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Subject: Proposal for a COUNCIL REGULATION on establishing the European High Performance Computing Joint Undertaking and Statutes of the EuroHPC Joint Undertaking
- Presidency text

Delegations will find attached a Presidency text on the Proposal for a Council Regulation establishing the European High Performance Computing Joint Undertaking and Statutes of the EuroHPC Joint Undertaking with a view to the Research working party meeting on 7 May 2018.

Changes in comparison to doc. 7824/18 and 8087/18 are marked **bold underline** for addition and ~~strike through~~ for deletion.

**PROPOSAL FOR A COUNCIL REGULATION ESTABLISHING THE EUROPEAN HIGH
PERFORMANCE COMPUTING JOINT UNDERTAKING**

Article 1

Establishment

- (1) For the implementation of the Initiative on 'European High Performance Computing' a Joint Undertaking within the meaning of Article 187 of the Treaty (the 'European High performance Computing Joint Undertaking', hereinafter referred to as "Joint Undertaking"), is hereby ~~be~~ established for a period until 31 December 2026.
- (2) In order to take into account the duration of the European Framework Programmes for Research and Innovation (Horizon 2020), established by Regulation (EU) No 1291/2013 and the Connecting Europe Facility (CEF), established by Regulation (EU) No 1316/2013, calls for proposals and calls for tenders under this Joint Undertaking shall be launched at the latest by 31 December 2020. In duly justified cases, calls for proposals or calls for tender may be launched by 31 December 2021.
- (3) The Joint Undertaking shall be a body entrusted with the implementation of a public-private partnership as referred to in Article 209 of Regulation (EU, Euratom) No 966/2012.
- (4) The Joint Undertaking shall have legal personality. In all 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 Joint Undertaking shall be located in Luxembourg.

- (6) The Statutes of the Joint Undertaking ('the Statutes') are set out in the Annex.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) "acceptance test" means a test conducted to determine if the requirements of the system specification are met.
- (2) "access time" means the computing time of a supercomputer that is made available to a user or a group of users to execute their programmes.
- (3) "affiliated" entity means an entity as defined in Article 2(1)(2) of Regulation 1290/2013.
- (4) "constituent entities" mean the entities that constitute each private member of the Joint Undertaking, as defined in that private member's statutes.
- (5) "exascale-**supercomputer**" means a **computing system with a** performance level of ~~computing systems~~ capable of executing -ten to the power of eighteen operations per second (or 1 Exaflop) **supporting applications that deliver high-fidelity solutions in less time and that address problems of greater complexity.**
- (6) "hosting agreement" means an agreement, which may take the form of a service contract or other contract, concluded between the Joint Undertaking and a hosting entity.
- (7) "hosting entity" means a legal entity which includes facilities to host and operate a supercomputer and which is established in a ~~Participating~~ **Member State that is a Participating State. A hosting entity may represent one or several Participating States.**

- (7a) **"National supercomputer" means a national computing system located in a Participating State with a performance level of at least 0,4 Petaflops and that is not procured under this Regulation.**
- (7b) **"Observer States" means Member States or countries associated to Horizon 2020 that are not Participating States.**
- (8) "Participating States" means the countries that are members of the Joint Undertaking.
- (9) "petascale- **supercomputer**" means a **computing system with a** performance level of ~~computing systems~~ capable of executing ten to the power of fifteen operations per second (or 1 Petaflop).
- (10) "pre-exascale- **supercomputer**" means a **computing system with a** performance level of ~~computing systems~~ capable of executing more than 100 Petaflops and less than 1 Exaflop).
- (11) **"Private Members"** means the private associations that are members of the Joint Undertaking.
- (12) "supercomputer" means any computing system having at least petascale computing performance **and procured under this Regulation.**
- (12a) "total cost of ownership" of a supercomputer means the acquisition costs plus the operation~~ing~~ costs, ~~(including maintenance),~~ **until the ownership of the supercomputer is transferred to the hosting entity.**
- (13) "user" means any natural or legal person, entity or international organisation that has been granted access time to use a Joint Undertaking supercomputer.
- (14) **"work plan" means the document defined in Regulation (EU) No 1290/2013 that shall also function as the work programme referred to in Regulation (EU) No 1316/2013.**

Article 3

Mission, Objectives and activities

(0) The mission of the Joint Undertaking shall be to establish, deploy and maintain in the Union an integrated world-class supercomputing and data infrastructure and to develop and support an innovative ecosystem, based on the Union's leadership in High-Performance Computing, Cloud and Big Data technologies and applications.

(1) The Joint Undertaking shall have the following overall objectives:

- (a) to provide the research and scientific community as well as the industry including SMEs, and the public sector, from the Union or ~~an Associated C~~**countries associated** to Horizon 2020 with latest **best available and competitive** High Performance Computing and Data Infrastructure and support the development of its technologies and its applications across a wide range of fields.
- (b) to provide a framework for acquisition of an integrated, **demand-oriented and user-driven** world-class petascale and pre-exascale supercomputing and data infrastructure in the Union;
- (c) to provide Union level coordination and adequate financial resources to support the development and acquisition of such infrastructure, which will be accessible to users from the public and private sector primarily for research and innovation purposes;

(c1) to support an ambitious **R&I research and innovation** agenda to develop and maintain in the Union world-class level HPC **high-performance computing technologies, ecosystem, exascale and beyond, covering all scientific and industrial value chain segments, including low-power processor and middleware technologies, algorithms and code design, applications and systems, services and engineering, interconnections,** including knowhow and skills, for the next generation supercomputing era, (exascale and beyond).

~~(d) to support the development of an integrated High Performance Computing ecosystem in the Union covering all scientific and industrial value chain segments notably hardware, software, applications, services, engineering, interconnections, know how and skills.~~

(da) to promote the uptake and systematic use of research and innovation results generated in the Union by users from science, industry including SMEs and the public sector.

(2) The Joint Undertaking shall have the following specific objectives:

(a) to contribute to the implementation of Regulation (EU) No 1291/2013 and Decision 2013/743/EU, in particular Part II thereof, and to the implementation of Regulation (EU) No 1316/2013 and (EU) No 283/2014;

(b) to align strategies between Member States and the Union in a coordinated European High Performance Computing strategy and contribute to the effectiveness of public support by avoiding unnecessary duplication and fragmentation of efforts;

(c) to pool Union resources, national resources and private investment and bring the investments in High Performance Computing to a level comparable with its global competitors;

- (d) to build and operate a world-class integrated supercomputing and data infrastructure **with the necessary variety in architecture for addressing different user requirements** across the Union as an essential component for scientific excellence, and for the digitisation of industry, and the public sector, and for strengthening the innovation capabilities and global competitiveness for creating economic and employment growth in the Union;
- (e) to provide access to High Performance Computing-based infrastructures and services to a wide range of users from the research and scientific community as well as the industry including SMEs, and the public sector, for new and emerging data and compute-intensive applications and services;
- (ea) to support the development **in the Union** of world-class exascale and post-exascale High Performance Computing technologies, including low-power micro-processor **and related middleware** technologies, and their integration into supercomputing systems through a co-design approach;
- (f) to bridge the gap between research and development and the delivery of exascale High Performance Computing systems reinforcing the digital technology supply chain in the Union and enabling the acquisition by the Joint Undertaking of world-class supercomputers, **possibly integrating European technologies**;
- (g) to achieve excellence in High Performance Computing applications for world-class performance through development and optimisation of codes and applications in a co-design approach, supporting Centres of Excellence in High Performance Computing applications and large-scale High Performance Computing-enabled pilot demonstrators and test-beds for big data applications and services in a wide range of scientific and industrial areas;
- (h) to interconnect and federate regional, national and European High Performance Computing supercomputers and other computing systems, data centres and associated software and applications in cooperation with PRACE and GÉANT;

- (i) to increase the innovation potential of industry, and in particular of SMEs, using advanced High Performance Computing infrastructures, applications and services, notably through the creation, networking and coordination of national High-Performance Computing Competence Centers **across the Union**;
- (j) to improve understanding of High Performance Computing and contribute to reducing skills gaps in the Union related to High Performance Computing **through awareness, training and exchange of know-how**;
- (k) to widen the scope of High Performance Computing usage.

(3) The Joint Undertaking shall implement the general and specific objectives referred to in paragraphs 1 and 2 around the following three main pillars of activity:

- (a) general administrative activities for the operation and management of the Joint Undertaking and for allocating and managing access time to the supercomputing and data infrastructures;**
- (b) activities for the acquisition, deployment, interconnection and operation of world-class supercomputing and data infrastructures;**
- (c) activities for supporting a research and innovation agenda for establishing an innovation ecosystem addressing hardware and software supercomputing technologies and their integration into exascale supercomputing systems, advanced applications, services and tools, skills and knowhow.**

Article 4

Union's financial contribution

- (1) The Union financial contribution to the Joint Undertaking including EFTA appropriations shall be up to EUR 486 000 000, distributed as follows:
 - (a) **up to** EUR 386 000 000 from the Horizon 2020 Programme, including up to EUR 10 000 000 for administrative costs;
 - (b) **up to** EUR 100 000 000 from the CEF Programme;
- (2) The Union's financial contribution referred to in point (a) of paragraph 1 shall be paid from the appropriations in the general budget of the Union allocated to the Specific Programme, implementing Horizon 2020, established by Decision 743/2013/EU.

The Union's financial contribution referred to in point (a) of paragraph 1 shall include at least EUR 180 000 000 for calls for proposals in order to provide financial support to indirect actions corresponding to the research and innovation agenda.

- (3) The Union's financial contribution referred to in point (b) of paragraph 1 shall be paid from the appropriations in the general budget of the Union allocated to the Connecting Europe Facility Programme established by Regulation (EU) No 1316/2013 and shall be dedicated exclusively to the acquisition of ~~infrastructure~~ **supercomputers**.
- (4) The budget implementation as regards the Union's financial contribution shall be entrusted to the Joint Undertaking acting as a body referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 in accordance with point (c)(iv) of Article 58(1), and Articles 60 and 61 of that Regulation.

- (5) The arrangements for the Union's 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 Joint Undertaking.
- (6) The delegation agreement referred to in paragraph 5 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 Delegated Regulation (EU) No 1268/2012 as well as, inter alia, the following:
- (a) the requirements for the Joint Undertaking's contribution concerning the relevant performance indicators referred to in Annex II to Decision 2013/743/EU;
 - (b) the requirements for the Joint Undertaking's contribution in view of the monitoring referred to in Annex III to Decision 2013/743/EU;
 - (c) the specific performance indicators related to the functioning of the 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 28 of Regulation (EU) No 1291/2013 and Article 28 of Regulation (EU) No 1316/2013, including on the single portal for participants as well as through other electronic means of dissemination managed by the Commission;
 - (e) 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 8 of Regulation (EU) No 283/2014;
 - (f) provisions for the publication of calls for proposals of the Joint Undertaking also on the single portal for participants as well as through other electronic means of dissemination managed by the Commission;

- (g) provisions for the publication of calls for tenders of the Joint Undertaking in the Official Journal as well as through other electronic means of dissemination managed by the Commission;
- (h) 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 5

Contributions of members other than the Union

- (1) The Participating States shall make a contribution to the operational and administrative costs of the Joint Undertaking for at least EUR 486 000 000, including EUR 10 000 000 for administrative costs.
- (2) The Private Members of the Joint Undertaking shall make or arrange for their constituent entities and affiliated entities to make contributions for at least EUR 422 000 000 to the Joint Undertaking , including EUR 2 000 000 for administrative costs.
- (3) The contributions referred to in paragraphs 1 and 2 shall consist of contributions as set out in Article 15 of the Statutes.
- (4) The members of the Joint Undertaking other than the Union shall report by 31 January each year 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 points (d), (e) and (f) of Article 15(3) of the Statutes, the costs shall be determined in accordance with the usual cost accounting practices of the entities concerned, to the applicable accounting standards of the country where the entity is established, and to the applicable International Accounting Standards and International Financial Reporting Standards. The costs shall be certified by an independent external auditor appointed by the entity concerned. The valuation method may be verified by the Joint Undertaking, should there be any uncertainty arising from the certification. In case of remaining uncertainties, the valuation method may be audited by the Joint Undertaking.
- (6) The Commission may terminate, proportionally reduce or suspend the Union's financial contribution to the Joint Undertaking or trigger the winding-up procedure referred to in Article 24 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 of this Article.

Article 6

Hosting entity

(0) Supercomputers shall be located in a Participating State that is a Member State of the Union. A Participating State shall not host more than one pre-exascale or one petascale supercomputer.

(0a) The hosting entity may represent one or several Participating States. The hosting entity and the competent authorities of the relevant Participating States shall enter into an agreement to this effect.

- (1) The Joint Undertaking shall entrust the operation of each individual pre-exascale supercomputer it shall own to a hosting entity.

The Joint Undertaking and the other co-owners shall entrust the operation of each individual petascale supercomputer they shall own to a hosting entity.

~~The hosting entity may represent one or several Participating States. The hosting entity and the relevant Participating States shall enter into an agreement to this effect.~~

- (1a) Hosting entities for pre-exascale supercomputers shall be selected in accordance with paragraph 4 3 and the Joint Undertaking's financial rules referred to in Article 11.
- ~~(2) Pre-exascale supercomputers shall be located in a Participating State that is a Member State of the Union. A Member State shall not host more than one pre-exascale supercomputer.~~
- (3) Following a call for expression of interest, the hosting entity shall be selected by the Governing Board through a fair and transparent process based, inter alia, on the following criteria:
- (a) compliance with the general system specifications defined in the call for expression of interest;
 - (b) total cost of ownership of the supercomputer;
 - (c) experience of the hosting entity in installing and operating similar systems;
 - (d) quality of the hosting facility's physical and IT infrastructure, its security and its connectivity with the rest of the Union;
 - (e) quality of service to the users, namely capability to comply with the service-level-agreement provided among the documents accompanying the selection procedure.

- (f) prior acceptance from the hosting entity of the terms and conditions set out in the model hosting agreement including in particular the elements set out in Article 7(1) and those defined in the selection procedure;
- (g) provision of a letter of **an appropriate supporting document proving the** commitment of the Member State where the hosting entity is established or the **competent authorities of the** relevant Participating States that are represented by the hosting entity to cover **at least** 50% of the total cost of ownership of the pre-exascale supercomputer until its ownership is transferred by the Joint Undertaking to that hosting entity;

(g1) provision of an appropriate supporting document proving the commitment of the Member State where the hosting entity is established or of the competent authorities of the relevant Participating States that are represented by the hosting entity to cover all the costs of the total cost of ownership of the petascale supercomputer that are not covered by the Joint Undertaking.

~~(5) Regarding the selection of hosting entities for petascale supercomputers, the provisions in paragraphs (2) to (4) of this Article shall apply, with the following exceptions:~~

- ~~(a) Petascale supercomputers shall be located in a Participating State that is a Member State of the Union or an associated country to Horizon 2020.~~
- ~~(b) A Participating State shall not host more than one pre-exascale or one petascale supercomputer.~~
- ~~(c) Paragraph 4(g) should read: the hosting entity should commit to cover all the costs of the total cost of ownership of the petascale supercomputer that are not covered by the Joint Undertaking.~~

Article 7

Hosting agreement

- (0) The Joint Undertaking shall conclude a hosting agreement with each selected hosting entity prior to launching the procedure for the acquisition of the pre-exascale supercomputers.

The Joint Undertaking and the other co-owners shall conclude a hosting agreement with each selected hosting entity prior to launching the procedure for the acquisition of the petascale supercomputers.

- (1) The hosting agreement shall address in particular the following **elements**:
- (a) the ~~responsibilities~~ **rights and obligations** during the procedure for acquisition of the ~~pre-exascale~~ supercomputers, including the acceptance test of those supercomputers;
 - (b) the liability conditions for operating the ~~pre-exascale~~ supercomputer;
 - (c) the quality of service offered to the users when operating the ~~pre-exascale~~ supercomputer, as set out in the service level agreement;
 - (d) the access conditions of the Union's share of access time to the ~~pre-exascale~~ supercomputer, as decided by the Governing Board; **in accordance with Article 10;**
 - (e) the accounting modalities of the access times;
 - (f) the share of the total cost of ownership that the hosting entity shall arrange to be covered by the relevant Participating State(s);
 - (g) the conditions for the transfer of ownership referred to in Article 8(3) **and Article 8a(3), including, in the case of pre-exascale supercomputers, provisions for the calculation of their residual value and for their decommissioning;**

- (h) the obligation of the hosting entity to provide access to the ~~pre-exascale~~ supercomputers, while ensuring the security of the ~~pre-exascale~~ supercomputers, -the protection of personal data in accordance with Regulation (EU) No 2016/679, of privacy of electronic communications in accordance with Directive 2002/58/EC, of trade secrets in accordance with Directive (EU) 2016/943 and the protection of confidentiality of other data covered by the obligation of professional secrecy;
- (i) **in the case of pre-exascale supercomputers**, the obligation of the hosting entity to put in place a certified audit procedure covering the costs of operation of the supercomputer and the access-times of the users;
- (j) the obligation of the hosting entity to submit **by 31 January of each year to the Governing Board** an audit report and data on ~~the Union's share of~~ **the use of** access time ~~once a year to the Governing Board.~~
- (2) The hosting agreement shall be governed by Union law, supplemented **for any matter not covered by this Regulation or by other Union legal acts** ~~if necessary~~ by the ~~national~~ law of the Member State where the hosting entity is ~~seated~~ **located**.
- (3) The hosting agreement shall contain an arbitration clause giving jurisdiction to the Court of Justice of the European Union.
- (4) After the hosting agreement is concluded, the Joint Undertaking, supported by the selected hosting entity, shall launch the procedures for the acquisition of the pre-exascale supercomputer in accordance with the financial rules of the Joint Undertaking referred to in Article 11.

After the hosting agreement is concluded, the Joint Undertaking, jointly with the competent authorities of the Participating States, supported by the selected hosting entity, shall launch the procedures for the acquisition of the petascale supercomputer in accordance with the financial rules of the Joint Undertaking referred to in Article 11.

~~(5) Regarding the hosting agreements for petascale supercomputers, the provisions of this Article shall apply, with the following exceptions:~~

~~(a) Paragraph (g) shall not apply;~~

~~(b) Paragraph (5), the Joint Undertaking or the hosting entity shall launch the procedure for the acquisition of the petascale supercomputers; in case of the Joint Undertaking launching the procedure, it will be in accordance with the financial rules of the Joint Undertaking referred to in Article 11.~~

Article 8

Acquisition and ownership of the pre-exascale supercomputers

- (0) The Joint Undertaking shall procure the pre-exascale supercomputers ~~and associated infrastructure~~ and shall **own them** ~~be the owner of the procured goods~~.
- (1) The Union financial contribution referred to in Article 4(1) shall cover up to 50% of the total cost of ownership of the **pre-exascale** supercomputers. The remaining total cost of ownership **of the pre-exascale supercomputers** shall be covered by the **relevant Participating States** ~~hosting entity~~.
- (3) Without prejudice to Article 24(4) of the Statutes, at the earliest four years after the successful acceptance test by the Joint Undertaking of the pre-exascale supercomputers installed in a hosting entity the ~~property~~ **ownership** of the pre-exascale supercomputer may be transferred to that hosting entity upon decision of the Governing Board. In this case the hosting entity shall reimburse the Joint Undertaking the residual value of the supercomputers that is transferred.

~~(4) Regarding petascale supercomputers, the following provisions shall apply:~~

- ~~(a) The Joint Undertaking shall support the acquisition of petascale supercomputers by the Participating States;~~
- ~~(b) The Union's contribution shall be used only to support acquisition costs of petascale supercomputers;~~
- ~~(c) The Participating States shall be the main owners of the petascale supercomputers. The Joint Undertaking shall own the part that corresponds to the share of the Union's financial contribution to the acquisition cost of the petascale computer.~~

Article 8a

Acquisition and ownership of the petascale supercomputers

- (1) The Joint Undertaking shall procure, jointly with the competent authorities of the relevant Participating States, the petascale supercomputers and shall co-own them.**
- (2) The Union financial contribution referred to in Article 4(1) shall cover up to 35% of the acquisition costs of the petascale supercomputers. The remaining total cost of ownership of the petascale supercomputers shall be covered by the relevant Participating States.**
- (3) Without prejudice to Article 24(4) of the Statutes, four years after the successful acceptance test by the hosting entity of the petascale supercomputers installed in that hosting entity, the part of the ownership of the petascale supercomputer owned by the Joint Undertaking shall be transferred to that hosting entity.**

Article 9

Use of supercomputers

- (1) The use of supercomputers shall be primarily for research and innovation purposes falling under public funding programmes, ~~and~~ shall be open to users from the public and private sectors **and shall have an exclusive focus on civilian applications.**
- (2) The Governing Board shall define the general access conditions to use the supercomputers **in accordance with paragraphs 5 to 8 of Article 10** and may define specific access conditions for different types of users or applications. The quality of service shall be the same for all users.
- (3) Without prejudice to international agreements concluded by the Union, only users residing, established or located in a Member State or in a country associated to Horizon 2020, shall be granted access time, except if decided otherwise by the Governing Board in duly justified cases, taking into account the interests of the Union.

Article 10

Allocation of access time to the supercomputers

- ~~(1) Users shall be granted access to the supercomputers in accordance with paragraphs 2 and 3 of this Article.~~
- (2) The share of the Union's access time to each pre-exascale supercomputer shall be directly proportional to the financial contribution of the Union to the total cost of ownership of this supercomputer. ~~The Governing Board shall define the rights to the Union's share of access time.~~

- (3) Each Participating State shall be allocated a share of access time to each pre-exascale supercomputer that shall be directly proportional to its financial and in-kind contributions to the total costs of ownership of the pre-exascale supercomputer. Without prejudice to Article 12(3) the Participating State shall be responsible for defining the rights to its allocated access time, in accordance with the access conditions defined by the Governing Board in accordance with Article 9(2).
- (4) The share of the Union's access time to each petascale supercomputer shall be directly proportional to the financial contribution of the Union to the acquisition cost of this supercomputer. ~~The Governing Board shall define the rights to the Union's share of access time.~~
- (5) The Governing Board shall define the access rights to the Union's share of access time to the pre-exascale and petascale supercomputers and to the Union's share of access time to the national supercomputers, provided as in-kind contribution by Participating States in accordance with the following guiding principles:**
- (a) Allocation of access time for publicly funded research and innovation activities for any user of a Member State or country associated to Horizon 2020 shall be based on a fair and transparent peer review process following continuously open calls for expressions of interest launched by the Joint Undertaking, which shall target users from science, industry, including SMEs and the public sector. Expressions of interest shall be evaluated by independent experts. For expressions of interest from academia and research centres, the criterion of excellence shall have the predominant weight. For expressions of interest from industry users, including SMEs, the criterion of impact and innovation shall have the predominant weight. For expressions of interest from users from the public sector, the criterion of impact on society shall have the predominant weight.**

(b) Access time may be granted without a call for expressions of interest in the following cases:

- **strategic scientific European research initiatives, High Performance Computing Centres of Excellence, Competence Centres and SMEs participating in Horizon 2020 actions related to High Performance Computing;**
- **emergency and crisis management situations.**

(c) Up to 10% of the Union's share of access time shall be allocated to commercial services on a pay-per-use principle and in accordance with Article 12.

(6) Use of the Union's share of access time shall be free of charge for applications related to publicly funded research and innovation activities;

(7) The Governing Board shall regularly monitor granted access per Member State and country associated to Horizon 2020 and per user category. It may decide to:

(a) re-adapt access times per category of activity or user, with the aim to optimise the use capabilities of the petascale and pre-exascale supercomputers;

(b) propose additional support measures for providing fair access opportunities to users from all Member States and countries associated to Horizon 2020 that would aim to raise their level of skills and expertise in high performance computing systems.

Article 11

Financial rules

The Joint Undertaking shall adopt its specific financial rules in accordance with Article 209 of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 110/2014¹.

Article 12

Commercial services

- (1) Specific conditions shall apply to industrial users applying for ~~the Union's~~ access time for commercial purposes. This commercial service shall be a paying service, based on market prices. The level of the fee shall be established by the Governing Board.
- (2) The fees generated **[by the use of the Union's access time]** shall constitute a revenue to the Joint Undertaking budget.
- (3) The total access time allocated to commercial services shall not exceed ~~4~~20% of the total available access time of each supercomputer. The Governing Board shall decide on the allocation of the access time for the users of commercial services.
- (4) The quality of commercial services shall be the same for all users.

¹ Commission Delegated Regulation (EU) No 110/2014 of 30 September 2013 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ([OJ L 38, 7.2.2014, p. 2](#)).

Article 13

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 259/68² ('Staff Regulations' and 'Conditions of Employment') and the rules adopted jointly by the institutions of the Union for the purpose of applying the Staff Regulations and Conditions of Employment shall apply to the staff of the Joint Undertaking.
- (2) The Governing Board shall exercise, with respect to the staff of the Joint Undertaking, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment on the Authority empowered to conclude contracts ('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 on Article 6 of the Conditions of Employment delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which that delegation may be suspended. The Executive Director shall be authorised to sub-delegate those powers.

² Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission ([OJ L 56, 4.3.1968, p. 1](#)).

Where exceptional circumstances so require, the Governing Board may by decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and any subsequent sub-delegation of those powers by the latter. In such cases the Governing Board shall exercise the appointing authority powers itself or shall delegate them to one of its members or to a staff member of the Joint Undertaking other than the Executive Director.

- (3) The Governing Board shall adopt appropriate implementing rules giving effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations.
- (4) The staff resources shall be set out in the staff establishment plan of the 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 accordance with its annual budget.
- (5) The staff of the Joint Undertaking shall consist of temporary staff and contract staff.
- (6) All costs related to staff shall be borne by the Joint Undertaking.

Article 14

Seconded national experts and trainees

- (1) The Joint Undertaking may make use of seconded national experts and trainees not employed by the Joint Undertaking. The number of seconded national experts expressed in full-time equivalents shall be added to the information on staff resources as referred to in Article 13(4) in accordance with the annual budget.
- (2) The Governing Board shall adopt a decision laying down rules on the secondment of national experts to the Joint Undertaking and on the use of trainees.

Article 15

Privileges and Immunities

The Protocol No 7 on the privileges and immunities of the European Union, annexed to the Treaty on European Union and Treaty on the Functioning of the European Union, shall apply to the Joint Undertaking and its staff.

Article 16

Liability of the Joint Undertaking

- (1) The contractual liability of the 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 Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.
- (3) Any payment by the 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 Joint Undertaking and shall be covered by its resources.
- (4) The Joint Undertaking shall be solely responsible for meeting its obligations.
- (5) The Joint Undertaking shall not be liable for the operation of the supercomputers it owns by the hosting entity.

Article 17

Evaluation

- (1) By 30 June 2022 the Commission shall carry out, with the assistance of independent experts, an interim evaluation of the Joint Undertaking, which shall assess in particular the level of participation in, and contribution to, the actions by the Participating States, the Private Members and their constituent entities and affiliated entities, ~~and also by other legal entities~~. The Commission shall prepare a report on that evaluation which includes conclusions of the evaluation and observations by the Commission. The Commission shall send that report to the European Parliament and to the Council by 31 December 2022.
- (2) On the basis of the conclusions of the interim evaluation referred to in paragraph 1 of this Article, the Commission may act in accordance with Article 5(6) or take any other appropriate action.
- (3) Within six months after the winding-up of the Joint Undertaking, but no later than two years after the triggering of the winding-up procedure referred to in Article 24 of the Statutes, the Commission shall conduct a final evaluation of the Joint Undertaking. The results of that final evaluation shall be presented to the European Parliament and to the Council.

Article 18

Jurisdiction of the Court of Justice of the European Union and applicable law

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

- (c) in any dispute between the Joint Undertaking and its staff within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment.
- (2) Regarding any matter not covered by this Regulation or by other Union legal acts, the law of the State where the seat of the Joint Undertaking is located shall apply.

Article 19

Ex-post audits

- (1) Ex-post audits of expenditure on actions funded by the Horizon 2020 budget shall be carried out by the Joint Undertaking in accordance with Article 29 of Regulation (EU) No 1291/2013.
- (2) Ex-post audits of expenditure on activities funded by the CEF budget shall be carried out by the Joint Undertaking in accordance with Article 24 of Regulation (EU) No 1316/2013 as part of CEF actions.
- (3) The Commission may decide to carry out itself the audits referred to in paragraph 1 and 2. In such cases, it shall do so in accordance with the applicable rules, in particular Regulations (EU, Euratom) No 966/2012, (EU) No 1290/2013, (EU) No 1291/2013 and (EU) No 1316/2013.

Article 20

Protection of the Union's financial interests

- (1) The Commission shall take appropriate measures to ensure that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative sanctions.

- (2) The Joint Undertaking shall grant Commission staff and other persons authorised by 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 that is needed in order to conduct their audits.
- (3) 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 Council Regulation (Euratom, EC) No 2185/96³ and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁴ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or a contract funded, directly or indirectly, in accordance with this Regulation.
- (4) Without prejudice to paragraphs 1, 2 and 3, contracts and grant agreements, resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Joint Undertaking, the Court of Auditors and OLAF to conduct such audits and investigations in accordance with their respective competences. Where the implementation of an action is outsourced or sub-delegated, in whole or in part, or where it requires the award of a procurement contract or financial support to a third party, the contract, or grant agreement shall include the contractor's or beneficiary's obligation to impose on any third party involved explicit acceptance of those powers of the Commission, the Joint Undertaking, the Court of Auditors and OLAF.

³ 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 ([OJ L 292, 15.11.1996, p. 2](#)).

⁴ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 ([OJ L 248, 18.9.2013, p. 1](#)).

- (5) The Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls..
- (6) The 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 the European Anti-Fraud Office (OLAF)⁵. The Joint Undertaking shall adopt the necessary measures to facilitate internal investigations conducted by OLAF.

Article 21

Confidentiality

Without prejudice to Article 22, the Joint Undertaking shall ensure the protection of sensitive information the disclosure of which could damage the interests of its members or of participants in the activities of the Joint Undertaking.

Article 22

Transparency

- (1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁶ shall apply to documents held by the Joint Undertaking.
- (2) The Joint Undertaking's Governing Board may adopt the practical arrangements for implementing Regulation (EC) No 1049/2001.

⁵ OJ L 136, 31.5.1999, p. 15.

⁶ 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 ([OJ L 145, 31.5.2001, p. 43](#))

- (3) Without prejudice to Article 18 of this Regulation, decisions taken by the 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 23

Rules for participation and dissemination applicable to indirect actions funded under the Horizon 2020 programme

Regulation (EU) No 1290/2013 shall apply to the indirect actions funded by the Joint Undertaking from the Horizon 2020 funding programme. In accordance with that Regulation, the Joint Undertaking shall be considered as a funding body and shall provide financial support to indirect actions as set out in Article 1 of the Statutes.

Article 24

Rules applicable to the activities funded under CEF programme

Regulation (EU) No 1316/2013 shall apply to the activities funded by the Joint Undertaking from the CEF funding programme.

Article 25

Support from the host Member State

An administrative agreement may be concluded between the 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 Joint Undertaking.

Article 26

Initial Actions

- (1) The Commission shall be responsible for the establishment and initial operation of the Joint Undertaking until it has the operational capacity to implement its own budget. The Commission shall carry out, in accordance with Union law, all necessary actions in collaboration with the other members and with the involvement of the competent bodies of the Joint Undertaking.
- (2) For the purpose of paragraph 1:
 - (a) until the Executive Director takes up his duties following his/her appointment by the Governing Board in accordance with Article 7 of the Statutes, the Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director who may be assisted by a limited number of Commission officials;
 - (b) by derogation from Article 13(2) of this Regulation, the interim Director shall exercise the appointing authority powers;
 - (c) the Commission may assign a limited number of its officials on an interim basis.
- (3) The interim Executive Director may authorise all payments covered by the appropriations provided in the annual budget of the Joint Undertaking once approved by the Governing Board and may conclude agreements, decisions and contracts, including staff contracts following the adoption of the Joint Undertaking's staff establishment plan.

- (4) The interim Executive Director shall determine, in common accord with the Executive Director of the Joint Undertaking and subject to the approval of the Governing Board, the date on which the Joint Undertaking shall have the capacity to implement its own budget. From that date onwards, the Commission shall abstain from making commitments and executing payments for the activities of the Joint Undertaking.

Article 27

Entry into force

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

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 EuroHPC JOINT UNDERTAKING

Article 1

Tasks

The Joint Undertaking shall carry out the following tasks:

- (a) mobilise public and private sector funds for financing the activities of the Joint Undertaking;
- (b) launch calls for tenders for the acquisition of pre-exascale supercomputers and acquire at least two pre-exascale supercomputers that rank amongst the top ten world-wide, funded by the Union's budget stemming from Horizon 2020, Connecting Europe Facility and contributions from the **relevant** Participating States, in compliance with the Joint Undertaking's rules;
- (b1) launch, jointly with the **hosting entity**, calls for tenders for the acquisition of **at least two** petascale supercomputers and acquire, jointly with **the relevant hosting entity**, at least two petascale supercomputers; the funding for this joint procurement shall stem from Horizon 2020 and contributions from the Participating States, in compliance with the Joint Undertaking's rules;
- (c) initiate and manage the calls for expressions of interest for hosting petascale and pre-exascale supercomputers and evaluate the offers received, with the support of independent external experts;

- (d) select the hosting entity of the petascale and pre-exascale supercomputers in a fair, open and transparent manner, in accordance with Article 6 of this Regulation;
- (e) conclude a hosting agreement in accordance with Article 7 of this Regulation with the hosting entity for the operation and maintenance of the pre-exascale supercomputers and monitor the contractual compliance with the hosting agreement, including the acceptance test of the acquired supercomputers;
- (e1) conclude, jointly with the ~~Participating States~~ **other co-owners**, a hosting agreement in accordance with Article 7 of this Regulation with the hosting entity for the operation and maintenance of the petascale supercomputers and monitor, jointly with the ~~Participating States~~ **other co-owners**, the contractual compliance with the hosting agreement;
- (g) define general and specific conditions for allocating the Union's share of access time to the petascale and pre-exascale supercomputers and monitor access to these supercomputers **in accordance with Article 10 of the Regulation**;
- (g1) define general and specific conditions for allocating access time to national supercomputers to be provided as an in-kind contribution**;
- (h) initiate open calls for proposals and award funding in accordance with Regulation 1290/2013 and within the limits of available funds, to indirect actions mainly in the form of grants, focusing on:
- the development of the next generation of key High Performance Computing ~~technologies and systems~~ towards exascale addressing the whole **spectrum of European technologiesy spectrum** from low-power microprocessors and related middleware technologies to software, algorithms, programming models and tools, to novel architectures and their system integration through a co-design approach;

- new **and upscaling** algorithms **and codes**, new test-beds and **innovative** applications, outreach activities, awareness raising actions and professional development activities for attracting human resources to High Performance Computing, as well as increasing skills and engineering know-how of the ecosystem; this may include **coordination and support actions**, support to existing or new Centres of Excellence and to the creation, networking and coordination of national ~~High Performance Computing~~ **supercomputer** Competence Centres.
- (k) monitor the implementation of the actions and manage grant agreements;
- (l) ensure the efficiency of the EuroHPC initiative;**
- (m) monitor overall progress towards achieving the objectives of the Joint Undertaking;
- (n) develop close cooperation and ensure coordination with Union and national activities, bodies and stakeholders, creating synergies and improving exploitation of research and innovation results in the area of high performance computing;
- (o) define the multiannual strategic plan, draw up and implement the corresponding annual work plans for their execution and make any necessary adjustments to the multiannual strategic plan;
- (p) engage in information, communication, exploitation and dissemination activities by applying *mutatis mutandis* Article 28 of Regulation (EU) No 1291/2013, including making the detailed information on results from calls for proposals available and accessible in a common Horizon 2020 e-database;
- (q) any other task needed to achieve the objectives set out in Article 3 of this Regulation.

Article 2

Members

- (1) The members of the Joint Undertaking shall be:
 - (a) the Union, represented by the Commission;
 - (b) [Belgium, Bulgaria, Croatia, ~~Cyprus~~, the Czech Republic, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Poland, Portugal, Slovenia, Spain, and Switzerland];
 - (c) upon acceptance of these Statutes by means of a letter of endorsement, the European Technology Platform for High Performance Computing (ETP4HPC) Association registered under Dutch law with its registered office in Amsterdam (The Netherlands), the Big Data Value Association (BDVA) registered under Belgian law with its registered office in Brussels (Belgium).
- (2) Each Participating State shall appoint its representatives in the bodies of the Joint Undertaking and shall designate the national entity or entities responsible for fulfilling its obligations with respect to the activities of the Joint Undertaking.

Article 3

Changes to membership

- (1) Provided that they contribute to the financing referred to in Article 15 to achieve the objectives of the Joint Undertaking, Member States or countries associated to Horizon 2020 that are not listed in point (b) of Article 2(1) ~~shall~~**may** become members of the 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 Joint Undertaking.

- (2) Provided that they contribute to the financing referred to in Article 15 to achieve the objectives of the Joint Undertaking set out in Article 3 of this Regulation, and accept the Statutes of the Joint Undertaking, any legal entity established **in a Member State or a country associated to Horizon 2020** ~~[in a Participating State]~~ that directly or indirectly supports research and innovation in a Member State or in a country associated to Horizon 2020 may apply to become a member of the Joint Undertaking.
- (3) Any application for membership of the Joint Undertaking made in accordance with paragraph 2 shall be addressed to the Governing Board. The Governing Board shall assess the application, taking into account the relevance and the potential added value of the applicant as regards the achievement of the objectives of the Joint Undertaking and shall decide on the application.
- (4) Any member may terminate its membership of the Joint Undertaking. Such termination shall become effective and irrevocable six months after notification to the **other members of the** Governing Board and **to the Executive Director, who shall inform** the private members. As from the date of termination, the former member shall be discharged from any obligations other than those approved or incurred by the Joint Undertaking prior to the notification of termination of the membership.
- (5) Membership of the Joint Undertaking may not be transferred to a third party without the prior agreement of the Governing Board.
- (6) Upon any change to membership pursuant to this Article, the Joint Undertaking shall immediately publish on its website an updated list of members together with the date of such change.

Article 4

Bodies of the Joint Undertaking

The bodies of the Joint Undertaking shall be:

- (a) the Governing Board;
- (b) the Executive Director;
- (c) the Industrial and Scientific Advisory Board composed of the Research and Innovation Advisory Group and the Infrastructure Advisory Group.

Article 5

Composition of the Governing Board

- (1) **The Governing Board shall be composed of representatives of the Commission, on behalf of the Union, and of the Participating States.**~~The Governing Board shall be composed of representatives of the Participating States and the Commission.~~
- (2) **The Commission and** ~~Each Participating State and the Commission~~ shall appoint one representative ~~who shall hold the voting rights of the Participating State and of the Commission, respectively,~~ in the Governing Board. Each representative may be accompanied by one expert.

Article 6

Functioning of the Governing Board

- (0) **Only the representative of the Commission and the representatives of the Participating States that are Member States shall hold voting rights.**

(1) The Union shall hold 50 % of the voting rights. The voting rights of the Union shall be indivisible.

~~[(1a) For the first financial year, the voting rights of the Participating States shall be distributed equally among them.]~~

~~(2) For the remaining financial years, the voting rights of the Participating States shall be calculated on an annual basis as specified in paragraphs (2a) to (2c):~~

(2a) For the tasks referred to in Article 7(3), the voting rights of the Participating States shall be {distributed equally among them};

~~(2ba)~~ For the tasks referred to in Article 7(4) points 0, a, b and b1, the voting rights of the Participating States shall be distributed equally among them.

~~(2b)~~ For the tasks referred to in Article 7(4) points d, e and k, and for each supercomputer, the voting rights of the Participating States shall be distributed in proportion to their committed actual-financial contributions and to their actual in-kind contributions to that supercomputer to the corresponding activities of the Joint Undertaking over the duration of the Joint Undertaking until its ownership is transferred to the hosting entity in accordance with Article 8(3) of this Regulation; the in-kind contributions shall only be taken into account if they have been certified ex-ante by an independent auditor;

(2c) For the tasks referred to in Article 7(5), the voting rights of the Participating States shall be in proportion to their committed actual-financial contributions to the calls for proposals launched by to the corresponding activities of the Joint Undertaking. The committed financial contributions shall be recalculated on a regular basis over the duration of the Joint Undertaking.

- (3) The members of the Governing Board 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 absent.

For the voting referred to in paragraph (2c), in addition to the first subparagraph, a majority shall only be deemed established if it represents at least ~~30%~~ **one third** of the members of the Governing Board, including the members who are absent.

- (5) The Governing Board shall elect a chair for a period of two years. The mandate of the chairperson shall be extended only once, following a decision by the Governing Board.
- (6) The Governing Board shall hold its ordinary meetings at least twice a year. It may hold extraordinary meetings at the request of the Commission, of a majority of the representatives of the Participating States, at the request of the chair, or at the request of the Executive Director in accordance with Article 15(5). The meetings of the Governing Board shall be convened by its chair and shall usually take place at the seat of the Joint Undertaking. **[The Joint Undertaking shall reimburse the travel and subsistence expenses of the representatives of the Participating States attending meetings of the Governing Board.]**

~~The quorum of the Governing Board shall be constituted by the Commission and at least three Participating States' representatives.~~

[The quorum of the Governing Board shall be constituted by the Commission and at least one third of the Participating States' representatives.]

The quorum for the tasks referred to in Article 7(4) points d, e and k and for each supercomputer shall be constituted by the Commission and the Participating State where the hosting entity of that supercomputer is established.]

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.

Each Observer State may appoint one delegate ~~Any Member State or Associated Country that is not a member of the Joint Undertaking may participate in the Governing Board as an observer, who~~ Observers shall receive all relevant documents and may give advice on any decision taken by the Governing Board. ~~All such observers~~ **Delegates** shall **have no voting rights and shall** be bound by the confidentiality rules **according to Article 23.** ~~applying to the Governing Board members.~~

- (7) The representatives of the members shall not be personally liable for actions carried out in their capacity as representatives on the Governing Board.
- (8) The Governing Board shall adopt its own rules of procedure. These rules shall include specific procedures for identifying and avoiding conflicts of interest and ensure the confidentiality of any sensitive information.
- (9) The chair of the Research and Innovation Advisory Group, as well as the chair of the Infrastructure Advisory Group, shall have the right, whenever issues falling within its tasks are discussed, to attend meetings of the Governing Board as observers and take part in its deliberations, but shall have no voting rights.

Article 7

Tasks of the Governing Board

- (1) The Governing Board shall have overall responsibility for the strategic orientation and the operations of the Joint Undertaking and shall supervise the implementation of its activities. It shall ensure that the principles of fairness and transparency are properly applied in the allocation of public funding.

- (2) The Commission, in its role in the Governing Board, shall seek to ensure coordination between the activities of the Joint Undertaking and the relevant activities of Union Funding Programmes with a view to promoting synergies when developing an integrated supercomputing and data infrastructure ecosystem and when identifying priorities covered by collaborative research.
- (3) The Governing Board shall, in particular, carry out the following general administrative tasks of the Joint Undertaking:
- (a) assess, accept or reject applications for a membership in accordance with Article 3(2) of these Statutes;
 - (b) decide on the termination of membership in the Joint Undertaking of any member that does not fulfil its obligations;
 - (c) adopt the financial rules of the Joint Undertaking in accordance with Article 11 of this Regulation;
 - (d) adopt the annual administrative budget of the Joint Undertaking, including the corresponding 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 13(2) of this Regulation;
 - (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 upon recommendation of the Executive Director;

- (i) approve the annual activity report, including the corresponding expenditure referred to in Article 20(1);
- (j) arrange as appropriate, for the establishment of an internal audit capability of the Joint Undertaking upon recommendation by the Executive Director;
- (k) establish the Joint Undertaking's communications policy upon recommendation by the Executive Director;
- (l) where appropriate, establish implementing rules to the Staff Regulations and the Conditions of Employment in accordance with Article 13(3) of this Regulation;
- (m) where appropriate, lay down rules on the secondment of national experts to the Joint Undertaking and on the use of trainees in accordance with Article 14(2) of this Regulation;
- (n) where appropriate, set up advisory groups in addition to the bodies of the Joint Undertaking;
- (o) where appropriate, submit to the Commission a request to amend this Regulation proposed by a member of the Joint Undertaking;
- (p) approve the model hosting agreement to be annexed to the calls for expression of interest for the selection of the hosting entity;
- {(p1) define **the** general and specific access conditions ~~of~~ **to use** the Union's share of access time ~~on how the users from academia, the public sector and industry, including SMEs, can access the petascale and the pre-exascale supercomputers, including the pricing for paying services;~~}
- {(p2) ~~define the access rights to the Union's share of access time of the peta-scale~~ **and pre-exascale** supercomputers **and of the access time provided as in-kind contributions by the national supercomputers in accordance with Article 10(5) of this Regulation;**}

~~_{(p3)} define the access rights to the Union's share of access time of the pre-exascale supercomputers;}~~

~~_{(p4)} establish the level of the fee of the commercial services referred to in Article 12 of this Regulation, and decide on the allocation of the access time for these paying services;}~~

~~_{(p5)} decide annually on the use of any revenue generated by the fees for commercial services referred to in Article 12 of this Regulation;}~~

(q) be responsible for any task that is not specifically allocated to a particular body of the Joint Undertaking; it may assign such tasks to any body of the Joint Undertaking.

(4) The Governing Board shall, in particular, carry out the following tasks related to the acquisition and operation of the petascale and pre-exascale supercomputers:

(0) adopt the multiannual strategic agenda for the acquisition of supercomputers referred to in Article 19(1);

(a) adopt the part of the annual work plan that is related to the acquisition of supercomputers and the selection of hosting entities and the corresponding expenditure estimates referred to in Article 19(2);

(b) approve the launch of calls for expressions of interest, in accordance with the annual work plan;

(b1) approve the selection of the hosting entities for the pre-exascale and petascale supercomputers selected through a fair, open and transparent process in accordance with Article 6 of this Regulation;

(d) approve the launch of calls for tenders, in accordance with the annual work plan;

(e) approve the tenders selected for funding;

- (k) decide on the possible transfer of ownership of the pre-exascale supercomputers to a hosting entity, in accordance with Article 8(3) of the Regulation.
- (5) The Governing Board shall, in particular, carry out the following tasks related to the research and innovation activities of the Joint Undertaking:
- (a) adopt the multiannual strategic research and innovation agenda referred to in Article 19(1);
 - (b) adopt the part of the annual work plan that is related to the research and innovation activities and the corresponding expenditure estimates referred to in Article 19(2);
 - (c) approve the launch of calls for proposals, in accordance with the annual work plan;
 - (d) approve the list of actions selected for funding on the basis of the ranking list produced by a panel of independent experts.

Article 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 may associate the representation from the other members of the Joint Undertaking in the selection procedure, as appropriate.

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

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

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

- (3) The term of office of the Executive Director shall be ~~three~~**four** years. By the end of that period, the Commission, associating the Participating States and the Private Members as appropriate, shall undertake an assessment of the performance of the Executive Director and the 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 a period of no more than ~~three~~**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 Participating States and the Private Members as appropriate.

Article 9

Tasks of the Executive Director

- (1) The Executive Director shall be the chief executive responsible for the day-to-day management of the Joint Undertaking in accordance with the decisions of the Governing Board.
- (2) The Executive Director shall be the legal representative of the Joint Undertaking. The Executive Director shall be accountable to the Governing Board and perform his or her duties with complete independence within the powers assigned to him or her.

- (3) The Executive Director shall implement the budget of the 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 referred to in Article 19(1);
 - (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 annual work plan including the scope of the calls for proposals, calls for expressions of interest and calls for tenders needed to implement the research and innovation activities plan and procurement plans as proposed by the Industrial and Scientific Advisory Board and the corresponding expenditure estimates as proposed by the Participating States and the Commission;
 - (d) submit for opinion to the Governing Board the annual accounts;
 - (e) prepare and submit for approval to the Governing Board the annual activity report, including the information on corresponding expenditure;
 - (f) sign individual grant agreements, decisions and contracts;
 - (g) sign procurement contracts;
 - (h) monitor the operations of the peta-scale and pre-exascale supercomputers owned or funded by the Joint Undertaking (including the allocation of the Union's share of access time, compliance with the access rights for academic and industrial users and quality of provided services);

- (i) implement the Joint Undertaking's communication policy;
 - (j) organise, direct and supervise the operations and the staff of the Joint Undertaking within the limits of the delegation by the Governing Board as provided for in Article 13(2) of this Regulation;
 - (k) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Governing Board;
 - (l) ensure that risk assessment and risk management are performed;
 - (m) take any other measures needed to assess the progress of the Joint Undertaking towards its objectives as set out in Article 3 of this Regulation;
 - (n) 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 or her responsibility, of all support tasks arising from this Regulation. The Programme Office shall be composed of the staff of the 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 referred to in Article 11 of this Regulation;
 - (b) manage the calls for proposals as provided for in the annual work plan and administer the grant agreements and decisions;
 - (c) manage the calls for tenders as provided for in the annual work plan and administer the contracts;

- (d) manage the process for the selection of the hosting entities and administer the hosting agreements;
- (e) provide the members and the other bodies of the Joint Undertaking with all relevant information and support necessary for them to perform their duties as well as responding to their specific requests;
- (f) act as the secretariat of the bodies of the Joint Undertaking and provide support to advisory groups set up by the Governing Board.

Article 10

Composition of the Industrial and Scientific Advisory Board

- (1) The Industrial and Scientific Advisory Board shall be composed of a Research and Innovation Advisory Group and an Infrastructure Advisory Group.
- (2) The Research and Innovation Advisory Group shall consist of no more than twelve members, whereof no more than six shall be appointed by the Private Members and no more than six shall be appointed by the Governing Board. The Governing Board shall establish the specific criteria and selection process for the members it appoints.
- (3) The Infrastructure Advisory Group shall consist of no more than twelve members. The Governing Board shall establish the specific criteria and selection process and shall appoint its members. ~~Only without a conflict of interest are eligible to become members.~~

Article 11

Functioning of the Research and Innovation Advisory Group

- (1) The Research and Innovation Advisory Group shall meet at least twice a year.

- (2) The Research and Innovation Advisory Group may appoint working groups where necessary under the overall coordination of one or more members.
- (3) The Research and Innovation Advisory Group shall elect its chair.
- (4) The Research and Innovation Advisory Group shall adopt its rules of procedure, including the nomination of the constituent entities that shall represent the Advisory Group and the duration of their nomination.

Article 12

Functioning of the Infrastructure Advisory Group

- (1) The Infrastructure Advisory Group shall meet at least twice a year.
- (2) The Infrastructure Advisory Group may appoint working groups where necessary under the overall coordination of one or more members.
- (3) The Infrastructure Advisory Group shall elect its chair.
- (4) The Infrastructure Advisory Group shall adopt its rules of procedure, including the nomination of the constituent entities that shall represent the Advisory Group and the duration of their nomination.

Article 13

Tasks of the Research and Innovation Advisory Group

The Research and Innovation Advisory Group shall:

- (a) draw up and regularly update the draft multiannual strategic research and innovation agenda referred to in Article 19(1) for achieving the objectives of the Joint Undertaking set out in Article 3 of this Regulation. This draft multiannual strategic research and innovation agenda shall identify research and innovation priorities for the development and adoption of technologies and key competences for high performance computing across different application areas in order to support the development of an integrated High Performance Computing ecosystem in the Union, strengthen competitiveness and help create new markets and societal applications. It shall be reviewed regularly in accordance with the evolution of the scientific and industrial demand.
- (b) submit to the Executive Director the draft multiannual strategic research and innovation agenda as a basis for drafting the annual work plan within the deadlines set by the Governing Board;
- (c) organise public consultations open to all public and private stakeholders having an interest in the field of high performance computing, to inform them about and collect feedback on the draft multiannual strategic research and innovation agenda and the draft research and innovation activities plan for a given year.

Article 14

Tasks of the Infrastructure Advisory Group

The Infrastructure Advisory Group shall provide advice to the Governing Board for the acquisition and operation of the petascale and pre-exascale supercomputers. It shall:

- (a) draw up and regularly update the draft multiannual strategic agenda for the acquisition of the petascale and pre-exascale supercomputers referred to in Article 19(1) for achieving the objectives of the Joint Undertaking set out in Article 3 of this Regulation. The draft multiannual strategic agenda for the acquisition of the petascale and pre-exascale supercomputers shall include the specifications for the selection of the hosting entities and the planning for the acquisition of infrastructure; for these, it shall identify, inter alia, needed capacity increases, the types of applications and user communities to be addressed, the system architectures, and the integration with national High Performance Computing infrastructures.
- (b) submit to the Executive Director the draft multiannual strategic agenda for the acquisition of the petascale and pre-exascale supercomputers as a basis for drafting the annual work plan within the deadlines set by the Governing Board
- (c) organise public consultations open to all public and private stakeholders having an interest in the field of high performance computing, to inform them about and collect feedback on the draft multiannual strategic agenda for the acquisition of the petascale and pre-exascale supercomputers and related activities plan for a given year.

Article 15

Sources of financing

- (1) The Joint Undertaking shall be jointly funded by its members through financial contributions paid in instalments and in kind contributions as set out in paragraphs (2) and (3).
- (2) The administrative costs of the Joint Undertaking shall not exceed EUR 22 000 000 and shall be covered by means of the financial contributions referred to in Article 4(1), 5(1) and 5(2) of this Regulation.

The contribution of each Participating State to the administrative costs of the Joint Undertaking shall be [proportional to the share of their financial and in-kind contribution to the Joint Undertaking.] [to be agreed by the Participating States.]

If part of the contribution for administrative costs is not used, it may be made available to cover the operational costs of the Joint Undertaking.

- (3) The operational costs of the Joint Undertaking shall be covered by means of:
 - (a) the Union's financial contribution;
 - (b) financial contributions ~~from~~ **by** Participating States to the Joint Undertaking **for the acquisition of the pre-exascale supercomputers [and for their operation until their ownership is transferred to the hosting entity];**
 - (d) in-kind contributions by the Participating States consisting of the ~~costs incurred by the hosting entities for the operational~~ **ing** costs of the pre-exascale supercomputers owned by the Joint Undertaking, **incurred by the hosting entities**, less the contributions by the Joint Undertaking and any other Union contribution to those costs;

(e) financial contributions by the Participating States consisting of the costs incurred by the hosting entities for the acquisition, jointly with the Joint Undertaking, of the petascale supercomputers, less the contributions by the Joint Undertaking and any other Union contribution to those costs;

(e1) financial contributions by Participating States to the eligible costs incurred by beneficiaries in implementing indirect actions corresponding to the research and innovation agenda as a complement to the reimbursement of these costs made by the Joint Undertaking;

[(e2) in-kind contributions provided by the Participating States in form of access time to one or more of their national supercomputers which are not part of PRACE. In order to be accounted as in-kind contribution, at least 25% of their access time shall be provided to the Joint Undertaking.]

(f) 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 **corresponding to the research and innovation agenda** less the contributions by the Joint Undertaking, ~~and~~ any other Union contribution to those costs, **and the contributions referred to in point (e1).**

(4) The resources of the 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;
- (c) any revenue generated by the Joint Undertaking;
- (d) any other financial contributions, resources and revenues.

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

- (5) Should any member of the Joint Undertaking be in default of its commitments concerning its financial contribution, the Executive Director shall put this in writing and shall 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 whether any other measures are to be taken until its obligations have been met. The defaulting member's voting rights shall be suspended until the default of its commitments is remedied
- (6) The resources and activities of the Joint Undertaking shall be intended for the achievement of the objectives set out in Article 3 of this Regulation.
- (7) The Joint Undertaking shall own all assets generated by it or transferred to it for the achievement of its objectives set out in Article 3 of this Regulation. This shall not include the supercomputers whose ownership the Joint Undertaking may have transferred to a hosting entity in accordance with Article 8(3) of this Regulation.
- (8) Except when the Joint Undertaking is wound up, any excess revenue over expenditure shall not be paid to the members of the Joint Undertaking.

Article 16

Contributions of the Participating States

~~(1) The Participating States shall entrust the Joint Undertaking with the implementation of their financial contributions to the Joint Undertaking.~~

~~(2) When providing their financial contribution to the Joint Undertaking the Participating States shall include a breakdown of their contribution, specifying the contribution to~~

~~(a) the acquisition of supercomputers;~~

~~(b) the operation of supercomputers and~~

~~(c) the other activities to be funded by the Joint Undertaking.~~

~~(3) The Governing Board shall establish the detailed terms and conditions for the financial contribution of the Participating States to the Joint Undertaking.~~

Article 17

Financial commitments

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

Article 18

Financial year

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

Article 19

Operational and financial planning

(1) The multiannual strategic plan shall specify the strategy and plans for achieving the objectives of the Joint Undertaking set out in Article 3 of this Regulation. The multiannual strategic plan shall be composed by a multiannual strategic research and innovation agenda and a multiannual strategic agenda for the acquisition of supercomputers from the Industrial and Scientific Advisory Board and multiannual financial perspectives from the Participating States and the Commission.

- (2) The Executive Director shall submit to the Governing Board for adoption a draft annual work plan which shall include the research and innovation activities, the procurement activities, the administrative activities and the corresponding expenditure estimates.
- (3) The annual work plan shall be adopted by the end of the year prior to its implementation. The annual work plan shall be made publicly available.
- (4) The Executive Director shall prepare the draft annual budget for the following year and shall 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's financial contribution as set out in the Union budget.

Article 20

Operational and financial reporting

- (1) The Executive Director shall report annually to the Governing Board on the performance of the duties of the Executive Director in accordance with the financial rules of the Joint Undertaking.

Within two months of the closure of each financial year, the Executive Director shall submit to the Governing Board for approval an annual activity report on the progress made by the Joint Undertaking in the previous calendar year, in particular in relation to the annual work plan for that year. The annual activity report shall include, inter alia, information on the following matters:

- (a) research, innovation and other actions carried out and the corresponding expenditure;

- (b) acquisition and operation of infrastructure, including the use of and access to the infrastructure, including the access times effectively used by each Participating State;
 - (c) the proposals and tenders submitted, including a breakdown by participant type, including SMEs, and by country;
 - (d) the proposals selected for funding, with a breakdown by participant type, including SMEs, and by country, and indicating the contributions of the Joint Undertaking to the individual participants and actions;
 - (e) the tenders selected for funding, with a breakdown by type of contractor, including SMEs, and by country, and indicating the contributions of the Joint Undertaking to the individual contractors and procurement actions;
 - (f) the outcome of the procurement activities;
 - (g) progress towards the achievement of the objectives set out in Article 3 of this Regulation and proposals for further necessary work to achieve these objectives.
- (2) Once approved by the Governing Board, the annual activity report shall be made publicly available.
- (3) By 1 March of the following financial year, the accounting officer of the Joint Undertaking shall send the provisional accounts to the Commission's accounting officer and to the Court of Auditors.

By 31 March of the following financial year, the Joint Undertaking shall send the report on the budgetary and financial management to the European Parliament, to the Council and to the Court of Auditors.

On receipt of the Court of Auditors' observations on the Joint Undertaking's provisional accounts pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the Joint Undertaking shall draw up the Joint Undertaking's final accounts and the Executive Director shall submit them to the Governing Board for an opinion.

The Governing Board shall deliver an opinion on the Joint Undertaking's final accounts.

The Executive Director shall, by 1 July of the following financial year, send the final accounts to the European Parliament, to the Council, to the Commission and to the Court of Auditors, together with the Governing Board's opinion.

The final accounts shall be published in the *Official Journal of the European Union* by 15 November of the following financial year.

The Executive Director shall provide the Court of Auditors with a reply to observations made in its annual report by 30 September. The Executive Director shall also submit that reply to the Governing Board.

The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of Regulation (EU, Euratom) No 966/2012.

Article 21

Internal audit

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

Article 22

Liability of members and insurance

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

Article 23

Conflict of interest

- (1) The Joint Undertaking, its bodies and staff shall avoid any conflict of interest in carrying out their activities.
- (2) The Joint Undertaking Governing Board shall adopt rules for the prevention and management of conflicts of interest in respect of its members, bodies and staff. Those rules shall contain provisions intended to avoid a conflict of interest in respect of the representatives of the members of the Joint Undertaking serving on the Governing Board.

Article 24

Winding-up

- (1) The Joint Undertaking shall be wound up at the end of the period laid down in Article 1 of this Regulation.
- (2) In addition to paragraph 1, the winding-up procedure shall be automatically triggered if the Union withdraws from the Joint Undertaking.

- (3) For the purpose of conducting the proceedings to wind up the Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.
- (4) When the Joint Undertaking is being wound up, its assets shall be used to cover its liabilities and the expenditure relating to its winding-up. The supercomputers owned by the Joint Undertaking shall be transferred to the respective hosting entity. The hosting entity shall reimburse the Joint Undertaking the residual value of the supercomputers that are transferred. Any surplus shall be distributed among the members at the time of the winding-up in proportion to their financial contribution to the 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 the appropriate management of any agreement concluded or decision adopted by the Joint Undertaking as well as any procurement contract with a duration longer than the duration of the Joint Undertaking.
