



**COUNCIL OF  
THE EUROPEAN UNION**

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**RECH 557  
COMPET 849  
MI 1055**

**NOTE**

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From:	Permanent Representatives Committee (Part I)
To:	Council
No. prev. doc.:	15998/13 RECH 525 COMPET 803 MI 1000
No. Cion doc.:	12375/13 RECH 359 COMPET 577 MI 649 - COM(2013) 501 final
Subject:	Proposals by the Commission for Joint Initiatives established under Article 187 TFUE Proposal for a COUNCIL REGULATION on the ECSEL Joint Undertaking - General approach

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**I. INTRODUCTION**

1. On 10 July 2013, the Commission submitted to the European Parliament and to the Council its proposal for a Council Regulation on the ECSEL Joint Undertaking.
2. This proposal for a public-private partnership (PPP) relates to a Joint Undertaking (JU) in the field of electronic components and systems. The ECSEL ('Electronic Components and Systems for European Leadership') JU replaces the previous ENIAC and ARTEMIS JUs respectively in the fields of nanoelectronics and embedded systems launched under the Seventh Framework Programme.

3. The European Parliament's Committee on Industry, Research and energy (ITRE) appointed Ms Lena KOLARSKA-BOBINSKA (EPP) as the Rapporteur on this proposal. The ITRE Committee is expected to vote on its opinion on 9 January 2014.
4. The opinion of the European Economic and Social Committee is still pending.

## II. WORK WITHIN THE COUNCIL

1. Following the work since September 2013 within the Research Working Party, resulting to some amendments to the initial proposal, the Permanent Representatives Committee on 22 November 2013 reached an agreement in principle on the Presidency compromise text included in annex to this note.
2. It should be noted that the Commission has entered a general reservation on the whole text, pending the opinion of the European Parliament. DK has a parliamentary scrutiny reservation on the whole text.

## III. CONCLUSION

In the light of the above, the Council is invited to consider the compromise proposal presented by the Presidency (in Annex) with a view to reaching a General Approach at the Council (Competitiveness) meeting on 2-3 December 2013.

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Proposal for a  
**COUNCIL REGULATION**  
**on the ECSEL Joint Undertaking**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 187 and the first paragraph of Article 188 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Whereas:

- (1) Public-private partnerships in the form of Joint Technology Initiatives were initially provided for in Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)<sup>3</sup>.

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<sup>1</sup> OJ C [EP opinion], , p. .

<sup>2</sup> OJ C [ESC opinion], , p. .

<sup>3</sup> OJ L 412, 30.12.2006, p. 1.

- (2) Council Decision 2006/971/EC of 19 December 2006 concerning the Specific Programme ‘Cooperation’ implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)<sup>4</sup> identified specific public-private partnerships to be supported, including public-private partnerships in the specific areas of the ENIAC and ARTEMIS Joint Technology Initiatives.
- (3) Europe 2020 Strategy<sup>5</sup> underscores the need to develop favourable conditions for investment in knowledge and innovation so as to achieve smart, sustainable and inclusive growth in the Union. Both European Parliament and Council have endorsed this strategy.
- (4) Regulation (EU) No .../2013 of the European Parliament and of the Council of ... 2013 establishing Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020)<sup>6</sup> aims to achieve a greater impact on research and innovation by combining Horizon 2020 Framework Programme and private-sector funds in public-private partnerships in key areas where research and innovation can contribute to the Union’s wider competitiveness goals and help tackle societal challenges. Union involvement in those partnerships may take the form of financial contributions to joint undertakings established on the basis of Article 187 of the Treaty on the Functioning of the European Union under Decision No 1982/2006/EC.

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<sup>4</sup> OJ L 400, 30.12.2006, p. 86.

<sup>5</sup> COM(2010) 2020 final.

<sup>6</sup> OJ [H2020 FP].

- (5) In accordance with Decision (EU) No [...] /2013 of the Council of [...] 2013 establishing the Specific Programme implementing Horizon 2020 (2014-2020)<sup>7</sup> further support should be provided to Joint Undertakings established under Decision No 1982/2006/EC under the conditions specified in Decision (EU) No [...] /2013. The Industrial Leadership priority targets two specific activity lines under Information and Communication Technologies: "micro- and nanoelectronics", and "a new generation of components and systems, engineering of advanced and smart embedded components and systems". Embedded computing systems (ARTEMIS) and nanoelectronics (ENIAC) should be combined into a single initiative.
- (6) The Commission Communication 'A European strategy for Key Enabling Technologies — A bridge to growth and jobs'<sup>8</sup> identifies key enabling technologies (hereinafter 'KET'), which include micro- and nanoelectronics, as indispensable sources of innovation. There is currently a gap between basic knowledge generation and its subsequent commercialisation into goods and services. This needs to be tackled inter alia through a focused effort on pilot manufacturing lines and innovation pilot projects, including those of larger scale, for achieving technology and product validation under industrial conditions, and more integration and cross-fertilisation between the various KETs.

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<sup>7</sup> OJ [H2020 SP].

<sup>8</sup> COM(2012) 341, 26.6.2012.

- (7) According to the Commission Communication ‘A European strategy for micro- and nanoelectronics components and systems’<sup>9</sup>, micro- and nanoelectronics components and systems underpin innovation and competitiveness of all major economic sectors. The importance of the area and the challenges faced by the stakeholders in the Union require urgent action in order to leave no weak link in Europe’s innovation and value chains. It is thus proposed to set up a mechanism at Union level to combine and focus support to research and innovation in electronic components and systems by Member States, the Union and the private sector.
- (8) In view of regaining a leading position in the nanoelectronics eco-system for Europe, the industrial and research stakeholders have proposed a strategic research and innovation programme with a total investment of EUR 100 billion up to the year 2020, aiming at increasing Europe’s nanoelectronics-based worldwide revenues by over EUR 200 billion per year and creating an additional 250 000 direct and induced jobs in Europe.
- (9) The term ‘Electronic Components and Systems’ encompasses the areas of micro- and nanoelectronics, embedded/cyber-physical and smart integrated systems and applications.
- (10) The ENIAC Joint Undertaking set up by Council Regulation (EC) No 72/2008 of 20 December 2007<sup>10</sup> successfully implemented a research agenda strengthening the relevant areas in nanoelectronics in which Europe improved its competitiveness by leveraging investments in priority subjects and by engaging the whole ecosystem.

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<sup>9</sup> COM(2013) 298, 23.5.2013.

<sup>10</sup> OJ L 30, 4.2.2008, p. 21.

- (11) The ARTEMIS Joint Undertaking set up by Council Regulation (EC) No 74/2008 of 20 December 2007 on the establishment of the ‘ARTEMIS Joint Undertaking’ to implement a Joint Technology Initiative in Embedded Computing Systems<sup>11</sup> has successfully demonstrated its strategic positioning which combines top-down guidance with bottom-up definition of the technical issues to be addressed, attracting projects with outcomes directly relevant for industry.
- (12) The interim evaluations of the ENIAC and ARTEMIS Joint Undertakings have shown that they are useful and adapted tools to combine forces and have significant impact in their respective domains. The research areas covered by the ENIAC and ARTEMIS Joint Undertakings should therefore continue to be supported in order to further improve the competitiveness of the electronic components and systems industry in Europe and focus the efforts on a set of strategic activities commonly agreed among the private and public stakeholders engaged in the initiatives.
- (13) Continued support for the nanoelectronics and embedded computing systems research programmes should build on the experience acquired from the operations of the ENIAC and ARTEMIS Joint Undertakings including the results of their interim evaluations, the stakeholders’ recommendations and the need to achieve effective coordination and synergy of resources.

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<sup>11</sup> OJ L 30, 4.2.2008, p. 52.

- (14) There is increased interaction between the stakeholders of the European Technology Platforms ARTEMIS, ENIAC and EPoSS (the European Technology Platform on Smart Systems Integration) as detailed in the High Level Strategic Research and Innovation Agenda of the ICT Components and Systems Industries which they released in 2012. In order to best capture and build on the synergies stemming from these interactions, it is necessary to set up a single Joint Undertaking (hereinafter the ‘ECSEL Joint Undertaking’) covering electronic components and systems including the previous activities of the ENIAC and ARTEMIS Joint Undertakings and using a more fit-for-purpose structure and rules in order to enhance efficiency and to ensure simplification. To this effect, the ECSEL Joint Undertaking should adopt financial rules specific to its needs in accordance with Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union<sup>12</sup>.
- (15) The implementation of the high level strategic research and innovation agenda put forward by the industrial stakeholders relies on several sources of support: national, regional and intergovernmental programmes, Union Framework Programme and a Joint Technology Initiative in the form of a public-private partnership.
- (16) The public-private partnership on electronic components and systems should combine the financial and technical means that are essential to master the complexity of the ever escalating pace of innovation in this area. Therefore, the members of the ECSEL Joint Undertaking should be the Union, Member States and Associated Countries to the Horizon 2020 Framework Programme (hereinafter ‘Associated Countries’) on a voluntary basis, and associations as private members representing their constituent companies and other organisations active in the field of electronic components and systems in Europe. The ECSEL Joint Undertaking should be open to new members.

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<sup>12</sup> OJ L 298, 26.10.2012, p. 1.



- (17) The ECSEL Joint Undertaking should address clearly defined topics that would enable the European industries at large to design, manufacture and use the most innovative technologies in electronic components and systems. A structured and coordinated financial support at European level is necessary to help maintain research teams and European industries at the leading edge in a highly competitive international context, ensure the fast and broad industrial exploitation of technology leadership across Europe generating important spill-overs for society, share risk-taking and join forces by aligning strategies and investments towards a common European interest. The Commission might consider, upon notification of the Member State or group of Member States concerned, that the ECSEL Joint Undertaking's initiatives qualify as important projects of common European interest, provided all relevant conditions are met.
- (18) The private associations AENEAS, ARTEMISIA and EPoSS have expressed in writing their agreement for the research and innovation activities in the area of the ECSEL Joint Undertaking to be pursued within a structure well adapted to the nature of a public-private partnership. It is appropriate that the private associations accept the Statutes set out in the Annex to this Regulation by means of a letter of endorsement.
- (19) In order to achieve its objectives, the ECSEL Joint Undertaking should provide financial support mainly in the form of grants to participants following open and competitive calls for proposals. Such financial support must be targeted at proven market failures that prevent the development of the programme concerned and must have an incentive effect in that it changes the behaviour of the recipient.
- (19bis) In assessing the overall impact of the ECSEL Joint Undertaking, the investments from all legal entities other than the Union and the ECSEL Participating States contributing to the objectives of the ECSEL Joint Undertaking should be taken into account. These overall investments are expected to amount to at least EUR 2 400 000 000.

- (20) In order to maintain a level playing field for all undertakings active in the internal market, funding provided by the Union Framework Programme should be designed in accordance with State aid rules so as to ensure the effectiveness of public spending and prevent market distortions such as crowding-out of private funding, creating ineffective market structures or preserving inefficient firms.
- (21) Participation in indirect actions funded by the ECSEL Joint Undertaking should comply with Regulation (EU) No .../2013 of the European Parliament and of the Council of ... 2013 laying down the rules for the participation and dissemination in "Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)"<sup>13</sup>. Specific criteria regarding the eligibility of individual applicants to receive funding from ECSEL Participating States may be determined by the relevant authorities. Specific rules regarding the eligibility of costs may be determined by an ECSEL Participating State when it does not entrust the ECSEL Joint Undertaking with the implementation of its contributions to the participants in indirect actions.
- (22) The Union's financial contribution should be managed in accordance with the principle of sound financial management and with the relevant rules on indirect management set out in Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012<sup>14</sup>.
- (23) Audits of recipients of Union funds under this Regulation should be carried out in such a manner that administrative burden is reduced, in compliance with Regulation (EU) No [...] /2013 [the Horizon 2020 Framework Programme].

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<sup>13</sup> OJ [H2020 Rules for participation and dissemination].

<sup>14</sup> OJ L 362, 31.12.2012, p. 1.

- (24) The financial interests of the Union and of the other members of the ECSEL Joint Undertaking should be protected by proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.
- (25) The Commission's internal auditor should exercise the same powers over the ECSEL Joint Undertaking as those exercised in respect of the Commission.
- (26) In accordance with Article 287(1) of the Treaty, the constituent instrument of bodies, offices or agencies set up by the Union may preclude the examination of the accounts of all revenue and expenditure of those bodies, offices or agencies by the Court of Auditors. In accordance with Article 60(5) of Regulation (EU, Euratom) No 966/2012, the accounts of the bodies under Article 209 of that Regulation are to be examined by an independent audit body which is to give an opinion *inter alia* on the reliability of the accounts and the legality and regularity of the underlying transactions. Avoidance of duplication of the examination of the accounts justifies that the accounts of the ECSEL Joint Undertaking should not be subject to examination by the Court of Auditors.
- (27) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty on European Union, the objectives of the ECSEL Joint Undertaking in strengthening industrial research and innovation across the Union cannot be sufficiently achieved by the Member States and can therefore, by reason of avoiding unnecessary duplication, retaining critical mass and ensuring that public financing is used in an optimal way, be better achieved by the Union. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

- (28) The ENIAC and ARTEMIS Joint Undertakings were set up for a period up to 31 December 2017. The transition from the ENIAC and ARTEMIS Joint Undertakings to the ECSEL Joint Undertaking should be aligned and synchronized with the transition from the Seventh Framework Programme to the Horizon 2020 Framework Programme to ensure optimal use of the funding available for research. In the interest of legal certainty and clarity, Council Regulations (EC) No 72/2008 and No 74/2008 should therefore be repealed and transitional provisions should be set out.
- (29) It is appropriate to ensure a smooth transition without interruption to align the duration of this Joint Undertaking with the Council Regulation laying down the multiannual framework for the years 2014-2020<sup>15</sup>. Therefore, this Joint Undertaking should apply as from 1 January 2014.

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<sup>15</sup> OJ ...

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Establishment*

1. To implement the Joint Technology Initiative on ‘Electronic Components and Systems for European Leadership’, a Joint Undertaking within the meaning of Article 187 of the Treaty on the functioning of the European Union (hereinafter ‘ECSEL Joint Undertaking’) is hereby established for a period up to 31 December 2024.
2. The ECSEL Joint Undertaking shall replace and succeed the ENIAC and ARTEMIS Joint Undertakings as originally established by Regulations (EC) Nos 72/2008 and 74/2008.
3. The ECSEL Joint Undertaking shall constitute a body entrusted with the implementation of a public-private partnership referred to in Article 209 of Regulation (EU, Euratom) No 966/2012.
4. The ECSEL Joint Undertaking shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those Member States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
5. The seat of the ECSEL Joint Undertaking shall be located in Brussels, Belgium.
6. The Statutes of the ECSEL Joint Undertaking are set out in the Annex.

*Article 2*  
*Objectives*

1. The ECSEL Joint Undertaking shall have the following objectives:
  - (a) to contribute to the implementation of Regulation (EU) No ... of the European Parliament and of the Council of ... 2013 establishing the Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020) and in particular part ... of Decision No .../2013/EU of the Council of ... 2013 establishing the Specific Programme implementing Horizon 2020 (2014-2020);
  - (b) to contribute to the development of a strong and globally competitive electronics components and systems industry in the Union;
  - (c) to ensure the availability of electronic components and systems for key markets and for addressing societal challenges, aiming at keeping Europe at the forefront of technology development, bridging the gap between research and exploitation, strengthening innovation capabilities and creating economic and employment growth in the Union;
  - (d) to align strategies with Member States to attract private investment and contribute to the effectiveness of public support by avoiding unnecessary duplication and fragmentation of efforts, and easing participation for actors involved in research and innovation;
  - (e) to maintain and grow semiconductor and smart system manufacturing capability in Europe, including leadership in manufacturing equipment and materials processing;
  - (f) to secure and strengthen a commanding position in design and systems engineering including embedded technologies;

- (g) to provide access for all stakeholders to a world-class infrastructure for the design and manufacture of electronic components and embedded/cyber-physical and smart systems;
- (h) to build a dynamic ecosystem involving Small and Medium-Sized Enterprises (SMEs), thereby strengthening existing clusters and nurturing the creation of new clusters in promising new areas.

2. The scope of work for the ECSEL Joint Undertaking will build on the results obtained by the ENIAC and ARTEMIS Joint Undertakings, the European Technology Platform EPoSS and work funded through other national and European programmes. It will foster in a proper and balanced way new developments in, and synergies between the following main areas:

- (a) design technologies, process and integration, equipment, materials and manufacturing for micro- and nanoelectronics while targeting miniaturisation, diversification and differentiation, heterogeneous integration;
- (b) processes, methods, tools and platforms, reference designs and architectures, for software and/or control-intensive embedded/cyber-physical systems, addressing seamless connectivity and interoperability, functional safety, high availability, and security for professional and consumer type applications, and connected services;
- (c) multi-disciplinary approaches for smart systems, supported by developments in holistic design and advanced manufacturing to realise self-reliant and adaptable smart systems having sophisticated interfaces and offering complex functionalities based on e.g. the seamless integration of sensing, actuating, processing, energy provision and networking.

### *Article 3*

#### *Union financial contribution*

1. The maximum Union contribution, including EFTA appropriations, to the ECSEL Joint Undertaking to cover administrative costs and operational costs shall be EUR {1 215 255 000}. The contribution shall be paid from the appropriations in the general budget of the Union allocated to the Specific Programme implementing Horizon 2020 (2014-2020). The budget implementation with regard to the Union contribution shall be entrusted to the ECSEL Joint Undertaking acting as a body referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 in accordance with Articles 58(1)(c)(iv), 60 and 61 of that Regulation.
2. The arrangements for the Union financial contribution shall be set out in a delegation agreement and annual transfer of funds agreements to be concluded between the Commission, on behalf of the Union, and the ECSEL Joint Undertaking.
3. The delegation agreement referred to in paragraph 2 shall address the elements set out in Article 58(3) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 and in Article 40 of Commission Delegated Regulation (EU) No 1268/2012 as well as inter alia the following:
  - (a) the requirements for the ECSEL Joint Undertaking's contribution concerning the relevant performance indicators referred to in Annex II to Decision No .../EU [the Specific Programme implementing the Horizon 2020 Framework Programme];
  - (b) the requirements for the ECSEL Joint Undertaking's contribution in view of the monitoring referred to in Annex III to Decision No .../EU [the Specific Programme implementing the Horizon 2020 Framework Programme];
  - (c) the specific performance indicators related to the functioning of the ECSEL Joint Undertaking;



- (d) the arrangements regarding the provision of data necessary to ensure that the Commission is able to meet its dissemination and reporting obligations as referred to in Article 22 of Regulation (EU) No .../2013 [the Horizon 2020 Framework Programme];
- (e) the use of and changes to human resources, in particular recruitment by function group, grade and category, the reclassification exercise and any changes to the number of staff members.

#### *Article 4*

##### *Contributions of members other than the Union*

1. The ECSEL Participating States shall make a financial contribution to the operational costs of the ECSEL Joint Undertaking to commensurate to the contribution of the Union. The amount of at least EUR {1 200 000 000} over the period defined in Article 1 is envisaged.
2. The private members shall make or arrange for their constituent entities and affiliated entities to make contributions to the ECSEL Joint Undertaking. The amount of at least EUR {1 700 000 000} over the period defined in Article 1 is envisaged.
3. The contributions referred to in paragraphs 1 and 2 shall consist of contributions to the ECSEL Joint Undertaking as laid down in clause 16(2), clause 16(3)(b) and clause 16(3)(c) of the Statutes.
4. The Members of the ECSEL Joint Undertaking other than the Union shall report each year by 31 January to the Governing Board on the value of the contributions referred to in paragraphs 1 and 2 made in each of the previous financial years.

5. For the purpose of valuing the contributions referred to in clause 16(3)(c) of the Statutes, the costs shall be determined according to the usual cost accounting practices of the entities concerned, or to the applicable accounting standards of the country where each entity is established, or to the applicable International Accounting Standards / International Financial Reporting Standards. The costs shall be certified by an independent external auditor appointed by the entity concerned. The valuation of the contributions shall be verified by the ECSEL Joint Undertaking. In case of remaining uncertainties, it may be audited by the ECSEL Joint Undertaking.
6. The Commission may engage in remedial actions and possibly terminate, proportionally reduce or suspend the Union financial contribution to the ECSEL Joint Undertaking or trigger the winding up procedure referred to in clause 26(2) of the Statutes if members other than the Union, including their constituent entities and affiliated entities do not contribute, contribute only partially or contribute late with regard to the contributions referred to in paragraphs 1 and 2.

#### *Article 5*

#### *Financial rules*

The ECSEL Joint Undertaking shall adopt its specific financial rules in accordance with Article 209 of Regulation (EU, Euratom) No 966/2012 and Regulation (EU) No ... [delegated Regulation on the model Financial Regulation for PPPs].

*Article 6*  
*Staff*

1. The Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>16</sup> and the rules adopted by agreement between the institutions of the Union for giving effect to those acts shall apply to the staff employed by the ECSEL Joint Undertaking.
  
2. Regarding the staff of the ECSEL Joint Undertaking, the Governing Board shall exercise the powers conferred by the Staff Regulations on the appointing authority and by the Conditions of Employment of Other Servants on the authority empowered to conclude contracts (hereinafter ‘the appointing authority powers’).

The Governing Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

In exceptional circumstances, the Governing Board may decide to temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter, and exercise them itself or delegate them to one of its members or to a staff member of ECSEL the Joint Undertaking other than the Executive Director.

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<sup>16</sup> OJ L 56, 04.03.1968, p. 1.

3. The Governing Board shall adopt appropriate implementing rules giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.
4. The staff resources shall be set out by the staff establishment plan of the ECSEL Joint Undertaking, indicating the number of temporary posts by function group and by grade, as well as by the number of contract staff expressed in full-time equivalents, in line with its annual budget.
5. The staff of the ECSEL Joint Undertaking shall consist of temporary staff and contract staff.
6. All costs related to staff shall be borne by the ECSEL Joint Undertaking.

#### *Article 7*

##### *Seconded national experts and trainees*

1. The ECSEL Joint Undertaking may make use of seconded national experts and trainees not employed by the ECSEL Joint Undertaking. The number of seconded national experts expressed in full-time equivalents shall be added to the staff resources as referred to in Article 6(4) in line with the annual budget.
2. The Governing Board shall adopt a decision laying down rules on the secondment of national experts to the ECSEL Joint Undertaking and on the use of trainees.

#### *Article 8*

##### *Privileges and Immunities*

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

*Article 9*

*Liability of the ECSEL Joint Undertaking*

1. The contractual liability of the ECSEL Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement, decision or contract in question.
2. In the event of non-contractual liability, the ECSEL Joint Undertaking shall make good any damage caused by its staff in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
3. Any payment by the ECSEL Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in that connection shall be considered as expenditure of the ECSEL Joint Undertaking and shall be covered by the resources of the ECSEL Joint Undertaking.
4. The ECSEL Joint Undertaking shall be solely responsible for meeting its obligations.

*Article 10*

*Jurisdiction of the Court of Justice and applicable law*

1. The Court of Justice shall have jurisdiction:
  - (a) pursuant to any arbitration clause contained in agreements, decisions and contracts concluded by the ECSEL Joint Undertaking;
  - (b) in disputes relating to compensation for damage caused by the staff of the ECSEL Joint Undertaking in the performance of their duties;

- (c) in any dispute between the ECSEL Joint Undertaking and its staff within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union.
2. Regarding any matter involving an Associated Country, the specific provisions of the relevant agreements shall apply.
  3. Regarding any matter not covered by this Regulation or by Union law, the law of the state where the seat of the ECSEL Joint Undertaking is located shall apply.

*Article 11*  
*Evaluation*

1. By 31 December 2017 the Commission shall conduct an interim evaluation of the ECSEL Joint Undertaking, which shall assess notably the level of participation in, and contribution to, the indirect actions both by the private members and their constituent entities and affiliated entities, and also by other legal entities. The Commission shall communicate the conclusions of this evaluation, and its observations, to the European Parliament and to the Council by 30 June 2018.
2. On the basis of the conclusions of the interim evaluation referred to in paragraph 1, the Commission may act in accordance with Article 4(6) or take any other appropriate action.
3. Within six months after the winding up of the ECSEL Joint Undertaking, but no later than two years after the triggering of the winding up procedure referred to in clause 26 of the Statutes, the Commission shall conduct a final evaluation of the ECSEL Joint Undertaking. The results of that final evaluation shall be presented to the European Parliament and to the Council.

*Article 12*  
*Discharge*

1. The discharge of the budget implementation with regard to the Union's contribution to the ECSEL Joint Undertaking shall be part of the discharge given by the European Parliament, upon recommendation of the Council, to the Commission in accordance with the procedure provided for in Article 319 of the Treaty.
2. The ECSEL Joint Undertaking shall fully cooperate with the institutions involved in the discharge procedure and provide any necessary additional information. In this context, it may be requested to be represented in meetings with the relevant institutions or bodies and to assist the Commission authorising officer by delegation.

*Article 13*  
*Ex-post audits*

1. Ex-post audits of expenditure on indirect actions shall be carried out by the ECSEL Joint Undertaking in accordance with Article 23 of Regulation (EU) No ... [the Horizon 2020 Framework Programme] as part of the Horizon 2020 Framework Programme indirect actions.
2. To ensure consistency, the Commission may decide to carry out the audits referred to in paragraph 1. The Commission shall only do so in duly justified cases and in consultation with the relevant Participating States.

## *Article 14*

### *Protection of the Union's financial interests*

1. Without prejudice to clause 22(4) of the Statutes, the ECSEL Joint Undertaking shall grant Commission staff and other persons authorised by the Joint Undertaking or the Commission, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.
2. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>17</sup> and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities<sup>18</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the Union's financial interests in connection with an agreement or decision or a contract funded under this Regulation.
3. Without prejudice to paragraphs 1 and 2, agreements, decisions and contracts resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the ECSEL Joint Undertaking, the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

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<sup>17</sup> OJ L 248, 18.9.2013, p. 1.

<sup>18</sup> OJ L 292, 15.11.1996, p. 2-5.



4. The ECSEL Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls.
5. The ECSEL Joint Undertaking shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF<sup>19</sup>. The ECSEL Joint Undertaking shall adopt the necessary measures to facilitate internal investigations conducted by OLAF.

#### *Article 15*

#### *Confidentiality*

Without prejudice to Article 16, the ECSEL Joint Undertaking shall ensure the protection of sensitive information whose disclosure could damage the interests of its members or of participants in the activities of the ECSEL Joint Undertaking.

#### *Article 16*

#### *Transparency*

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>20</sup> shall apply to documents held by the ECSEL Joint Undertaking.
2. The ECSEL Joint Undertaking's Governing Board may adopt practical arrangements for implementing Regulation (EC) No 1049/2001.

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<sup>19</sup> OJ L 136, 31.5.1999, p. 15.

<sup>20</sup> OJ L 145, 31.5.2001, p. 43.

3. Without prejudice to Article 10, decisions taken by the ECSEL Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman under the conditions laid down in Article 228 of the Treaty.

*Article 17*

*Rules for participation and dissemination*

1. Regulation (EU) No ... [Rules for participation and dissemination in Horizon 2020] shall apply to the actions funded by the ECSEL Joint Undertaking. In accordance with that Regulation, the ECSEL Joint Undertaking shall be considered as a funding body and shall provide financial support to indirect actions as set out in clause 1(a) of the Statutes.
2. Specific criteria regarding the eligibility of individual applicants to receive funding from ECSEL Participating States may be determined by the relevant funding authorities. Such criteria could cover, inter alia, the applicant type, including legal status and purpose, conditions of liability and viability, including financial soundness, and the fulfilment of fiscal and social obligations.

3. When an ECSEL Participating State does not entrust the ECSEL Joint Undertaking with the implementation of its contributions to the participants in indirect actions through the grant agreements with participants concluded by the ECSEL Joint Undertaking, it may determine specific rules regarding the eligibility of costs for the funding of participants.
4. The specific criteria and rules shall be included in the work plan.

#### *Article 18*

##### *Support from the host state*

An administrative agreement may be concluded between the ECSEL Joint Undertaking and the State where its seat is located concerning privileges and immunities and other support to be provided by that State to the ECSEL Joint Undertaking.

#### *Article 19*

##### *Repeal and transitional provisions*

1. Regulation (EC) No 72/2008 and Regulation (EC) No 74/2008 are repealed with effect from the date of entry into force of the present Regulation.
2. Without prejudice to paragraph 1, actions initiated under Regulations (EC) Nos 72/2008 and 74/2008 including annual implementation plans adopted under those Regulations shall continue to be governed by those Regulations until their completion.
3. In addition to the contributions referred to in Article 3(1) and Article 4(2), the following contributions to the administrative costs of the ECSEL Joint Undertaking shall be paid over the period 2014-2017 for the completion of the actions launched under Regulations (EC) Nos 72/2008 and 74/2008: EUR 2 050 000 by the Union, EUR 1 430 000 by the AENEAS association and EUR 975 000 by the ARTEMISIA association.

The interim evaluation referred to in Article 11(1) shall include a final evaluation of the ENIAC and ARTEMIS Joint Undertakings under Regulations (EC) Nos 72/2008 and 74/2008.

4. The Executive Director appointed on the basis of Regulation (EC) No 72/2008 shall, for the remaining period of the term of office, be assigned to the functions of the Executive Director of the ECSEL Joint Undertaking as provided for in this Regulation with effect from the date of entry into force of the present Regulation. The other conditions of the Executive Director's contract shall remain unchanged.
5. If the Executive Director appointed in accordance with paragraph 4 was in his/her first term of office, he/she shall be appointed for the remaining period of term of office with a possibility to extend the term of office up to 4 years in line with clause 8(4) of the Statutes. If the Executive Director appointed in accordance with paragraph 4 was in his/her second term of office, there is no possibility for extension. The Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
6. The contract of employment of the Executive Director appointed on the basis of Regulation (EC) No 74/2008 shall be terminated before the date of entry into force of this Regulation.
7. Without prejudice to paragraphs 4 and 5, this Regulation shall not affect the rights and obligations of staff engaged under Regulations (EC) Nos 72/2008 and 74/2008. Their contracts may be renewed under this Regulation in accordance with the Staff Regulations and the Conditions of Employment of Other Servants and in line with the budgetary constraints of the ECSEL Joint Undertaking.
8. The Executive Director of the ECSEL Joint Undertaking shall convene the first meeting of the Governing Board and of the Public Authorities Board.

9. Unless otherwise agreed between members of the ENIAC Joint Undertaking and of the ARTEMIS Joint Undertaking pursuant to Regulations (EC) Nos 72/2008 and 74/2008, all rights and obligations, including assets, debts or liabilities of the members of the Joint Undertakings pursuant to those Regulations shall be transferred to the members of the ECSEL Joint Undertaking pursuant to this Regulation.
10. Any unused appropriations under Regulations (EC) Nos 72/2008 and 74/2008 shall be transferred to the ECSEL Joint Undertaking. Any amount due by the AENEAS Association and the ARTEMISIA Association for the administrative appropriations of the ENIAC and ARTEMIS Joint Undertakings over the period 2008-2013 shall be transferred to the ECSEL Joint Undertaking according to arrangements to be agreed with the Commission.

*Article 20*

*Entry into force*

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

It shall apply from 1 January 2014.

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

Done at Brussels,

*For the Council*

*The President*

**STATUTES**  
**OF THE**  
**ECSEL JOINT UNDERTAKING**

*1 - Tasks*

The ECSEL Joint Undertaking shall carry out the following tasks:

- (a) support financially research and innovation indirect actions, mainly in the form of grants;
- (b) ensure sustainable management of the ECSEL Joint Undertaking;
- (c) develop close cooperation and ensure coordination with European (in particular Horizon 2020), national and transnational activities, bodies and stakeholders, aiming at fostering a fertile innovation environment in Europe, creating synergies and improving exploitation of research and innovation results in the area of electronic components and systems;
- (d) define and make any necessary adjustments to the multiannual strategic plan;
- (e) draw up and implement work plans for executing the multiannual strategic plan;
- (f) initiate open calls for proposals, evaluate proposals, and award funding to indirect actions through open and transparent procedures within the limits of available funds;
- (g) publish information on the indirect actions;

- (h) monitor the implementation of the indirect actions and manage the grant agreements or decisions;
- (i) monitor overall progress towards the objectives of the ECSEL Joint Undertaking;
- (j) information, communication, exploitation and dissemination activities by applying *mutatis mutandis* the provisions of Article 22 of Regulation (EU) No .../2013 [the Horizon 2020 Framework Programme], including making the detailed information on results from calls for proposals available and accessible in a common H2020 e-database;
- (k) any other task needed to achieve the objectives set out in Article 2.

## *2 - Members*

1. The members of the ECSEL Joint Undertaking shall be the following:
  - (a) the Union, represented by the Commission,
  - (b) [Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom], and
  - (c) upon acceptance of these Statutes by means of a letter of endorsement, [the AENEAS association, an association registered under French law (registration No 20070039) with its registered office in Paris (France); the ARTEMISIA association, an association registered under Dutch law (registration No 17201341) with its registered office in Eindhoven (the Netherlands); the EPoSS association, an association registered under ... law (registration No ...) with its registered office in ... (...)].

2. The countries who are members of the ECSEL Joint Undertaking are hereinafter referred to as ‘ECSEL Participating States’. Each ECSEL Participating State shall appoint its representatives in the bodies of the ECSEL Joint Undertaking and designate the national entity or entities responsible for fulfilling its obligations with respect to activities of the ECSEL Joint Undertaking.
3. The ECSEL Participating States together with the Commission shall hereinafter be referred to as the ‘public authorities’ of the ECSEL Joint Undertaking.
4. The private associations shall hereinafter be referred to as the ‘private members’ of the ECSEL Joint Undertaking. Constituent entities are the entities that constitute each private member as defined in the member's statutes.

### *3 - Changes to membership*

1. Member States of the Union or Associated Countries that are not listed in clause 2(1)(b) shall become members of the ECSEL Joint Undertaking upon notification to the Governing Board of their written acceptance of these Statutes and of any other provisions governing the functioning of the ECSEL Joint Undertaking.
2. Provided that they contribute to the financing referred to in clause 16(4) to achieve the objectives of the ECSEL Joint Undertaking set out in Article 2 and accept these Statutes, the following entities may apply to become a member of the ECSEL Joint Undertaking:
  - (a) any other country than those referred under paragraph 1 pursuing research and innovation policies or programmes in the area of electronic components and systems;
  - (b) any other legal entity that directly or indirectly supports research and innovation in a Member State or in an Associated Country.



3. Any application for membership to the ECSEL Joint Undertaking in accordance with paragraph 2 shall be addressed to the Governing Board. It shall assess the application, taking into account the relevance and the potential added value of the applicant for achieving the objectives of the ECSEL Joint Undertaking. It shall then decide on the application.
4. Any member may terminate its membership of the ECSEL Joint Undertaking. Such termination shall become effective and irrevocable six months after notification to the other members. As of then, the former member shall be discharged from any obligations other than those approved or incurred by the ECSEL Joint Undertaking prior to the notification of terminating the membership.
5. Membership of the ECSEL Joint Undertaking may not be transferred to a third party without prior agreement of the Governing Board.
6. The ECSEL Joint Undertaking shall publish on its website immediately upon any change to membership pursuant to this clause an updated list of members of the ECSEL Joint Undertaking together with the date when such change takes effect.

#### *4 - Organisation of the ECSEL Joint Undertaking*

The bodies of the ECSEL Joint Undertaking shall be:

- (a) the Governing Board;
- (b) the Executive Director;
- (c) the Public Authorities Board;
- (d) the Private Members Board.

### *5 - Composition of the Governing Board*

The Governing Board shall be composed of representatives of the members of the ECSEL Joint Undertaking.

Each member of the ECSEL Joint Undertaking shall appoint its representatives and a lead delegate who shall hold the voting rights of the member in the Governing Board.

### *6 - Functioning of the Governing Board*

1. The voting rights are distributed as follows: 1/3 for the private members collectively, 1/3 for the Commission, and 1/3 for the ECSEL Participating States collectively. The members shall make every effort to achieve consensus. Failing consensus, the Governing Board shall take its decisions by a majority of at least 75% of all votes, including the votes of the members who are not in attendance.

For the first two financial years, the voting rights of the ECSEL Participating States shall be distributed as follows: one per cent for each ECSEL Participating State and the remaining percentage distributed annually among the ECSEL Participating States in proportion to their actual financial contributions in the past two years, including their contributions to the ENIAC and ARTEMIS Joint Undertakings. For subsequent years, the distribution of the voting rights of the ECSEL Participating States shall be established annually in proportion to the funds they have actually committed to indirect actions in the past two financial years.

The voting rights of the private members shall be distributed equally amongst the private associations unless decided otherwise by the Private Members Board.

Voting rights for any new member of the ECSEL Joint Undertaking that is not a Member State or an Associated Country shall be determined by the Governing Board before that member joins the ECSEL Joint Undertaking.

2. The Governing Board shall elect a chairperson for a period of at least one year.
3. The Governing Board shall hold its ordinary meetings at least twice a year. It may hold extraordinary meetings at the request of the Commission or of a majority of the representatives of the ECSEL Participating States or of a majority of the private members, or at the request of the chairperson, or at the request of the Executive Director in accordance with clause 16(5). The meetings of the Governing Board shall be convened by its chairperson and shall usually take place at the seat of the ECSEL Joint Undertaking.

The quorum of the Governing Board shall be constituted by the Commission, the private members and at least three ECSEL Participating States' lead delegates.

The Executive Director shall take part in the deliberations, unless decided otherwise by the Governing Board, but shall have no voting rights.

The Governing Board may invite, on a case by case basis, other persons to attend its meetings as observers, in particular representatives of EU regional authorities.

The representatives of the members of the ECSEL Joint Undertaking shall not be personally liable for actions they have taken in their capacity as representatives on the Governing Board.

The Governing Board shall adopt its own rules of procedure.

## *7 - Tasks of the Governing Board*

1. The Governing Board shall have overall responsibility for the strategic orientation and the operations of the ECSEL Joint Undertaking and shall supervise the implementation of its activities.
2. The Governing Board shall in particular carry out the following tasks:
  - (a) assess, accept or reject applications for new membership in accordance with clause 3(3);
  - (b) decide on the termination of membership in the ECSEL Joint Undertaking of any member that does not fulfil its obligations;
  - (c) adopt the financial rules of the ECSEL Joint Undertaking in accordance with Article 5;
  - (d) adopt the annual budget of the ECSEL Joint Undertaking, including the staff establishment plan indicating the number of temporary posts by function group and by grade, the number of contract staff and seconded national experts expressed in full-time equivalents;
  - (e) exercise the appointing authority powers with respect to staff, in accordance with Article 6(2);
  - (f) appoint, dismiss, extend the term of office of, provide guidance to and monitor the performance of the Executive Director;
  - (g) approve the organisational structure of the Programme Office, referred to in clause 9(5) upon recommendation by the Executive Director;
  - (h) adopt the multiannual strategic plan referred to in clause 21(1);

- (i) adopt the work plan and the corresponding expenditure estimates referred to in clause 21(2);
- (j) approve the annual accounts;
- (k) approve the annual activity report, including the corresponding expenditure referred to in clause 22(1);
- (l) arrange as appropriate, for the establishment of an internal audit capability of the ECSEL Joint Undertaking upon recommendation by the Executive Director;
- (m) establish the ECSEL Joint Undertaking's communications policy upon recommendation by the Executive Director;
- (n) where appropriate, lay down implementing rules pursuant to Article 6(3);
- (o) where appropriate, lay down rules on the secondment of national experts to the ECSEL Joint Undertaking and on the use of trainees pursuant to Article 7(2);
- (p) where appropriate, set up advisory groups in addition to the bodies of the ECSEL Joint Undertaking;
- (q) where appropriate, submit to the Commission any request to amend this Regulation proposed by any member of the ECSEL Joint Undertaking;
- (r) be responsible for any task that is not specifically allocated to one of the bodies of the ECSEL Joint Undertaking; it may assign such tasks to one of those bodies.

*8 – Appointment, dismissal or extension of the term of office of the Executive Director*

1. The Executive Director shall be appointed by the Governing Board, from a list of candidates proposed by the Commission, following an open and transparent selection procedure. The Commission shall associate the representation from the other members of the ECSEL Joint Undertaking in the selection procedure as appropriate.

In particular, an appropriate representation from the other members of the ECSEL Joint Undertaking shall be ensured at the pre-selection stage of the selection procedure. For that purpose, the ECSEL Participating States and the private members shall appoint by common accord a representative as well as an observer on behalf of the Governing Board.

2. The Executive Director is a member of staff and shall be engaged as a temporary agent of the ECSEL Joint Undertaking under point (a) of Article 2 of the Conditions of Employment of Other Servants of the Union.

For the purpose of concluding the contract of the Executive Director, the ECSEL Joint Undertaking shall be represented by the chairperson of the Governing Board.

3. The term of office of the Executive Director shall be three years. By the end of that period, the Commission associating the ECSEL Participating States and the private members as appropriate shall undertake an assessment of the performance of the Executive Director and the ECSEL Joint Undertaking's future tasks and challenges.
4. The Governing Board, acting on a proposal from the Commission which takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for no more than four years.

5. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
6. The Executive Director may be dismissed only upon a decision of the Governing Board acting on a proposal from the Commission associating the the ECSEL Participating States and the private members as appropriate.

#### *9 - Tasks of the Executive Director*

1. The Executive Director shall be the chief executive responsible for the day-to-day management of the ECSEL Joint Undertaking in accordance with the decisions of the Governing Board.
2. The Executive Director shall be the legal representative of the ECSEL Joint Undertaking. He/she shall be accountable to the Governing Board.
3. The Executive Director shall implement the budget of the ECSEL Joint Undertaking.
4. The Executive Director shall in particular carry out the following tasks in an independent manner:
  - (a) consolidate and submit for adoption to the Governing Board the draft multiannual strategic plan composed of the multiannual strategic research and innovation agenda as proposed by the Private Members Board and the multiannual financial perspectives from the public authorities;
  - (b) prepare and submit for adoption to the Governing Board the draft annual budget, including the corresponding staff establishment plan indicating the number of temporary posts in each grade and function group and the number of contract staff and seconded national experts expressed in full-time equivalents;

- (c) prepare and submit for adoption to the Governing Board the draft work plan including the scope of the calls for proposals needed to implement the research and innovation activities plan as proposed by the Private Members Board and the corresponding expenditure estimates as proposed by the public authorities;
- (d) submit for approval to the Governing Board the annual accounts;
- (e) prepare and submit for approval to the Governing Board the annual activity report, including the corresponding expenditure;
- (f) sign individual grant agreements or decisions;
- (g) sign procurement contracts;
- (h) implement the ECSEL Joint Undertaking's communication policy;
- (i) organise, direct and supervise the operations and the staff of the ECSEL Joint Undertaking within the constraints of the delegation by the Governing Board as provided for in Article 6(2);
- (j) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Governing Board;
- (k) ensure that risk assessment and risk management are performed;
- (l) take any other measures needed for assessing the progress of the ECSEL Joint Undertaking towards its objectives as set out in Article 2;
- (m) perform any other tasks entrusted or delegated to the Executive Director by the Governing Board.



5. The Executive Director shall set up a Programme Office for the execution, under his/her responsibility, of all support tasks arising from this Regulation. The Programme Office shall be composed of the staff of the ECSEL Joint Undertaking and shall in particular carry out the following tasks:
- (a) provide support in establishing and managing an appropriate accounting system in accordance with the financial rules of the ECSEL Joint Undertaking;
  - (b) manage the calls for proposals as provided for in the work plan and administer the grant agreements or decisions;
  - (c) provide the members and the other bodies of the ECSEL Joint Undertaking all relevant information and support necessary for them to perform their duties as well as responding to their specific requests;
  - (d) act as the secretariat of the bodies of the ECSEL Joint Undertaking and provide support to any advisory group set up by the Governing Board.

#### *10 - Composition of the Public Authorities Board*

The Public Authorities Board shall be composed of representatives of the public authorities of the ECSEL Joint Undertaking.

Each public authority shall appoint its representatives and a lead delegate who shall hold the voting rights in the Public Authorities Board.

## *11 - Functioning of the Public Authorities Board*

1. The voting rights in the Public Authorities Board shall be assigned to the public authorities on an annual basis in proportion to their financial contribution to the activities of the ECSEL Joint Undertaking for that year in accordance with clause 18(4), and with an upper limit for any given member of 50% of the total voting rights in the Public Authorities Board.

If fewer than three ECSEL Participating States have communicated to the Executive Director their financial contribution according to clause 18(4), the Commission shall hold 50% of the voting rights and the remaining 50% shall be distributed equally amongst the ECSEL Participating States.

The public authorities shall make every effort to achieve consensus. Failing consensus, the Public Authorities Board shall take its decisions by a majority of at least 75% of all votes, including the votes of the ECSEL Participating States that are not in attendance.

Each public authority shall have a right of veto on all issues concerning the use of its own contribution to the ECSEL Joint Undertaking.

2. The Public Authorities Board shall elect its chairperson for a period of at least two years.
3. The Public Authorities Board shall hold its ordinary meetings at least twice a year. It may hold extraordinary meetings at the request of the Commission or of a majority of the representatives of the ECSEL Participating States, or at the request of the chairperson. The meetings of the Public Authorities Board shall be convened by its chairperson and shall normally take place at the seat of the ECSEL Joint Undertaking.

The quorum of the Public Authorities Board shall be constituted by the Commission and at least three ECSEL Participating States' lead delegates.

The Executive Director shall take part in the deliberations, unless decided otherwise by the Public Authorities Board, but shall have no voting rights.

Any Member State or Associated Country that is not a member of the ECSEL Joint Undertaking shall be able to participate in the Public Authorities Board as an observer. Observers shall receive all relevant documents and may give advice on any decision taken by the Public Authorities Board. All such observers will be bound by the confidentiality rules applying to the Public Authorities Board members.

The Public Authorities Board may appoint working groups where necessary under the overall coordination of one or more public authorities.

The Public Authorities Board shall adopt its own rules of procedure.

#### *12 - Tasks of the Public Authorities Board*

The Public Authorities Board shall:

- (a) ensure that the principles of fairness and transparency are properly applied in the allocation of public funding to participants in indirect actions;
- (b) approve the rules of procedure for calls for proposals, and for the evaluation, selection and monitoring of indirect actions;
- (c) approve the launch of calls for proposals, in accordance with the work plan;
- (d) rank proposals on the basis of the selection and award criteria, and considering their contribution towards achieving the objectives of the call and synergy with national priorities;

- (e) decide on the allocation of public funding to selected proposals up to the limit of the budgets available, taking into account the verifications carried out in accordance with clause 18(5). This decision shall be binding on ECSEL Participating States without any further evaluation or selection processes.

### *13 - Composition of the Private Members Board*

The Private Members Board shall be composed of representatives of the private members of the ECSEL Joint Undertaking.

Each private member shall appoint its representatives and a lead delegate who shall hold the voting rights in the Private Members Board.

### *14 - Functioning of the Private Members Board*

1. The Private Members Board shall meet at least twice a year.
2. The Private Members Board may appoint working groups where necessary under the overall coordination of one or more members.
3. The Private Members Board shall elect its chairperson.
4. The Private Members Board shall adopt its rules of procedure.

### *15 - Tasks of the Private Members Board*

The Private Members Board shall:

- (a) draw up and regularly update the draft multiannual strategic research and innovation agenda referred to in clause 21(1) for achieving the objectives of the ECSEL Joint Undertaking set out in Article 2;
- (b) prepare each year the draft research and innovation activities plan for the next year, as a basis for the calls for proposals referred to in clause 21(2);

- (c) submit to the Executive Director the draft multiannual strategic research and innovation agenda and the yearly draft research and innovation activities plan within the deadlines set by the Governing Board;
- (d) organise an advisory stakeholder forum that is open to all public and private stakeholders having an interest in the field of electronic components and systems, to inform them and collect feedback about the draft multiannual strategic research and innovation agenda and draft research and innovation activities plan for a given year.

### *16 - Sources of financing*

1. The ECSEL Joint Undertaking shall be jointly funded by its members through financial contributions paid in instalments and in-kind contributions consisting of the costs incurred by the private members or their constituent entities and affiliated entities in implementing indirect actions that are not reimbursed by the ECSEL Joint Undertaking.
2. The administrative costs of the ECSEL Joint Undertaking shall not exceed EUR {39 420 000} and shall be covered through the financial contributions referred to in Article 3(1) for the Union contribution up to EUR {15 255 000}, Article 4(2) for the contribution by the private members up to EUR {19 710 000} and Article 19(2) for the completion of the actions launched under Regulations 72/2008 and 74/2008. If part of the contribution for administrative costs is not used, it may be made available to cover the operational costs of the ECSEL Joint Undertaking.
3. The operational costs of the ECSEL Joint Undertaking shall be covered through:
  - (a) a financial contribution by the Union;
  - (b) financial contributions from ECSEL Participating States.

- (c) in-kind contributions by the private members or their constituent entities and affiliated entities consisting of the costs incurred by them in implementing indirect actions less the contributions by the ECSEL Joint Undertaking, the ECSEL Participating States and any other Union contribution to those costs.
4. The resources of the ECSEL Joint Undertaking entered in its budget shall be composed of the following contributions:
- (a) members' financial contributions to the administrative costs;
  - (b) members' financial contributions to the operational costs, including those from the ECSEL Participating States which entrust the ECSEL Joint Undertaking in accordance with clause 17(1);
  - (c) any revenue generated by the ECSEL Joint Undertaking;
  - (d) any other financial contributions, resources and revenues.

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

5. Should any member of the ECSEL Joint Undertaking be in default of its commitments concerning its agreed financial contribution, the Executive Director shall put this in writing and set a reasonable period within which such default shall be remedied. If the situation is not remedied within that period, the Executive Director shall convene a meeting of the Governing Board to decide whether the defaulting member's membership is to be revoked or if any other measures are to be taken until its obligations have been met.

6. All the resources and activities of the ECSEL Joint Undertaking shall be intended for the achievement of the objectives set out in Article 2.
7. The ECSEL Joint Undertaking shall own all assets generated by it or transferred to it for the achievement of its objectives set out in Article 2.
8. Except when the ECSEL Joint Undertaking is wound up pursuant to clause 26, any excess revenue over expenditure shall not be paid to the members of the ECSEL Joint Undertaking.

#### *17 - ECSEL Participating States contributions*

1. The ECSEL Participating States may entrust the ECSEL Joint Undertaking with the implementation of their contributions to the participants in indirect actions through the grant agreements with participants concluded by the ECSEL Joint Undertaking. They may also entrust the ECSEL Joint Undertaking with the payment of their contributions to the participants or make the payments by themselves based on the verifications made by the ECSEL Joint Undertaking.
2. Where an ECSEL Participating State does not entrust the ECSEL Joint Undertaking as described in the first paragraph, it shall take all necessary measures to establish its own grant agreements within a similar timeframe as the ECSEL Joint Undertaking grant agreements. The verification of the eligibility of costs performed by the ECSEL Joint Undertaking as referred to in clause 18(7) may be used by the ECSEL Participating State as part of its own payment process.

3. The arrangements for the cooperation between the ECSEL Participating States and the ECSEL Joint Undertaking shall be established by means of an administrative arrangement to be concluded between the entities designated by the ECSEL Participating States for that purpose and the ECSEL Joint Undertaking.
4. When ECSEL Participating States entrust the ECSEL Joint Undertaking in accordance with the first paragraph, the administrative arrangements referred to in paragraph 3 shall be supplemented with annual arrangements between the entities designated by the ECSEL Participating States for that purpose and the ECSEL Joint Undertaking, laying down the terms and conditions for the financial contribution of the ECSEL Participating States to the ECSEL Joint Undertaking.
5. Member States, Associated Countries and third countries that are not members of the ECSEL Joint Undertaking may conclude similar arrangements with the ECSEL Joint Undertaking.

#### *18 - Funding of indirect actions*

1. The ECSEL Joint Undertaking shall support indirect actions through open and competitive calls for proposals, and allocation of public funding within the limits of the budgets available. Any public support under this initiative is without prejudice to the procedural and material State aid rules.



2. The financial contribution from the public authorities shall be that referred to in clause 16(3)(a) and clause 16(3)(b) disbursed as a reimbursement of eligible costs to the participants in indirect actions. The specific reimbursement rates by the Union and by each ECSEL Participating State shall be included in the work plan.
4. The public authorities shall communicate to the Executive Director their financial commitments reserved for each call for proposals to be included in the work plan and where applicable in accordance with clause 17(1) in time for the preparation of the draft budget of the ECSEL Joint Undertaking, taking into account the scope of the research and innovation activities addressed in the work plan.
5. The Executive Director shall verify the eligibility of applicants for funding from the Union and the ECSEL Participating States shall verify the eligibility of their applicants against any predetermined national criteria for funding and communicate the results to the Executive Director.

6. On the basis of the verifications provided in paragraph 5, the Executive Director shall establish the proposed list of indirect actions to be retained for funding, detailed by applicants, and communicate it to the Public Authorities Board who shall decide on the maximum allocation of public funding in accordance with clause 12(e) and mandate the Executive Director to establish agreements with the corresponding participants.
7. The ECSEL Joint Undertaking shall take all necessary measures, including the verification of the eligibility of costs, for the disbursement of the public funding to the respective participants in accordance with the arrangements referred to in clause 17(3) and (4).
8. The ECSEL Participating States shall not require additional technical monitoring and reporting other than those required by the ECSEL Joint Undertaking.

#### *19 - Financial commitments*

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

#### *20 - Financial year*

The financial year shall run from 1 January to 31 December.

## *21 - Operational and financial planning*

1. The multiannual strategic plan shall specify the strategy and plans for achieving the objectives of the ECSEL Joint Undertaking set out in Article 2 in the form of a multiannual strategic research and innovation agenda from the Private Members Board and multiannual financial perspectives from the public authorities. It should identify research and innovation priorities for the development and adoption of key competences for electronic components and systems across different application areas in order to strengthen European competitiveness and help create new markets and societal applications. It should be reviewed regularly in accordance with the evolution of the industrial needs in Europe.
2. The Executive Director shall submit to the Governing Board for adoption a draft annual or multiannual work plan which shall include the research and innovation activities plan, the administrative activities and the corresponding expenditure estimates.
3. The work plan shall be adopted by the end of the year prior to its implementation. The work plan shall be made publicly available.
4. The Executive Director shall prepare the draft annual budget for the following year and submit it to the Governing Board for adoption.

5. The annual budget for a particular year shall be adopted by the Governing Board by the end of the previous year.
6. The annual budget shall be adapted in order to take into account the amount of the Union contribution as set out in the Union budget.

## *22 - Operational and financial reporting*

1. The Executive Director shall report annually to the Governing Board on the performance of his/her duties in accordance with the financial rules of the ECSEL Joint Undertaking.

By 15 February each year, the Executive Director shall submit to the Governing Board for approval an annual activity report on the progress made by the ECSEL Joint Undertaking in the previous calendar year, in particular in relation to the work plan for that year. That report shall include, inter alia, information on the following matters:

- (a) research, innovation and other actions carried out and the corresponding expenditure;
  - (b) the proposals submitted, including a breakdown by participant type, including SMEs, and by country;
  - (c) the proposals selected for funding, with a breakdown by participant type, including SMEs, and by country, and indicating the contributions of the ECSEL Joint Undertaking and the ECSEL Participating States to the individual participants and indirect actions.
2. Once approved by the Governing Board, the annual activity report shall be made publicly available.

3. The ECSEL Joint Undertaking shall report annually to the Commission in accordance with Article 60(5) of Regulation (EU, Euratom) No 966/2012.
4. The accounts of the ECSEL Joint Undertaking shall be examined by an independent audit body as laid down in Article 60(5) of Regulation (EU, Euratom) No 966/2012.

The accounts of the ECSEL Joint Undertaking shall not be subject to examination by the Court of Auditors.

### *23 - Internal audit*

The Commission's internal auditor shall exercise the same powers over the ECSEL Joint Undertaking as those exercised in respect of the Commission.

### *24 - Liability of members and insurance*

1. The financial liability of the members of the ECSEL Joint Undertaking for the debts of the ECSEL Joint Undertaking shall be limited to their contribution already made for the administrative costs.
2. The ECSEL Joint Undertaking shall take out and maintain appropriate insurance.

### *25 - Conflict of interest*

1. The ECSEL Joint Undertaking, its bodies and staff shall avoid any conflict of interest in carrying out their activities.
2. The ECSEL Joint Undertaking Governing Board may adopt rules for the prevention and management of conflicts of interest in respect of its members, bodies and staff. In those rules, provision shall be made to avoid a conflict of interest for the representatives of the members of the ECSEL Joint Undertaking serving in the Governing Board or in the Public Authorities Board.

## *26 - Winding up*

1. The ECSEL Joint Undertaking shall be wound up at the end of the period provided for in Article 1.
2. The winding up procedure shall be automatically triggered if the Commission or all private members withdraw from the ECSEL Joint Undertaking.
3. For the purpose of conducting the proceedings to wind up the ECSEL Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.
4. When the ECSEL Joint Undertaking is being wound up, its assets shall be used to cover its liabilities and the expenditure relating to its winding up. Any surplus shall be distributed among the members at the time of the winding up in proportion to their financial contribution to the ECSEL Joint Undertaking. Any such surplus distributed to the Union shall be returned to the Union budget.
5. An ad hoc procedure shall be set up to ensure appropriate management of any agreement concluded or decision adopted by the ECSEL Joint Undertaking as well as any procurement contract extending beyond the duration of the ECSEL Joint Undertaking.