

COUNCIL DECISION

of 22 December 1998

concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the fifth framework programme of the European Community (1998-2002)

(1999/65/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130j and the second paragraph of Article 130o thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

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

Acting in accordance with the procedure referred to in Article 189c of the Treaty ⁽³⁾,

(1) Whereas the fifth framework programme of the European Community for research, technological development and demonstration activities (1998 to 2002) (hereinafter referred to as 'the fifth framework programme') was adopted by Decision No 182/1999/EC of the European Parliament and Council ⁽⁴⁾; whereas the detailed rules for financial participation by the Community, as set out in Annex IV to that Decision, must be supplemented by other provisions to be laid down in accordance with Article 130j and the second paragraph of Article 130o of the Treaty;

(2) Whereas the new provisions should be part of a complete, coherent and transparent framework so that the specific programmes implementing the fifth framework programme may be carried out in a harmonised manner;

(3) Whereas the rules for the participation of undertakings, research centres and universities must be adapted to the nature of the research and technological development activities, including demonstration activities (hereinafter referred to as 'indirect RTD actions'); whereas, moreover, they

may vary depending on whether the participant is based in a Member State, an Associated State or a third country and on its legal structure;

(4) Whereas, under the fifth framework programme, the participation of legal entities of third countries should be envisaged, including on the basis of international agreements; whereas, however, the agreements concluded with the Community, in particular on the basis of Article 130m of the Treaty, must be implemented in accordance with the principle of reciprocity and the protection of intellectual and industrial property rights; whereas the Community's legal entities must accordingly enjoy genuine access to the research programmes of the third country concerned;

(5) Whereas, in the specific case of small and medium-sized enterprises, particular stress should be laid on indirect RTD actions designed to encourage their participation, since they can contribute to the creation and maintenance of jobs and to innovation;

(6) Whereas the Joint Research Centre (JRC) takes part in indirect RTD actions on the same basis as legal entities established in a Member State or in an Associated State;

(7) Whereas the rules should be applied in a simple and efficient manner so as to minimise the administrative and financial burden on participants and the Commission, particularly with respect to the time taken to prepare proposals, conclude contract negotiations and make reimbursements;

⁽¹⁾ OJ C 40, 7.2.1998, p. 14.

⁽²⁾ OJ C 214, 10.7.1998, p. 51.

⁽³⁾ Opinion of the European Parliament of 28 May 1998 (OJ C 195, 22.6.1998), Council common position of 10 July 1998 (OJ C 262, 19.8.1998, p. 50) and Decision of the European Parliament of 8 October 1998 (OJ C 328, 26.10.1998).

⁽⁴⁾ See page 1 of this Official Journal.

(8) Whereas the Community financial participation must be paid to the participants against justification of the eligible costs of the indirect

- RTD action, although other more appropriate methods may be used;
- (9) Whereas the RTD activities should be carried out in compliance with ethical principles;
- (10) Whereas the rules for the dissemination of research results must guarantee the protection of rights linked to obtaining and using knowledge;
- (11) Whereas the rules must take account of the interests of the Community and the legitimate interests of the parties to any contract concluded as a result of the selection of the proposal for an indirect RTD action;
- (12) Whereas, in the case of indirect RTD actions, the rules must, generally speaking, be adapted to the level of the Community financial participation or the proximity to the market of the RTD activity in question, including demonstration;
- (13) Whereas ownership of the knowledge resulting from indirect RTD actions is normally determined in accordance with the level of Community financial participation;
- (14) Whereas, in the case of indirect RTD actions, the knowledge must be used or, failing that, disseminated;
- (15) Whereas the primary responsibility for dissemination or use of research results rests with the contractors; whereas for projects closer to the market the rules must promote the use of results suitable for exploitation by the contractors; whereas the rules must otherwise promote the dissemination of suitable results, including those suitable for use which have not been exploited, to third parties, including Member States' and Associated States' governments, so as to facilitate the use of those results and avoid duplication of research efforts;
- (16) Whereas agreements concerning exclusive rights may be necessary to facilitate exploitation of the knowledge; whereas such agreements must comply with the applicable rules on competition;
- (17) Whereas, in the case of certain indirect RTD actions, a technological implementation plan must be produced by the contractors to enable the Commission to monitor the use and dissemination of the knowledge;
- (18) Whereas RTD activities should be carried out in accordance with the principles of sound financial management;
- (19) Whereas, to the extent necessary for achieving their objectives, the specific programmes may set out in greater detail or supplement the rules for the participation of undertakings, research centres and universities and for the dissemination of research results;
- (20) Whereas, in order to ensure coherence between the activities carried out under the fifth framework programme and those undertaken pursuant to Council Decision 1999/64/Euratom of 22 December 1998 concerning the fifth framework programme of the European Atomic Energy Community (Euratom) for research and training activities (1998-2002) ⁽¹⁾, this Decision and Council Decision 1999/66/Euratom of 22 December 1998 concerning the rules for the participation of undertakings, research centres and universities and for the implementation of the fifth framework programme of the European Atomic Energy Community (Euratom) (1998 to 2002) ⁽²⁾ should be adopted simultaneously and for the same period,

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Decision:

- (a) *RTD activities* means the research and technological development activities, including demonstration activities, described in Annex II to the fifth framework programme;

⁽¹⁾ See page 34 of this Official Journal.

⁽²⁾ See page 56 of this Official Journal.

- (b) *indirect RTD actions* means one of the two ways of implementing RTD activities, as described in Annex IV to the fifth framework programme. Such actions are carried out by third parties under contracts concluded with the Community; the JRC may take part in such actions under the conditions laid down in Article 7;
- (c) *direct RTD actions* means one of the two ways of implementing RTD activities, as described in Annex IV to the fifth framework programme. Such actions are carried out by the JRC;
- (d) *Associated State* means a State which is party to an international agreement concluded with the Community, in particular on the basis of Article 130m of the Treaty, under which the State concerned makes a financial contribution to the fifth framework programme. The said agreement relates to cooperation in research, technological development and demonstration;
- (e) *third country* means a country which is neither a Member State nor an Associated State;
- (f) *legal entity* means:
- any natural person, or
 - any legal person, provided that it has been established under Community law or the applicable national law and has been given legal personality or has the capacity, in its own name, to hold rights and obligations of all kinds, to conclude contracts and to be a party to legal proceedings;
- (g) *international organisation* means any 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;
- (h) *potential user of RTD results* means any legal entity, any international organisation or the JRC which, by virtue of its needs and capabilities — whether scientific, technological, economic or social — has a specific contribution to make to the use or the ensuring of the use of the results of indirect RTD actions;
- (i) *small and medium-sized enterprises* (hereinafter referred to as 'SMEs') means enterprises which meet the criteria set out in Commission Recommendation 96/280/EC, ⁽¹⁾ namely:
- have fewer than 250 employees (full-time equivalents), and
 - have either an annual turnover not exceeding ECU 40 million or an annual balance-sheet total not exceeding ECU 27 million, and
 - conform to the criterion of independence as defined in the Recommendation;
- (j) *knowledge* means the results, including information, which result from RTD actions under the fifth framework programme;
- (k) *dissemination* means the disclosure of knowledge by any appropriate means other than the publication resulting from the formalities for protecting the knowledge, for the purposes of promoting scientific and technical progress;
- (l) *use* means the direct or indirect use of knowledge in research activities or for the purposes of exploitation;
- (m) *exploitation* means the use of knowledge for creating and marketing a product or process or for creating and providing a service;
- (n) *pre-existing know-how* means the information which is held by the proposer prior to the conclusion of a contract referred to in Article 12 of this Decision or acquired in parallel to it and necessary for the proper execution of an indirect RTD action, and the rights attaching thereto.

Article 2

Interests of the Community

The interests of the Community, as referred to in Articles 6, 15, 16, 17, 18 and 20, shall be assessed with particular regard to:

- (a) the objective of strengthening the international competitiveness of Community industry;
- (b) the objective of providing appropriate incentives for maintaining and creating jobs in the Community;
- (c) the objective of promoting sustainable development and improving the quality of life in the Community;
- (d) the needs of other Community policies in support of which the RTD actions are carried out;
- (e) the existence of scientific and technical cooperation agreements between the Community and third countries or international organisations.

⁽¹⁾ OJ L 107, 30.4.1996, p. 4.

CHAPTER II

RULES FOR THE PARTICIPATION OF UNDERTAKINGS,
RESEARCH CENTRES AND UNIVERSITIES*Article 3***Scope**

The rules laid down in this Chapter shall apply to the participation of legal entities and international organisations and of the JRC in indirect RTD actions.

Section 1

Conditions for participation and financing*Article 4***Number of participants in indirect RTD actions**

1. Indirect RTD actions shall be carried out by:

- (a) at least two mutually independent legal entities established in two different Member States or in a Member State and an Associated State; or
- (b) at least one legal entity established in a Member State or in an Associated State and the JRC; or
- (c) one or several legal entities established in a third country or international organisations, acting in cooperation with the minimum number of legal entities established in a Member State or Associated State and the JRC, as required in points (a) or (b).

2. Exceptionally, where the nature of the indirect RTD action or activity to be undertaken requires it to be carried out by a single participant, it must be carried out by:

- (a) a legal entity established in a Member State, in an Associated State or in a third country; or
- (b) an international organisation; or
- (c) the JRC.

*Article 5***Conditions for legal entities from the Member States
and Associated States**

1. Any legal entity established in a Member State or in an Associated State may take part in indirect RTD

actions and receive funding from the fifth framework programme, provided that:

- it is carrying out or is about to carry out a research, technological development or demonstration activity, or
- it contributes to the dissemination and use of results in accordance with the specific programme on ‘Promotion of innovation and encouragement of SME participation’, or
- it is a potential user of RTD results,

or, additionally for thematic networks and concerted actions,

- it is instead in a position to contribute substantial added value to the quality of work to be undertaken by virtue of its knowledge of the relevant area of research.

2. The conditions set out in paragraph 1 do not apply in the following cases:

- (a) for exploratory awards, where the legal entity must be an SME or, exceptionally, a potential user of RTD results. In the latter case, the entity will not normally receive funding from the fifth framework programme;
- (b) for cooperative research projects, where the legal entity must be an SME which is a potential user of RTD results but with little or no RTD capability of its own;
- (c) for accompanying measures, where the legal entity has the necessary technical know-how to carry out the indirect RTD action in question.

3. Where an Associated State is only partially associated with the fifth framework programme, a legal entity in that country may only take part and receive financing under this Article in those specific programmes covered by the association agreement. Participation in specific programmes to which that country is not associated is subject to Article 6.

4. Where the purpose of the indirect RTD action concerned so permits, any legal entity referred to in paragraphs 1 and 2 shall carry out the major part of the work within the Member States or Associated States.

*Article 6***Conditions for legal entities from third countries and for international organisations**

1. Any legal entity established in a third European country or Mediterranean partner country and any international organisation may take part in indirect RTD actions on a project-by-project basis in conformity with the interests of the Community and without financing from the fifth framework programme, provided that:

- (a) the number of participations in the proposal for an indirect RTD action is in accordance with Article 4; and
- (b) it meets the conditions laid down in Article 5(1) and (2) for legal entities from the Member States and Associated States.

This shall not apply to training fellowships as defined in Annex IV to the fifth framework programme.

2. Legal entities established in other third countries may participate on the same terms provided that their participation is also of substantial added value or implementing all or part of the specific programmes in accordance with the objectives of that programme.

3. Where an international agreement between the Community and a third country is necessary to provide access to high-quality programmes in the third country concerned and/or to ensure suitable IPR arrangements, participation of legal entities established in that third country shall be subject to the conclusion of such an agreement. Where such an agreement exists, participation shall additionally be subject to the principles, conditions and limits laid down therein.

4. Any legal entity referred to in paragraphs 1, 2 and 3 may, exceptionally, participate with financing from the fifth framework programme provided that the financing is duly justified as being essential for achieving the objectives of the indirect RTD action in question.

This shall not apply to training fellowships as defined in Annex IV to the fifth framework programme.

5. In the case of RTD activities under the specific programme on 'Confirming the international role of Community research', any legal entity which meets the conditions laid down in paragraph 1(a) and (b) may take

part provided that it contributes to one of the objectives of the specific programme and its participation is in conformity with the interests of the Community.

Community financing will be provided only for the activities specified in this specific programme and under the conditions laid down therein.

6. Any international organisation may, exceptionally, receive financing from the fifth framework programme provided that:

- (a) in the case of indirect RTD actions other than accompanying measures,
 - the financing is duly justified as being essential for achieving the objectives of the indirect RTD action in question, and,
 - where any basic facility is to be used which is located in a third country, it is essential for carrying out the proposed work;
- (b) in the case of accompanying measures, it has the necessary technical skills and know-how, which are not readily accessible or are unavailable in the Member States or the Associated States.

*Article 7***Conditions for the JRC**

Subject to the internal budgetary and administrative measures necessary to enable the JRC to take part in indirect RTD actions, the JRC shall be bound by the same conditions and have the same rights and obligations as the legal entities established in a Member State or an Associated State taking part in indirect RTD actions.

*Article 8***Conditions relating to resources**

1. Any legal entity, international organisation and the JRC must:

- when filing its proposal for an indirect RTD action, have at least the potential resources needed for carrying it out,
- when the contract is signed, demonstrate that it will have all the necessary resources as and when needed for carrying it out.

2. The resources needed for carrying out the indirect RTD action shall comprise human resources, infrastructure, financial resources and, where appropriate, intangible property.

Section 2

Article 10

Procedures

Selection criteria and conditions applicable in accordance with the type of procedure

Article 9

Procedures to be applied

1. Indirect RTD actions other than accompanying measures shall be the subject of calls for proposals. These may be preceded by a call of expressions of interest of an informative nature. All such calls shall be published in the *Official Journal of the European Communities* and should also be disseminated through other appropriate channels.

2. Accompanying measures shall, as appropriate, be the subject of:

- calls for proposals, in accordance with procedures identical to those described in paragraph 1,
- public procurement procedures, where the indirect RTD action consists of a purchase or a service, in accordance with the applicable provisions,
- invitations to apply for appointment as an independent expert where the measure concerned requires the Commission to take account in a balanced fashion of the various research players, without prejudice to other procedures designed to achieve the same result in the case of the independent highly qualified experts appointed for the five-year evaluation referred to in Article 5(2) of the fifth framework programme.

In specific cases, for example for a contribution to the costs of conferences, workshops and seminars, spontaneous applications for a subsidy, addressed to the Commission by a legal entity or international organisation, may be supported by the Community.

3. Indirect RTD actions carried out as pilot schemes shall be governed by procedures appropriate to those actions as set out in the relevant specific programme decisions.

4. Subject to legal constraints and the need to respect requirements of transparency and equal treatment, the Commission shall keep the procedures for the submission, selection and adoption of proposals as short as reasonably achievable and keep the administrative costs of the applicants and of the Commission to the minimum level necessary.

1. Proposals for indirect RTD actions resulting from calls for proposals and pilot schemes shall be selected in conformity with Annex I to the fifth framework programme on the basis of the conditions for participation set out in Articles 4 to 8 and the following criteria:

- (a) scientific excellence;
- (b) Community added value;
- (c) the potential contribution to furthering the economic and social objectives of the Community;
- (d) the innovative nature of the proposal for an indirect RTD action;
- (e) the prospects for disseminating/exploiting the results, as described in the plan for dissemination and use attached to the proposal for an indirect RTD action;
- (f) effective transnational cooperation;
- (g) effective and efficient management;
- (h) any additional criteria set out in the specific programme concerned.

These criteria shall be applied in accordance with the category of indirect RTD action and with the nature of the RTD activity.

Any project which contravenes the ethical principles laid down in the relevant international conventions and regulations shall not be selected.

Proposals for accompanying measures which are subject to a public procurement procedure shall be evaluated on the basis of selection and award criteria defined in accordance with the relevant provisions.

2. Applications for subsidies shall be selected on the basis of:

- the relevant conditions for participation set out in Articles 4, 5, 6 and 8, and
- their appropriateness and usefulness in contributing to the objectives and to the scientific and technological content of the fifth framework programme and/or of the specific programme concerned.

3. Applicants responding to an invitation to apply shall be selected on the basis of the criteria set out in the relevant Commission Decision and of the relevant conditions for participation set out in Articles 4, 5 and 6.

Section 3

Contracts

Article 11

Community financial participation and eligible costs

1. In compliance with the provisions of Annex IV to the fifth framework programme, the Community financial participation shall consist of the reimbursement, in part or in whole, of the eligible costs of the indirect RTD action.

2. A cost relating to an indirect RTD action shall be eligible where it is necessary for the action in question and is provided for in the contract. It shall be reimbursable by payment within a reasonable period provided that the amount has actually been spent and has been recorded in the accounts or the tax documents.

In the appropriate circumstances, provisions should be made for advance payments.

3. In the case of the research and technological development projects, demonstration projects and combined RTD/demonstration projects, recourse shall be had to additional eligible costs where, in the view of the Commission, the system of accounting used by the participant in an indirect RTD action does not enable the full costs of carrying out the indirect RTD action to be established with sufficient precision.

4. Total eligible costs will be reimbursed by payments against justification of the actual costs of the indirect RTD action concerned. The documents substantiating these costs must be satisfactory. However, at the request of those taking part in the proposal for an indirect RTD action, general expenses may instead be calculated on a flat-rate basis by agreement with the Commission.

At the request of those taking part in the proposal for an indirect RTD action and by agreement with the Commission, the contract can establish other conditions:

(a) in the case of small-scale projects, fixed amounts determined on the basis of an assessment of the estimated costs of the work;

(b) in other cases, fixed amounts linked to the demonstration of best efforts to complete contractually agreed objectives;

(c) other arrangements involving flat- and composite-rate payments appropriate to specific projects.

5. Additional eligible costs, as referred to in Annex IV to the fifth framework programme, shall comprise the following:

— the additional eligible costs generated simply by taking part in the indirect RTD action,

— a flat-rate contribution to the general expenses.

Article 12

Contracts

1. Proposals for indirect RTD actions selected following any of the procedures set out in Article 9 shall be the subject of a contract.

2. Contracts will be based on the relevant model contract drawn up by the Commission in consultation with Member States, taking account, where appropriate, of the different RTD activities involved.

CHAPTER III

RULES FOR THE DISSEMINATION AND USE OF RESEARCH RESULTS

Article 13

Scope

For the purpose of carrying out the specific programmes implementing the fifth framework programme, the rules for the dissemination and use of research results shall:

— apply in compliance with international agreements concluded with the Community in particular under Article 130m of the Treaty,

— take full account of pre-existing know-how including the relevant existing property rights without prejudice to the contents of the detailed rules of application provided for in Article 22 and of the contracts referred to in Article 12.

*Article 14***Adaptation of the rules for the dissemination and use of research results**

The rules for the dissemination and use of research results relating to knowledge resulting from work carried out under indirect RTD actions shall, as a general rule, be determined by the level of Community financing reflecting, where appropriate, the different RTD activities involved and the proximity to the market.

The Community shall disseminate or promote the use of research results where it has financed indirect actions entirely.

*Article 15***Ownership of knowledge**

1. Knowledge resulting from work carried out under direct RTD actions shall be the property of the Community.

2. Knowledge resulting from work carried out under indirect RTD actions the full cost of which is borne by the Community shall, as a general rule, be the property of the Community.

Knowledge resulting from work carried out under cooperative research projects shall be the property of the SMEs who have entrusted the resolution of their research problem to a third legal entity.

Knowledge resulting from work carried out under other indirect RTD actions the full cost of which is not borne by the Community shall, as a general rule, be the property of the contractors who have carried out the work, including, where applicable, the Community, pursuant to Article 7.

Any subsequent transfer of such intellectual property rights to a third party is for the contractors to decide subject to imposing a contractual responsibility to respect those obligations on them concerning their dissemination and use and, in particular, the interests of the Community.

*Article 16***Protection of knowledge**

Knowledge capable of industrial or commercial application shall be protected in an appropriate manner and for an appropriate period of time, with particular regard to the interests of the Community and of the contractors, and in accordance with the contractual provisions and any applicable legislation or convention.

*Article 17***Use of knowledge**

1. The Community and the contractors shall use, or ensure that effective use is made of, any knowledge suitable for use in their possession, in conformity with the interests of the Community.

2. The Commission shall ensure that all knowledge belonging to the contractors which is suitable for use is used effectively by them. Failing that, after a specified period of time, it must be disseminated by the contractors or, where appropriate, by the Commission.

*Article 18***Making knowledge available with a view to its use**

1. As a general rule, knowledge resulting from work carried out under direct RTD actions, together with any information necessary for its use, should be made available to any interested legal entity established in a Member State or in an Associated State, provided that the entity undertakes to use the knowledge, or to ensure that it is used, in accordance with the interests of the Community. The making available of knowledge and information shall be subject to appropriate conditions, in particular concerning the payment of fees.

2. Knowledge belonging to any of the contractors and resulting from work carried out under indirect RTD actions, together with any information necessary for its use, shall be made available to the other contractors in the same project, provided the legitimate interests, including commercial interests, of all the contractors are safeguarded.

The detailed arrangements for making knowledge available to third parties with a view to its use shall take account of the interests of the Community and, in principle, the level of Community financial participation reflecting, where appropriate, the different RTD activities involved and the proximity to the market.

3. The making available of such knowledge and information may be subject to appropriate conditions. It may give rise to specific agreements, notably concerning exclusive rights, in compliance with the applicable rules on competition. The grantor of rights shall in that context take into consideration the constraints and risks resulting for the recipient of rights from the investment needed for exploiting the knowledge.

*Article 19***Dissemination of knowledge**

1. The Commission shall disseminate knowledge resulting from work carried out under direct RTD actions and which is suitable for dissemination.

Particular account shall be taken of:

- (a) the need to safeguard intellectual and industrial property rights;
- (b) confidentiality;
- (c) the benefits of swift dissemination, for example in order to avoid duplication of research efforts.

2. The Commission shall ensure that knowledge resulting from work carried out under indirect RTD actions and which is suitable for dissemination is disseminated through appropriate forums (e.g. scientific publications) by the contractors or, where appropriate, by the Commission itself.

For indirect actions, in addition to (a), (b) and (c) above, particular account shall also be taken of:

- the legitimate interests of the contractors, including commercial interests,
- in principle, the level of Community financial participation.

3. Subject to the conditions set out in paragraphs 1 and 2, Member States and Associated States shall, on request, for reasons of public and in specific cases, have access, without undue delay, to useful knowledge which is relevant to policy-making. General requirements in this respect shall be set out in the relevant calls for proposals and arrangements, or any exceptions to this principle, for individual projects shall be agreed in the contract.

*Article 20***Technological implementation plan**

1. Depending on the nature of the RTD activity concerned, contractors taking part in work under indirect RTD actions shall produce a technological implementation plan. It shall reflect the broad outlines of the dissemination and use plan evaluated as part of the original proposal presented to the Commission for participation in indirect RTD actions.

2. The technological implementation plan shall set out the conditions, including a timetable, under which the knowledge is to be disseminated and used. It shall be approved by the Commission, which shall assess its content with regard to the interests of the Community and of the contractors.

3. The contractors shall inform the Commission of the steps taken to carry out this technological implementation plan. They shall justify any material subsequent change in the plan.

CHAPTER IV

FINAL PROVISIONS

*Article 21***Provisions which may be laid down in the specific programmes**

1. The rules for the participation of undertakings, research centres and universities and for the dissemination and use of research results may be set out in greater detail or supplemented in the Council Decision adopting the specific programmes implementing the fifth framework programme.

2. The first paragraph shall not apply in the case of the definitions set out in Article 1 or the training fellowships referred to in the second subparagraphs of Article 6(1) and (4).

*Article 22***Detailed rules of application**

The detailed rules for applying Articles 4, 8, 11 and 14 to 20 shall be drawn up and amended as necessary in accordance with the procedure provided for in Article 23.

*Article 23***Procedure for drawing up the rules of application**

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be

delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by qualified majority.

If, within three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 24

Reports

1. The annual report which the Commission sends to the European Parliament and the Council in accordance with Article 130p of the Treaty shall contain information on the implementation of this Decision.
2. Before the end of the fifth framework programme the Commission shall present a report to the Council on the application of this Decision.

Article 25

Duration

This Decision shall apply to direct RTD actions and indirect RTD actions implementing the fifth framework programme.

Done at Brussels, 22 December 1998.

For the Council

The President

C. EINEM