72 of the FR³⁰⁵, and as mentioned in the third and fifth paragraphs of Article II.31 of Annex II (General conditions) to the FP6 model contract) :

- the Commission **calls any financial guarantee lodged by the contractor, if applicable;**

The contractor's prior consent is not required.

- if it is impossible to recover from the financial guarantee or it does not exist or if after calling the financial security the full amount of the debt has not been recovered, the **Commission enforces a recovery decision. The recovery decision is secured:**

- **either by legal action;**
- **or in accordance with the meaning of Article 256 of EC Treaty³⁰⁶.**

5.1.5- Additional provisions

- **Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the contractor** (fourth paragraph of Article II.31 of Annex II (General conditions) to the FP6 model contract).
- In accordance with Article 85 of the IM, the Commission accounting officer, in collaboration with the Commission authorising officer responsible, may allow **additional time for reimbursement** only at the written request of the contractor, with due indication of the reasons, and **provided that the following two conditions are fulfilled:**

³⁰³ IM: Part one – Title IV – Chapter 5 – Section 5 – Article 83:

“At any point in the procedure the accounting officer shall, after informing the authorising officer responsible and the debtor, recover established amounts receivable by offsetting in cases where the debtor also has a claim on the Communities that is certain, of a fixed amount and due relating to a sum established by a payment order.”

³⁰⁴ IM: Part one – Title IV – Chapter 5 – Section 5 – Article 84:

*“1. Without prejudice to Article 83, if the full amount has not been recovered by the due date specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.
2. Without prejudice to Article 83, where the recovery method referred to in paragraph 1 cannot be used and the debtor has failed to pay in response to the letter of formal notice sent by the accounting officer, the accounting officer shall enforce a recovery decision secured either in accordance with Article 72(2) of the Financial Regulation or by legal action.”*

³⁰⁵ FR: Part one – Title IV – Chapter 5 – Section 4 - Article 72 – second paragraph:

“The institution may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 256 of the EC Treaty.”

³⁰⁶ This provision is also mentioned in the fourth paragraph of article 12 of the RP:

“The conclusion of a contract shall not affect the right of the Commission to adopt a recovery decision, enforceable in accordance with Article 256 of the Treaty, to obtain reimbursement of an amount due from a participant. Before adopting a decision of this kind, the Commission shall ask for the participant's comments to be submitted before a specified date.”

- the contractor undertakes to pay interest at the rate specified in the seventh paragraph of Article II.28 of Annex II (General conditions) to the FP6 model contract for the entire additional period allowed, starting from the date on which the payment was originally due;
 - and
 - in order to safeguard the Community's rights, the contractor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the institution's accounting officer.
- This guarantee may be replaced by a joint and several guarantee by a third party approved by the institution's accounting officer.

5.2- SANCTIONS

5.2.1- Liquidated damages

The Community, with the aim of protecting its financial interests, is entitled to claim liquidated damages from a contractor who is found to have overstated expenditure and who has consequently received an unjustified financial contribution from the Community (Article II.30 of Annex II (General conditions) to the FP6 model contract).

5.2.1.1- Calculation of liquidated damages

The **amount of liquidated damages** is calculated according to the following formula:

$$\text{Liquidated damages} = \text{unjustified financial contribution} \times (\text{overstated expenditure} / \text{total claimed})$$

In the vast majority of cases, **the meaning of overstated expenditure in the above formula is unjustified financial contribution.**

In addition, **the calculation of any liquidated damages shall only take into consideration the period relating to the contractor's claim for the Community contribution for that period** (last indent of the first paragraph of Article II.30 of Annex II (General conditions) to the FP6 model contract). **It is not calculated in relation to the entire Community contribution.**

Example:

The Commission is entitled to claim an amount of liquidated damages from the contractor mentioned in example n°2 of point 5.1.1 of these guidelines who was found to have overstated expenditure and who had consequently received an unjustified financial contribution of the Community equal to €227.015.

The amount of these liquidated damages is equal to:

$$€227.015 \times (227.015 / 1.254.030) = \text{€}41.096,15$$

5.2.1.2- Modalities

- If applicable, liquidated damages are due **in addition** to the recovery of any unjustified financial contribution from the contractor.

Example:

If the provision relating to liquidated damages is applied to the contractor mentioned in example n°2 of point 5.1.1 of these guidelines who was found to have overstated expenditure and who had consequently received an unjustified financial contribution of the Community equal to €227.015, that contractor would have to reimburse to the Commission the total amount of:

- Unjustified financial contribution (a): €227.015
 - Liquidated damages (b): €41.096,15
 - Total amount (a) + (b): **€268.111,15**
- **The Commission informs the contractor** in writing of its claim for repayment of unjustified financial contribution and for payment of liquidated damages **by means of a registered letter with acknowledgement of receipt.**
The contractor has **30 calendar days to answer the Community's claim.**
 - The procedure for payment of liquidated damages is the same as those concerning the reimbursement of unjustified financial contribution³⁰⁷, including the implementation of provisions relating to default interest in case of late payment.

5.2.2- Financial penalties

In addition to liquidated damages, any contractor declared to be in grave breach of its contractual obligations shall be liable to financial penalties (the fourth and fifth indents of the first paragraph of Article 133 of the IM³⁰⁸ and as mentioned in the sixth paragraph of Article II.30 of Annex II (General conditions) to the FP6 model contract) of:

- **between 2% and 10% of the value of the Community financial contribution received by that contractor;**

³⁰⁷ See 5.1.

³⁰⁸ IM: Part One – Title V – Chapter 1 – Section 3 – Article 133 – paragraph 1 – fourth and fifth indents:
*“Contractors who have been found to have seriously failed to meet their contractual obligations shall receive financial penalties representing 2 % to 10 % of the total value of the contract in question.
 That rate may be increased to 4 % to 20 % in the event of a repeat offence within five years of the first infringement.”*

- **between 4% and 20% of the value of the Community financial contribution received by that contractor in the event of a repeated breach in the five years following the first breach..**

Example:

The contractor mentioned in example n°2 of point 5.1.1 of these guidelines may be subject to such financial penalties.

According to the report(s) on the distribution of the Community financial contribution between contractors provided to the Commission by the coordinator on behalf of the consortium, it is evident that **this contractor has received a Community financial contribution equal to €700.000³⁰⁹**.

According to the Commission recordings, it is the **first grave breach** of its contractual obligations in actions supported by the Commission since five years.

Therefore this contractor may be the object of **financial penalties between €14.000 and €70.000**.

The same provision applies also for contractors who have been guilty of making false declarations (the third indent of the first paragraph of Article 133 of the IM³¹⁰ and the fifth paragraph of Article II.30 of Annex II (General conditions) to the FP6 model contract).

5.2.3- Exclusion – irregularity

- **Any participant who has committed an irregularity in the implementation of an FP6 indirect action may lose all its rights to submit a proposal in the FP6** (second subparagraph of the fifth paragraph of Article 10 of the RP³¹¹).

Irregularity means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a legal entity which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it through unjustified expenditure³¹².

In such case, the principle of proportionality must be applied.

Therefore, according to the level of the irregularity noted, either a part of the legal entity concerned (a service, a centre, a department, a direction, ...) or the whole legal entity may be excluded.

³⁰⁹ It is recalled that the Community financial contribution is allocated among contractors according to the decisions taken by the consortium.

³¹⁰ IM: Part One – Title V – Chapter 1 – Section 3 – Article 133 – paragraph 1 – third indent:

“Tenderers or candidates who have been guilty of making false declarations shall also receive financial penalties representing 2 % to 10 % of the total value of the contract being awarded.”

³¹¹ RP: Article 10 – fifth paragraph – second subparagraph:

“Any participant who has committed an irregularity in the implementation of an indirect action may be excluded from the evaluation and selection procedure at any time, due regard being had to the principle of proportionality.”

³¹² As mentioned in indent 20 of article 2 of the RP.

- In addition:

*2. The Commission may immediately terminate the participation of a contractor:
a) where the contractor has deliberately or through negligence committed an irregularity in the performance of any contract with the Commission.* (second paragraph of Article 16 of Annex II (General conditions) to the FP6 model contract)

Therefore, **in case of an irregularity, a contractor may be excluded not only from the contract where the irregularity has been noted or occurred, but also from all other contracts with the Commission, in which it is involved.**

5.2.4- Other sanctions

All the above mentioned sanctions are without prejudice to any administrative or financial sanctions that the Commission may impose on any defaulting contractor in accordance with the FR or to any other civil remedy to which the Community or any other contractor may be entitled³¹³ (fifth paragraph of Article II.30 of Annex II (General conditions) to the FP6 model contract).

Furthermore, these provisions do not preclude any criminal proceedings that may be initiated by the Member States' authorities.

5.2.5- Implementation of the financial collective responsibility

5.2.5.1- General principle

The application of the provisions of collective financial responsibility on the contractors is also a form of sanction.

If a contractor breaches the contract and the consortium does not make good this breach, the Commission may, as a last resort and if all other approaches have been explored, hold the participants liable under certain conditions³¹⁴ (second indent of the second paragraph of Article 13 of the RP).

In cases of termination of the contract or of the participation of a contractor for breach of contractual obligations or irregularity, and where any contractor does not honour the reimbursement of the amount due by that contractor, the Commission will implement the financial collective responsibility of the consortium (in those instruments to which it applies). The consortium will reimburse the amount due to the Commission.

³¹³ See especially article 133 of the IM.

³¹⁴ See footnote n°270.

5.2.5.2- Modalities³¹⁵

- The amount due by the defaulting contractor:
 - can not exceed the maximum Community financial contribution (mentioned in the second paragraph of article 5 of the core-contract);
 - is allocated among all or some of the remaining contractors, except where:
 - ✓ the defaulting contractor:
 - ❖ meets the definition of a public body; or
 - ❖ meets the definition of an international organisation; or
 - ❖ is contractor whose participation to the indirect action is guaranteed by a Member State or an Associated State (=public body).

In the above cases, the debt of this defaulting contractor is **not** allocated among the remaining contractors.

- The amount due by the defaulting contractor:
 - is allocated among all or some of the remaining contractors, where
 - ✓ the defaulting contractor does not meet any of the above mentioned definitions, its debt is allocated among the remaining contractor which:
 - ❖ do not meet the definition of a public body;
 - ❖ or do not meet the definition of an international organisation;
 - ❖ or are contractors whose participation to the indirect action is not guaranteed by a Member State or an Associated State (= public body).

The allocation among the relevant remaining contractors is based on their relative weight:

- where pre-financing is to be recovered:
taking into account their share of the provisional Community financial contribution based on costs (as indicated in the table of estimated breakdown of eligible costs per activity and per contractor in the technical annex (Annex I) to the contract);
- where a settled payment is to be recovered
taking into account their share of Community financial contribution based on certified costs accepted by the Commission.

- In addition, the share of the debt of this defaulting contractor allocated to remaining contractors can not exceed the Community financial contribution each of those remaining contractors is entitled to receive.

The amount a contractor is entitled to receive is:

- where pre-financing is to be recovered:

³¹⁵ See article II.18 of Annex II (General conditions) to the FP6 model contract.

based on its provisional costs (as indicated in the table of estimated breakdown of eligible costs per activity and per contractor in the technical annex (Annex I) to the contract);

- where a settled payment is to be recovered:

based on its certified costs accepted by the Commission.

- Finally it is important to recall that the consortium is not responsible for:
 - any amount owed by a defaulting contractor for any contractual breach discovered after the end of the contract;
 - liquidated damages due by a contractor;
 - other financial penalties and other sanctions imposed on a defaulting contractor.

5.2.5.3- Examples

5.2.5.3.1- Example n°1

- Hypothesis

The debt of a defaulting contractor according to the periodic and final reports provided to the Commission by the coordinator of an Integrated Project is €1.000.000.

This sum is not a part of the pre-financing of the Commission transferred to this contractor according to the decision of the consortium, but a settled payment.

This Integrated Project is composed of 15 different independent legal entities. Among these:

- 7 meet the definition of a public body;
- 1 meets the definition of an international organisation;
- 3 meet the definition of an SME. Among the SMEs Group, one is a legal entity whose participation to this project is guaranteed by its State, which is a Member State;
- 4 are big private enterprises, whose participation is not guaranteed by their State.

The defaulting contractor is one of the seven legal entities that meet the definition of a public body.

- Calculation of the share of the debt per contractor

In this case, the debt of the defaulting contractor is not allocated among the remaining contractors, because the defaulting contractor is a public body.

5.2.5.3.2- Example n°2

- Hypothesis

Same hypothesis as in example n°1, but **the defaulting contractor is one of the big private enterprises.**

- Calculation of the share of the debt per contractor

In this case, the debt of the defaulting contractor is allocated among 5 of the 14 remaining contractors. Indeed:

- The 7 legal entities that meet the definition of a public body, the international organisation and the SME whose participation is guaranteed by its State are excluded from this group;
- The remaining contractors on which the debt is to be allocated are therefore the following:
 - ✓ The two other SMEs
 - ✓ The 3 other big private enterprises.

The Community financial contribution based on certified costs accepted by the Commission for these contractors is the following:

	Big private enterprise 1	Big private enterprise 2	Big private enterprise 3	SME 1	SME 2	Total
Share of the requested Community financial contribution accepted by the Commission (Amount)	275.000	652.000	471.000	320.000	125.000	1.843.000
Share of the requested Community financial contribution accepted by the Commission (%)	14,92%	35,38%	25,56%	17,36%	6,78%	100,00%

Taking into account the relative weight of these contractors, the debt of the defaulting contractor should be allocated as follows:

	Big private enterprise 1	Big private enterprise 2	Big private enterprise 3	SME 1	SME 2	Total
Allocation of the debt of the defaulting contractor	149.213	353.771	255.562	173.630	67.824	1.000.000
Difference between the accepted Community financial contribution and the share of the debt of the defaulting contractor	125.787	298.229	215.438	146.370	57.176	843.000

This table shows also that the share of the debt of the defaulting contractor allocated to each remaining contractor does not exceed the Community financial contribution generated for the consortium according to their certified costs accepted by the Commission. Therefore, the debt is allocated to these five contractors as mentioned in the first line of the above table.

5.2.5.3.3- Example n°3

- Hypothesis

Same hypothesis as in example n°2: **the defaulting contractor is one of the big private enterprises.**

- Calculation of the share of the debt per contractor

The Community financial contribution based on certified costs accepted by the Commission for the five contractors on which the debt of the defaulting contractor is to be allocated is the following:

	Big private enterprise 1	Big private enterprise 2	Big private enterprise 3	SME 1	SME 2	Total
Share of the requested Community financial contribution accepted by the Commission (Amount)	240.000	245.000	200.000	200.000	100.000	985.000
Share of the requested Community financial contribution accepted by the Commission (%)	24,37%	24,87%	20,30%	20,30%	10,15%	100,00%

Taking into account the relative weight of these contractors, the debt of the defaulting contractor should be allocated as follows:

	Big private enterprise 1	Big private enterprise 2	Big private enterprise 3	SME 1	SME 2	Total
Allocation of the debt of the defaulting contractor according to the relative weight of each contractor	243.655	248.731	203.046	203.046	101.523	1.000.000
Difference between the accepted Community financial contribution and the share of the debt of the defaulting contractor	-3.655	-3.731	-3.046	-3.046	-1.523	-15.000
Allocation of the debt of the defaulting contractor taking into account the Community financial contribution accepted	240.000	245.000	200.000	200.000	100.000	985.000

This table shows also that the share of the debt of the defaulting contractor allocated to each contractor exceeds the Community financial contribution generated for the consortium according to their certified costs accepted by the Commission. Therefore, only a part of the debt of the defaulting contractor is allocated to these five contractors as mentioned in the third line of the above table.

6- ANNEXES

6.A- ANNEX A- FINANCIAL GUIDELINES FOR R&TD ACTIVITIES UNDER THE PRIORITY THEMATIC AREA “FUSION ENERGY RESEARCH”

[To be provided by DG RTD – Directorate J]

DRAFT

6.B- ANNEX B- FINANCIAL GUIDELINES FOR ACTIONS TO PROMOTE HUMAN RESOURCES AND MOBILITY (MARIE CURIE ACTIONS)

[To be provided by DG RTD – Directorate B – MP]

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6.C- ANNEX C- FINANCIAL GUIDELINES FOR FP6 EXPERTS

[To be provided by DG RTD – Unit A3 – NRS]

DRAFT

6.1- ANNEX 1 – EXAMPLES OF POTENTIAL ELIGIBLE COSTS**[To be checked by DG RTD – Unit L4 – LS]**

Even though there is not anymore categories of eligible costs like in the 5th Framework Programme, types of costs like personnel, durable equipment, travel and subsistence, subcontracting, consumables, ... may of course be considered as eligible costs, providing the meet the definition of eligible costs mentioned in the contract.

One element of this definition is a key element: to be eligible, among other conditions, a cost must be determined according to the usual accounting principles of the participant.

6.1.1- Personnel

- A personnel is a resource under the authority of the contractor. Therefore it may be:
 - "Permanent employee", who has a permanent working contract with the legal entity.
 - "Temporary employee", who has a temporary working contract with the legal entity
 - a personnel made available by a third party on the basis of a prior agreement.
- The following elements must be known in order to calculate the total personnel costs which can be charged to the project:
 - As a general rule, **remuneration costs** charged should be taken from the payroll account and should be the total gross remuneration plus the employer's portion of social charges (e.g. holiday pay, pension contributions, health insurance and social security payments). Remuneration costs can be calculated individually for each researcher or as an average by category of staff (the method should fairly represent actual labour costs) **requiring that the average does not differ significantly from actual costs**³¹⁶.
 - **Working time to be charged** must be recorded throughout the duration of the project through any tool (including time sheets). The person in charge of the work designated by the contractor should certify the records. A simple estimation of worked hours is not allowed.

Contractors must calculate their specific productive hours according to their specifics (taking into account particularly national holidays, absenteeism, etc.).

- It is permitted to charge an estimation of actual direct eligible costs of personnel (or of the average per type of personnel category) at the moment of the delivery of a Financial Statement per Activity (Form C).

However, this estimation must be corrected in the subsequent Form C under the case "adjustment".

³¹⁶ A maximum difference of 10% between the higher and lower salary of a category is permitted.

- It is important to recall that any contractor using the AC model may charge the cost of permanent staff involved in the project:
 - for management of the consortium activities, providing it can identify and justify them with precision ;
 - for other activities, providing such people have a contract which depends in full or in part upon external funding additional to the normal recurring funding of the contractor. In other words, if such permanent people receive the same salary with or without being involved in this indirect action of the Community, their costs are not additional even though they may have additional work.

For example, a researcher may have a permanent-working contract, which depends partially by external funding. The working contract of this researcher mentions explicitly that a part of the salary of the researcher is subject to its involvement in specific activities financially supported by external funding (like the Community financial contribution to an indirect action of FP6). Where it is not involved in activities financially supported by external funding, its salary is equal to 5.000€ Where it is involved in such activities, its salary is equal to 6.000€ Therefore a part or the totality of the difference (1.000€) depending of its time of involvement in the FP6 indirect action concerned may be considered as an additional direct eligible cost.

- Costs of additional hours performed by a personnel may only be considered as eligible costs:
 - if the personnel concerned is involved at 100% of its working time in the contract with the European Communities ;
 - or
 - if unarguable evidences can establish clearly that they are only due to the involvement of this personnel in the contract with the European Communities ;
- Finally it is important to recall that where it is the usual practice of the contractor to consider personnel costs (or some of them) as indirect costs, those costs can not be charged as direct eligible costs, but as indirect eligible costs.

6.1.2- Durable equipment

- As a general rule, durable equipment should be recognised as assets when it is probable that:
 - the future economic benefits associated with the asset will flow to the organisation; and
 - the cost of the asset can be measured reliably.
 - Cost includes all costs necessary to bring the asset to working condition for its intended use. This would include not only its original purchase price but also costs of site preparation, delivery and handling, installation, related professional fees for architects and engineers.
 - If an asset has significant components that either have different useful lives or provide benefits in different patterns, each of the components should be accounted for as a separate asset.
 - Cost relating to the purchase or leasing with option to buy of durable equipment shall be charged to the contract, pursuant the contractors' own accounting practices. The total depreciation should be charged to the project income statement unless it is included in the carrying amount of overheads.
- However complying with the principle of sound financial management, the cost claimed for durable equipment leased with option to buy cannot exceed the costs that would have been incurred if the equipment had been purchased and depreciated under normal practices.
- As to be considered as eligible a cost must be determined according to the usual accounting practices of a contractor, each contractor must apply its usual depreciation system for durable equipment, if any:
 - Contractors who use cash based accounting system (no depreciation), may charge the total depreciation cost of the durable equipment when the equipment has been introduced in the project.

Only the portion of the equipment used on the project may be charged.

Contractors using a cash based accounting system must declare clearly in their periodic management report that they use cash based accounting system.

- Contractors not using cash based accounting system must use their usual depreciation model (degressive or linear).

Only the portion of the equipment used on the project may be charged.

The depreciation is charged according in each relevant periodic report.

Depreciation can be also calculated on equipment, which has been purchased before the commencement date of the contract, and which will be used in the project.

- Depreciation of durable equipment used on a project may be charged in line with International Accounting standards and in line with the normal methods of the contractor.

Depreciation of assets used for the general administration of the organisation may be charged to overheads on the same basis as above.

- The formula used for a linear depreciation must follow the principles established by the following one:

$$A / B \times C \times D$$

Where:

- A = the period in months (or in days) during which the durable equipment is used for the project after invoicing, for the relevant reporting period
- B = the depreciation period in months (or in days) for the durable equipment
- C = the actual cost (excluding VAT) of the durable equipment,
- D = the percentage of usage of the durable equipment for the project for the relevant reporting period

- The formula used for a degressive depreciation must follow the principles established by the following one:

$$A / B \times C \times D$$

Where:

- A = the period in months (or in days) during which the durable equipment is used for the project after invoicing, for the relevant reporting period
- B = the period in months (or in days) of the relevant reporting period
- C = the value of the depreciation for the relevant reporting period
- D = the percentage of usage of the durable equipment for the project for the relevant reporting period

- The following simplified cases provide examples of calculation of depreciation which may be considered as eligible costs:

- Example n°1:

A university involved in an Integrated Project (duration : 5 years) has bought a specific equipment necessary for the implementation of its tasks the first day of the start of the contract.

The costs (excluding VAT) of this equipment is equal to 120.000€

In full compliance with its national legislation and with its usual accounting practices, the university depreciates this equipment over a duration of 3 years through a linear depreciation model.

In full compliance with the usual accounting practices of this university, such cost is a direct cost.

The use of this equipment for the project is as follows:

- ✓ First reporting period (month 1 to month 12): 5% of the total time of use of the equipment;
- ✓ Second reporting period (month 12 to month 24): 10% of the total time of use of the equipment;
- ✓ Third reporting period (month 25 to month 36): 5% of the total time of use of the equipment;
- ✓ Fourth reporting period (month 37 to month 48): 5% of the total time of use of the equipment;
- ✓ Fifth reporting period (month 49 to month 60): 2% of the total time of use of the equipment;

The direct eligible costs per reporting periods are therefore the following:

	Reporting Period 1	Reporting Period 2	Reporting Period 3	Reporting Period 4	Reporting Period 5
Period in months during which the durable equipment is used for the project after invoicing, for the relevant reporting period (A)	12	12	12	0	0
Depreciation period in months (B)	36	36	36	0	0
Actual cost (excluding VAT) of the durable equipment (C)	120.000	120.000	120.000	0	0
% of use for the reporting period (D)	5%	10%	5%	5%	2%
Direct Eligible Costs (E) = (A) / (B) x (C) x (D)	2.000	4.000	2.000	0	0

■ Example n°2:

Same hypothesis as for example n°1 but with a degressive depreciation model.

The direct eligible costs per reporting periods are therefore the following:

	Reporting Period 1	Reporting Period 2	Reporting Period 3	Reporting Period 4	Reporting Period 5
Period in months during which the durable equipment is used for the project after invoicing, for the relevant reporting period (A)	12	12	12	0	0
Period in months of the relevant reporting period (B)	12	12	12	12	12
Value of the depreciation for the reporting period (C)	68.571,4	34.285,7	17.142,9	-	-
% of use for the reporting period (D)	5%	10%	5%	5%	2%
Direct Eligible Costs (E) = (A) / (B) x (C) x (D)	3.429	3.429	857	0	0

- Finally, it is important to recall that, where it is the usual practice of the contractor to consider durable equipment costs (or some of them) as indirect costs, those costs can not be charged as direct eligible costs, but as indirect eligible costs.

6.1.3- Travel and subsistence

- As a general rule, actual travel and related subsistence costs relating to the project may be considered as direct eligible costs, providing it is the contractor's habits.
- However, if such costs are incurred by a personnel and are reimbursed by the its legal entity (the contractor) on the basis of a lump sum/ a per diem, the concerned lump sum/per diem and not the actual costs is considered as an eligible cost.
- Where it is the usual practice of the contractor to consider travel and subsistence costs (or some of them) as indirect costs, those costs can not be charge as direct eligible costs, but as indirect eligible costs.

6.1.4- Subcontracting

- For a complete overview of direct eligible costs for subcontracting, please consult point 2.2.1.1 of the FP6 Financial Guidelines.
- It must be recalled that, by definition, and whatever the cost model used might be, indirect eligible costs can not be based on direct eligible costs of subcontracts.

6.1.5- Consumables

- Any consumables necessary for the implementation of the project may be considered as direct eligible costs.
Consumables shall relate to the purchase, fabrication, repair or use of any materials, goods or equipment and software which:
 - does not have a life expectancy greater than the duration of the work under the contract;
 - are not placed in the inventory of durable equipment of the contractor;
 - are not treated as capital expenditure in accordance with the accounting conventions and policies of the contractor.
- Where it is the usual practice of the contractor to consider consumable costs (or some of them) as indirect costs, those costs can not be charged as direct eligible costs, but as indirect eligible costs.

6.2- ANNEX 2 - TABLES TO BE INSERTED IN ANNEX I TO THE CONTRACT FOR A NETWORK OF EXCELLENCE

6.2.1- List of the researchers and doctoral students to be integrated

[To be provided by Negotiation Guidelines Group]

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6.2.2- Annual distribution of the grant for integration

[To be provided by Negotiation Guidelines Group]

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6.3- ANNEX 3 - MAXIMUM REIMBURSEMENT RATES OF ELIGIBLE COSTS PER TYPE OF COST MODELS AND ACTIVITIES

Instruments		Types of activities					
		Research and innovation-related activities	Demonstration activities	Training activities	Management of the consortium activities	Other specific activities (*)	
						Transnational access to infrastructures	Connectivity services
Network of excellence					AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)		AC/FC/FCF : 100%
Integrated project		FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%	AC/FC/FCF : 100%	AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)		
Specific targeted research or innovation project		FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%		AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)		
Specific research project for SMEs	Cooperative Research	FC/FCF : 50% AC : 100%			AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)		
	Collective Research	FC/FCF : 50% AC : 100%		AC/FC/FCF : 100%	AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)		
Integrated infrastructures initiative		FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%		AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs)	UF/AC : 100%	AC/FC/FCF : 50%
Coordination action	Classical			AC/FC/FCF : 100% (FC indirect costs : flat rate(**))	AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))		AC/FC/FCF : 100% (FC indirect costs : flat rate(**))
	for Infrastructures				AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))		AC/FC/FCF : 100% (FC indirect costs : flat rate(**))
Specific support action					AC/FC/FCF : 100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))	UF/AC : 100%	AC/FC/FCF : 100% (FC indirect costs : flat rate(**))

(*) Other specific activities means:

- for Network of Excellence : Joint Programme of Activities, except management of the consortium activities.
- for Integrated infrastructures initiative: any specific activity covered by Annex I, including transnational access to infrastructures
- for Coordination Action: Coordination activities
- for Specific support action: any specific activity covered by Annex I, including transnational access to infrastructures

(**): Flat rate for FC indirect costs : 20% of all their eligible direct costs minus the eligible direct costs of sub-contracts.

6.4- ANNEX 4 : TABLE OF THE ESTIMATED BREAKDOWN OF COSTS AND RECEIPTS PER TYPE OF ACTIVITY AND PER CONTRACTORS FOR A GRANT TO THE BUDGET (PART OF ANNEX I TO THE CONTRACT)

(Example of an Integrated Project)

[To be provided by Negotiation Guidelines Group]

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6.5- ANNEX 5 - GENERAL OVERVIEW OF THE DIFFERENT FORMS C PER TYPE OF INSTRUMENTS AND TYPE OF ACTIONS**6.5.1- Annexes III (Specific provisions) and VI (Forms C) per type of instruments and type of actions**

Instruments		Annex III (Specific provisions)	Annex VI (Forms C)	
Network of excellence		•	•	See 6.5.2
Integrated project		•	•	See 6.5.3
Specific targeted research or innovation project			•	See 6.5.4
Specific research project for SMEs	Cooperative Research	•	•	See 6.5.5
	Collective Research	•	•	See 6.5.6
Integrated infrastructures initiative		•	•	See 6.5.7
Coordination action	Classical		•	See 6.5.8
	for Infrastructures		•	See 6.5.9
Specific support action	Classical		•	See 6.5.10
	for Infrastructures	•	•	See 6.5.11

As clearly mentioned in this document, there are 10 different forms C.

6.5.2- Form C for a Network of Excellence (NoE)

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6.5.3- Form C for an Integrated project (IP)

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6.5.4- Form C for an Specific Targeted Research or Innovation Project (STReP)

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6.5.5- Form C for a Specific Cooperative Research Project for SMEs (CRAFT)

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6.5.6- Form C for a Specific Collective Research Project for SMEs (Collective)

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6.5.7- Form C for an Integrated Infrastructures Initiative (I³)

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6.5.8- Form C for a Coordination Action (CA)

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6.5.9- Form C for a Coordination Action for Infrastructures (CA Infrastructures)

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6.5.10- Form C for a Specific Support Action (SSA)

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6.5.11- Form C for a Specific Support Action for Infrastructures (SSA-ARI)

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6.6- ANNEX 6 : THE 8TH COUNCIL DIRECTIVE 84/253/EEC OF 10 APRIL 1984

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6.7- ANNEX 7: PROPOSED MODEL FOR AN AUDIT CERTIFICATE**Proposed model for an audit certificate provided by an external auditor****Option 1: one contractor / no third party(ies) => one single audit certificate****Addressed to**

[full name and the address of the contractor concerned³¹⁷]

We *[legal name of the audit firm]*, established in *[full address/city/state/province/country]* represented for signature of this audit certificate by *[name and function of an authorised representative]*, hereby certify that:

- we have conducted an audit relating to some information declared in your Financial Statement(s) per Activity attached to this audit certificate and presented to the Commission of the European Communities under contract *[EC contract reference: title, acronym, number]* for the following period(s) *[insert period(s) covered by the Financial Statement(s) per Activity]*.
- We confirm that our audit was carried out in accordance with generally accepted auditing standards respecting ethical rules and on the basis of the relevant provisions of the above-referenced contract and its annexes.

The above mentioned Financial Statement(s) per Activity was(were) examined and all tests of the supporting documentation and accounting records deemed necessary were carried out in order to obtain reasonable assurance³¹⁸ that, in our opinion, based on our audit:

- the amount of the total eligible costs (*[insert amount in number]* (*[insert amount in words³¹⁹]*)) you declared in the Box 2 of the attached Financial Statement(s) per Activity is complying with the following cumulative conditions³²⁰:
 - ✓ they are actual³²¹ and answers to your economic environment³²²;

³¹⁷ See head of the core-contract (if the contractor is the coordinator) or the second paragraph of article 1 of the core-contract.

³¹⁸ It means a true and fair view.

³¹⁹ In EURO.

³²⁰ In case where a part of the amount of the total eligible costs should be qualified, modify the sentence and mention only the amount of the total eligible costs that are unqualified. The purpose of the audit certificate is to certify unqualified eligible costs.

³²¹ Eligible costs are actual. They are not budgeted costs. Where actual costs are not available at the time of establishment of the audit certificate, average employment rates can be declared as actual if they are in conformity with the accounting principles of the contractor. In this case, please mention it. Remember that any necessary adjustments to these average rates must be reported in the Financial Statement for the subsequent reporting period and that for the last reporting period, only actual costs can be declared.

- ✓ they are determined in accordance with your usual accounting principles³²³;
- ✓ they have been incurred during the periods covered by the Financial Statement(s) per Activity concerned by this audit certificate³²⁴;
 [they also include the eligible costs incurred in drawing up the final reports referred to in Article II.7.4 of this contract, which may be incurred up to 45 calendar days after the end of the project;]³²⁵
- ✓ they are recorded in your accounts at the date of the establishment of this audit certificate³²⁶;
- ✓ they are exclusive of any non-eligible costs which are, as established in the second paragraph of article II.19 of your above mentioned contract with the Commission of the European Communities:
 - ❖ any identifiable indirect taxes, including VAT or duties;
 - ❖ interest owed;
 - ❖ provisions for possible future losses or charges;
 - ❖ exchange losses;
 - ❖ costs declared, incurred or reimbursed in respect of another Community project;
 - ❖ return on capital;
 - ❖ debt and debt service charges;
 - ❖ excessive or reckless expenditure;
 - ❖ any cost which does not meet the conditions established in Article II.19.1. of your contract with the Commission of the European Communities.
- ✓ they are represented according to the following cost reporting model *[insert the relevant cost reporting model]* you are eligible to use according to article II.22 of your above mentioned contract with the Commission of the European Communities;
 [As such, they are also exclusive of any additional direct eligible costs covered by contributions from third parties defined in indents a) and b) of Article II.23 of your contract with the Commission of the European Communities]³²⁷.
- ✓ [they are represented according to the following cost reporting model *[insert the relevant cost reporting model]* you are eligible to use for your involvement in the specific activities aiming to provide transnational access according to article III.13 of the above mentioned contract with the Commission of the European Communities;]³²⁸

³²² Article II.19.1.a)

³²³ Article II.19.1.b)

³²⁴ Article II.19.1.c)

³²⁵ If relevant, to be inserted only for the last audit certificate provided for this contract.

³²⁶ Article II.19.1.d)

³²⁷ To be added only for contractors using the additional cost reporting model (AC).

³²⁸ To be added only for contractors involved in the specific activities aiming to provide transitional access in an Integrated Infrastructures Initiative contract or a Specific Support Action contract.

[As such, they are also exclusive of any additional direct eligible costs covered by contributions from third parties defined in indents a) and b) of Article II.23 of the contract with the Commission of the European Communities]³²⁹.

- ✓ [they are represented according to the following basis for the conversion rate used of EURO:
 - ❖ the conversion rate of the date where the actual costs were incurred
 - ❖ the rate applicable on the first day of the month following the end of reporting period]³³⁰
- as declared in the Box 3 of the attached Financial Statement(s) per Activity, the total amount of receipts³³¹ for the periods covered by this(those) Financial Statement(s) per Activity is equal to ([insert amount in number] ([insert amount in words³³²)]);
- [as declared in the Box 4 of the attached Financial Statement(s) per Activity, the total amount of interests yielded by the pre-financing³³³ you received by the Commission of the European Communities for the periods covered by this(those) Financial Statement(s) per Activity is equal to ([insert amount in number] ([insert amount in words³³⁴)]³³⁵;
- accounting procedures used in the recording of your eligible costs and receipts respect the accounting rules of the State in which you are established as well as permit the direct reconciliation between the costs and receipts incurred for the implementation of the project covered by the EC contract above mentioned and the overall statement of accounts relating to your overall business activity³³⁶;
- our company is qualified to deliver this audit certificate in full compliance with the second and third paragraphs of article II.26 of the contract;
[Relevant information establishing this qualification are attached to this audit certificate;]³³⁷
- as declared in the Box 6 of the attached Financial Statement(s) per Activity, you have paid for this audit certificate a price equal to ([insert amount in number] ([insert amount in

³²⁹ To be added only for contractors using the additional cost reporting model (AC) involved in the specific activities aiming to provide transitional access in an Integrated Infrastructures Initiative contract or a Specific Support Action contract.

³³⁰ To be inserted only if some costs have not been incurred in EURO.

³³¹ As defined in article II.23 of the Annex II (General conditions) of the FP6 model contract (except for actions to promote human resources and mobility).

³³² In EURO.

³³³ As defined in article II.27 of the Annex II (General conditions) of the FP6 model contract (except for actions to promote human resources and mobility).

³³⁴ In EURO.

³³⁵ To be inserted only for the coordinator.

³³⁶ Article II.19.1.d)

³³⁷ To be inserted only for the first audit certificate provided for this contract.

words³³⁸] in which VAT is equal to ([insert amount in number] ([insert amount in words³³⁹]).

Date, Signature and Stamp of the audit firm

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³³⁸ In EURO.

³³⁹ In EURO.

Option 2: one contractor + third party(ies) => several audit certificates

Sub-option 2.1: the same external auditor (or public competent officer) certifies the information provided by the contractor and by the third party(ies)

Sub-option 2.2: each legal entity (contractor or third party(ies)) uses a specific external auditor (or public competent officer)

In both cases, one audit certificate per legal entity (one for the contractor + one for each third party) must be provided.

The same above proposed model may be used for a third party with the following modifications (bald and underlined):

Addressed to

[full name and the address of the third party concerned³⁴⁰]

We [legal name of the audit firm], established in [full address/city/state/province/country] represented for signature of this audit certificate by [[name and function of an authorised representative], hereby certify that:

- we have conducted an audit relating to some information declared in the Financial Statement(s) per Activity attached to this audit certificate and presented to the Commission of the European Communities under contract [EC contract reference: title, acronym, number] for the following period(s) [insert period(s) covered by the Financial Statement(s) per Activity] by the contractor [full name and the address of the contractor concerned³⁴¹] whom you provide resources on the basis of a prior agreement as established in Annex I of this contract.
- we confirm that our audit was carried out in accordance with generally accepted auditing standards respecting ethical rules and on the basis of the relevant provisions of the above-referenced contract and its annexes.

The above mentioned Financial Statement(s) per Activity was(were) examined and all tests of the supporting documentation and accounting records deemed necessary were carried out in order to obtain reasonable assurance³⁴² that, in our opinion, based on our audit:

- the amount of your total eligible costs ([insert amount in number] ([insert amount in words³⁴³])) you declared in the Box 2 of the attached Financial Statement(s) per Activity is complying with the following cumulative conditions³⁴⁴:

³⁴⁰ See Annex I of the contract and Box 1 of the Financial Statement(s) per Activity.

³⁴¹ See head of the core-contract (if the contractor is the coordinator) or the second paragraph of article 1 of the core-contract.

³⁴² It means a true and fair view.

³⁴³ In EURO.

- ✓ they are actual³⁴⁵ and answers to your economic environment³⁴⁶;
- ✓ they are determined in accordance with your usual accounting principles³⁴⁷;
- ✓ they have been incurred during the periods covered by the Financial Statement(s) per Activity concerned by this audit certificate³⁴⁸;
[they also include the eligible costs incurred in drawing up the final reports referred to in Article II.7.4 of this contract, which may be incurred up to 45 calendar days after the end of the project;]³⁴⁹
- ✓ they are recorded in your accounts at the date of the establishment of this audit certificate³⁵⁰;
- ✓ they are exclusive of any non-eligible costs which are, as established in the second paragraph of article II.19 of the above mentioned contract with the Commission of the European Communities:
 - ❖ any identifiable indirect taxes, including VAT or duties;
 - ❖ interest owed;
 - ❖ provisions for possible future losses or charges;
 - ❖ exchange losses;
 - ❖ costs declared, incurred or reimbursed in respect of another Community project;
 - ❖ return on capital;
 - ❖ debt and debt service charges;
 - ❖ excessive or reckless expenditure;
 - ❖ any cost which does not meet the conditions established in Article II.19.1. of the above contract with the Commission of the European Communities.
- ✓ they are represented according to the following cost reporting model [*insert the relevant cost reporting model*] you are eligible to use according to article II.22 of the above mentioned contract with the Commission of the European Communities;
[As such, they are also exclusive of any additional direct eligible costs covered by contributions from third parties defined in indents a) and b) of Article II.23 of the contract with the Commission of the European Communities]³⁵¹.

³⁴⁴ In case where a part of the amount of the total eligible costs should be qualified, modify the sentence and mention only the amount of the total eligible costs that are unqualified. The purpose of the audit certificate is to certify unqualified eligible costs

³⁴⁵ Eligible costs are actual. They are not budgeted costs. Where actual costs are not available at the time of establishment of the audit certificate, average employment rates can be declared as actual if they are in conformity with the accounting principles of the contractor. In this case, please mention it. Remember that any necessary adjustments to these average rates must be reported in the Financial Statement for the subsequent reporting period and that for the last reporting period, only actual costs can be declared.

³⁴⁶ Article II.19.1.a)

³⁴⁷ Article II.19.1.b)

³⁴⁸ Article II.19.1.c)

³⁴⁹ If relevant, to be inserted only for the last audit certificate provided for this contract.

³⁵⁰ Article II.19.1.d)

³⁵¹ To be added only for resources of third parties using the additional cost reporting model (AC).

- ✓ [they are represented according to the following cost reporting model *[insert the relevant cost reporting model]* you are eligible to use for your involvement in the specific activities aiming to provide transnational access according to article III.13 of **the** above mentioned contract with the Commission of the European Communities;]³⁵²

[As such, they are also exclusive of any additional direct eligible costs covered by contributions from third parties defined in indents a) and b) of Article II.23 of **the** contract with the Commission of the European Communities]³⁵³.
- ✓ [they are represented according to the following basis for the conversion rate used of EURO:
 - ❖ the conversion rate of the date where the actual costs were incurred
 - ❖ the rate applicable on the first day of the month following the end of reporting period]³⁵⁴
- as declared in the Box 3 of the attached Financial Statement(s) per Activity, **your** total amount of receipts³⁵⁵ for the periods covered by this(those) Financial Statement(s) per Activity is equal to (*[insert amount in number]* (*[insert amount in words*³⁵⁶ *]*);
- accounting procedures used in the recording of your eligible costs and receipts respect the accounting rules of the State in which you are established as well as permit the direct reconciliation between the costs and receipts incurred for the implementation of the project covered by the EC contract above mentioned and the overall statement of accounts relating to your overall business activity³⁵⁷;
- our company is qualified to deliver this audit certificate in full compliance with the second and third paragraphs of article II.26 of the contract;

[Relevant information establishing this qualification are attached to this audit certificate;]³⁵⁸
- as declared in the Box 6 of the attached Financial Statement(s) per Activity, you have paid for this audit certificate a price equal to (*[insert amount in number]* (*[insert amount in*

³⁵² To be added only for resources of third parties involved in the specific activities aiming to provide transitional access in an Integrated Infrastructures Initiative contract or a Specific Support Action contract.

³⁵³ To be added only for resources of third parties using the additional cost reporting model (AC) involved in the specific activities aiming to provide transitional access in an Integrated Infrastructures Initiative contract or a Specific Support Action contract.

³⁵⁴ To be inserted only if some costs have not been incurred in EURO.

³⁵⁵ As defined in article II.23 of the Annex II (General conditions) of the FP6 model contract (except for actions to promote human resources and mobility).

³⁵⁶ In EURO.

³⁵⁷ Article II.19.1.d)

³⁵⁸ To be inserted only for the first audit certificate provided for this contract.

words³⁵⁹] in which VAT is equal to ([insert amount in number] ([insert amount in words³⁶⁰]).

- **A second original of this audit certificate is also sent to the attention of [full name and the address of the contractor concerned]**

Date, Signature and Stamp of the audit firm

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³⁵⁹ In EURO.

³⁶⁰ In EURO.

6.8- ANNEX 8: GENERAL OVERVIEW OF REPORTS (EXCEPT AUDIT CERTIFICATES) TO BE PROVIDED PER TYPE OF INSTRUMENTS AND ACCORDING TO THE TYPE OF GRANT

Types of instruments and/or actions / Types of reports		Periodic Reports					Final Reports				
		Activity report	Management report	Report of distribution of the grant	Any other report requested by any Annex	Updated implementation plan / JPA	Activity report	Management report	Payment requests	Any other report requested by any Annex	Report of distribution of the grant
Network of excellence		•	•	•	•	•	•	•		•	•
Integrated project		•	•	•	•	•	•	•		•	•
Specific targeted research or innovation project		•	•	•	•		•	•		•	•
Specific research project for SMEs	Cooperative research	•	•	•	•		•	•		•	•
	Collective research	•	•	•	•		•	•		•	•
Integrated infrastructures initiative		•	•	•	•		•	•		•	•
Coordination action	Classical	•	•	•	•		•	•		•	•
	For Infrastructures	•	•	•	•		•	•		•	•
Specific Support Action	Classical through Grant to the Budget	•	•	•	•		•	•		•	•
	Classical through Lump Sum			•			•		•	•	•
	For Infrastructures	•	•	•	•		•	•		•	•

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6.9- ANNEX 9: FINANCIAL GUIDELINES – EXECUTIVE SUMMARY

1 - First Principles

- The Financial Regulation of the Communities³⁶¹, and the Rules for participation and dissemination of the results of the Sixth Framework Programme (6FP)³⁶², establish the basic principles for the **Community financial contribution** to indirect actions in the 6FP. This contribution can be made either :
 - by means of a call for tenders (public procurement), ^{363, 364} **or**
 - more usually, by means of a call for proposals (grant). ^{365, 366}
- In addition to the two different procedures (call for tenders vs. call for proposals) there are differences relating to the amount and nature of the financial contribution. Whereas public procurement consists of the payment of a market price for goods or services rendered, grants are limited to a contribution to certain costs (or in special cases a lump sum payment) incurred by the beneficiary. Therefore, public procurement permits a profit whereas grants forbid any profit.
- Usually, the Community financial contribution to indirect actions (research and development projects) under the 6FP will be by means of grants (public procurement is used only in the case of purchase of goods or services by the Commission for its use and this is limited to certain specific support actions (the instrument SSA)³⁶⁷). All other instruments will be financed by means of a grant (other specific support actions, integrated projects, networks of excellence, specific targeted projects, coordination actions specific actions for SMEs and integrated infrastructure initiatives).

³⁶¹ Regulation (EC, EURATOM) n°1605/2002 of the Council of 25 June 2002 regarding the Financial Regulation applicable to the general budget of the European Communities – OJ L248 of 16.9.2002, pages 1 à 48.

³⁶² Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006) – adopted by Council on 5.11.2002.

³⁶³ Title V, Chapter 1, Section 1, Article 88, Paragraph 1 of Regulation n°1605/2002 of the Council of 25 June 2002

« Public contracts are contracts for pecuniary interest concluded in writing by a contracting authority within the meaning of Articles 103 and 168, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

These contracts comprise:

- (a) building contracts;**
- (b) supply contracts;**
- (c) works contracts;**
- (d) service contracts »**

³⁶⁴ Articles 9.2b) and 14.1b) of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

³⁶⁵ Title VI, Chapter 1, Section 1, Article 107, Paragraph 1 of Regulation n°1605/2002 of the Council of 25 June 2002

« Grants are direct financial contributions, by way of donation, from the budget in order to finance:

- (a) either an action intended to help achieve an objective forming part of a European Union policy;**
- (b) or the functioning of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy.**

They shall be covered by a written agreement. »

³⁶⁶ Article 14.1 of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

³⁶⁷ Articles 9.2b) and 14.1 of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

2 - Nature of the grant

- The Rules for Participation allow the Community contribution to a grant to be made in one of two forms:
 - **Lump sum payments**³⁶⁸
 - **Reimbursement of eligible costs**³⁶⁹ (« Grant to Budget » et « Grant to Integration »)
- The use of lump sums or fixed rate amounts is limited by the Financial Regulation to actions such as prizes, training actions, unitary scale costs (where rates are fixed according to certain terms and conditions across the board for all users), and actions where the EC contribution is less than €5,000. Therefore, lump sum grants will only be used under the 6FP for certain specific support actions and certain human resources and mobility actions. *(Certain kinds of reimbursements of eligible costs can be by means of fixed rates with the agreement of the participant eg. fixed rate reimbursement for overheads in certain cost models or certain actions)*
- The vast majority of indirect actions under the 6FP will be financed by means of grants in the form of reimbursement of eligible costs.

3 - Principles applicable to grants which reimburse eligible costs

- The Community financial contribution to grants which reimburse eligible costs must conform to the principles and rules established by the Financial Regulation³⁷⁰, its Implementing Rules³⁷¹, the Framework Programme³⁷² and its Rules for Participation³⁷³ including:
 - The principle of non-profit
 - The principle of co-financing
 - The principle of additionality

These principles must be followed at the level of the project itself.

4 - The Community financial contribution

- The amount of the Community financial contribution is determined by a number of factors including the instrument, the activity, the cost model, the amount of any

³⁶⁸ Article 14.1 b) of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

³⁶⁹ Articles 14.1 a) and 14.1 c) of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

³⁷⁰ Title VI – Chapter 2 « Grant principles » – Article 109 – paragraphs 1 and 2 of Regulation n°1605/2002 of Council of 25 June 2002

Title VI – Chapter 2 « Grant principles » – Article 113 – Regulation n°1605/2002 of Council of 25 June 2002

³⁷¹ Article 163 « Rule of non-profit » - paragraph 1 of the Regulation of the Commission regarding the implementing rules of Regulation n°1605/2002 – SEC (2002) 835 final of 24.7.2002.

³⁷² Annex III – Section 2 – paragraph 5 of the Decision of the European Parliament and Council n°1513/2002/EC of 27 June 2002

Annexe III – Section 2 – table – footnote page (1) of the Decision of the European Parliament and Council n°1513/2002/EC of 27 June 2002

³⁷³ Article 14 « Community financial contribution » – Paragraph 2 (d) of the Regulation of European Parliament and of the Council relating to the rules for participation of enterprises, research centres and universities and rules of dissemination of the results of research for the implementation of the sixth framework programme of the European Community (2002-2006).

receipts to the project and the Community framework state aids in the area of research and development.

a. Cost Model Applicability

- The cost models are applicable to all instruments in the Sixth Framework Programme where the Community contribution is a grant for integration (Networks of Excellence) or a grant to the budget (Integrated Projects, Specific Targeted Projects, Specific Actions for SMEs, Integrated Infrastructure Initiatives*, Coordination Actions, and certain Specific Support Actions). They do not apply to those instruments where the Community financial contribution is a lump sum grant (certain Specific Support Actions and certain Actions promoting human resources and mobility).
- For some actions promoting human resources and mobility a specialised version of the cost model is applied.

b. Cost Models

There are three cost models in typical research actions:

- **Full Cost with actual indirect costs (FC)**
- all eligible direct and indirect costs are charged by the contractors.
- **Full Cost with indirect flat rate costs (FCF)**
- all eligible direct costs and a flat rate for indirect costs are charged. The flat rate is 20% of all direct eligible costs minus the cost of sub-contracts.

- **Additional Costs with indirect flat rate costs (AC)**
- all eligible direct additional costs and a flat rate for indirect costs are charged. The flat rate is 20% of all direct additional costs minus the cost of sub-contracts.

(***User fee**: a user fee cost model may be used for access to infrastructure activities either in the integrated infrastructure initiatives or in the specific support actions for transnational access)

- **Direct costs** are eligible costs that are associated directly to the project, and are determined by the contractor in accordance with its usual accounting practices;
- **Direct additional costs**, are eligible costs additional to the normal recurring costs of the contractor that are associated directly to the project and are not covered by any other sources of funding.

Direct additional costs of personnel can include:

- personnel with a temporary contract for working under the Community contract concerned ;
 - personnel with a temporary contract with a view to completing a doctorate ;
 - personnel whose employment contract depends wholly or in part on additional external financing. In this case, costs charged to the project must exclude all costs covered by normal recurring financing.
- **Indirect costs** are, for those working on the full cost model, all eligible costs determined by the contractor, in accordance with its usual accounting practices, which are not directly attributable to the project but are incurred in relation to the direct costs of the project. For those contractors using either of the flat rate models (FCF, AC) a flat rate is applied to the direct costs and is deemed to cover the indirect costs.

c. Access to the Cost Models

Access to a cost model depends on the type of legal entity concerned:

- All legal entities can use the FC model with the exception of physical persons;
- Physical persons must use the AC model;
- Non-commercial or non-profit organisations established either under public law or private law and international organisations may choose one of the AC, FCF or FC models. However, only those non-commercial or non-profit organisations established either under public law or private law and international organisations which do not have an accounting system that allows the share of their direct and indirect costs relating to the project to be distinguished may opt for the AC model.
- SMEs have the choice between the FC and FCF model.

d. Use of a Cost Model

Each contractor must apply the same cost reporting model in all contracts established under

the Sixth Framework Programme. However:

- any legal entity which is eligible to opt for the AC model in a first contract can change to the FCF or the FC model in a later contract. If it does so, it must then use the new cost reporting model in subsequent contracts;
- any legal entity which is eligible to opt for the FCF model in a first contract can change to the FC model in a later contract. If it does so, it must then use the new cost reporting model in subsequent contracts.

e. Receipts of the Project

Three kinds of receipts must be taken into consideration:

- Financial transfers or their equivalent to the contractor from third parties;
- Contributions in kind from third parties;
- Income generated by the project.

In the first two cases (financial transfers or contributions in kind), these endowments are considered as receipts of the project if the third party has provided them specifically to be used in the project. However, if the use of these contributions is at the discretion of the contractor they may be considered as eligible costs to the project but are not be considered to be receipts.

Where contributions from third parties are used by the contractor for the project, the latter is required to inform the third party of this use, in accordance with the national legislation or practice in force.

In the case of income generated by the project itself, any income generated by the project itself, including the sale of assets bought for the project (limited to the initial cost of purchase) are considered as income to the project (eg. admission fee to a conference carried out by the consortium; sale of the proceedings of such a conference; sale of equipment bought for the project etc.)

The table reproduced below and explained in detail in the Financial Guidelines indicates the maximum reimbursement rates per instrument, per activity and per cost model for all indirect actions.

Maximum reimbursement rates of eligible costs	Research and technological development or innovation activities	Demonstration activities	Training activities	Management of the consortium activities	Other specific activities (*)
Network of excellence				100% (up to 7% of the contribution) (AC : eligible direct costs)	100%
Integrated project	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%	100%	100% (up to 7% of the contribution) (AC : eligible direct costs)	
Specific targeted research or innovation project	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%		100% (up to 7% of the contribution) (AC : eligible direct costs)	
Specific research project for SMEs	FC/FCF : 50% AC : 100%		100% (for collective research only)	100% (up to 7% of the contribution) (AC : eligible direct costs)	
Integrated infrastructures initiative	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%		100% (up to 7% of the contribution) (AC : eligible direct costs)	100%
Coordination action			100% (FC indirect costs : flat rate(**))	100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))	100% (FC indirect costs : flat rate(**))
Specific support action				100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))	100% (FC indirect costs : flat rate(**))

(*) : Other specific activities means:

- for Network of Excellence : Joint Programme of Activities, except management of the consortium activities.
- for Integrated infrastructures initiative: any "specific activity" covered by Annex I, including transnational access to infrastructures
- for Coordination Action: Coordination activities, except management of the consortium activities
- for Specific support action: any "specific activity" covered by Annex I, including transnational access to infrastructures

(**) : Flat rate for FC indirect costs : 20% of all their eligible direct costs minus the eligible direct costs of sub-contracts.

• Audit certificates

An **audit certificate** is required from each contractor at some point during the life of the project **to certify the costs** claimed. It is provided by the contractor's own external auditor (or in the case of public body it may be provided by a competent public officer). The costs are reimbursed via the management activity of the project (100% funding).

For integrated projects and networks of excellence, audit certificates are provided each year by each contractor.

The submission of an audit certificate does not waive the right of the Commission to carry out its own audits, which may be launched at any time and up to 5 five years after the end of the project.

5 - Subcontracts

Contractors are expected to have the resources necessary to carry out the work required by the project. In certain circumstances, though, it is more economic or efficient to subcontract some aspects of the work. When work is to be subcontracted it must be identified in the technical annex to the contract (Annex I). Subcontracts must be awarded by means of competitive tender following the national legislation in force. This means that, depending on the size and nature of the subcontract, the public tendering procedure may take different forms ranging from the simplest to more complex (e.g. negotiated, restricted; open; competition). In a very simplified procedure, at least three different offers have to be received and evaluated against common established criteria, to ensure that each of them is treated fairly and equitably. Any

subcontract that is not identified in the technical annex to the contract must be limited to minor services and supplies, to which the public tendering rules apply.

6 - Collective responsibility

All contracts with more than one contractor impose technical collective responsibility on the partners to carry out the work of the project.

Most contracts impose financial collective responsibility (all actions except SME specific actions, fellowships and certain specific support actions) upon the contractors to make good the breach of a contractor if the others are not willing to complete the project and respect their contractual obligations. If a contractor breaches the contract and the consortium does not make good this breach, the Commission may, as a last resort and after having explored with the consortium all other viable solutions, hold participant liable for the defaulting contractor. Public bodies are exempt from financial collective responsibility.

In cases of termination for breach of contractual obligations or irregularity, and where the contractor does not honour its obligation to reimburse any amount due to the Commission, the latter will impose the provisions of financial collective responsibility on the consortium. The consortium will be obliged to reimburse the amount due to the Commission. The financial collective responsibility does not apply to the liquidated damages that may be imposed by the Commission to one or more contractors, neither does it apply to any obligation to reimburse funds as the result of an audit.

7 - Sanctions and recoveries

Any amount unduly paid by the Commission to a contractor has to be reimbursed to the Commission on the terms and date specified by it. In addition, in certain circumstances overclaims may be penalised by means of the imposition of liquidated damages. This means that the amount overclaimed must be reimbursed to the Commission and, in addition, a penalty amounting to a percentage of the overclaim must also be paid.

Further, a contract can be terminated for reasons of irregularity or for violation of fundamental ethical principles.