



EUROPEAN COMMISSION

RESEARCH DIRECTORATE-GENERAL

Directorate A - Coordination of Community actions
Regulatory and cross-cutting matters

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This note provides some initial interpretative guidance for contractors and Commission services but does not represent the official position of the Commission and is not a legal document adopted by the Commission.

Subject: Financial collective responsibility in FP6 contracts

This note addresses the issue of the application and use of the financial collective responsibility.

1. Who does it apply to?

Multi-contractor instruments in FP6 apply the principle of technical collective responsibility and most such instruments also apply financial collective responsibility. The exceptions are the Marie Curie actions, SME specific actions (cooperative and collective research) and certain specific support actions, where duly justified. In the first two cases, the contracts clearly indicate that financial collective responsibility does not apply. In the last case, the justification for not applying financial collective responsibility must be established by the services responsible for financing the action. A special clause is inserted in the contract in these cases indicating that the contractors are not bound by financial collective responsibility.

The financial collective responsibility established by the Rules for Participation is not equal to full joint and several liability. This is because it is limited in time, limited in amount and certain contractors (public bodies, international organisations and contractors whose participation is guaranteed by a Member State or Associated State) are not bound by its provisions. The Financial Regulation indicates that joint and several liability can be a substitute for bank guarantees or other financial liability. However the financial collective responsibility in FP6 projects cannot be considered to be sufficient protection of the Commission's financial interests in all cases. It is necessary to examine the amount of the EC contribution to the project, the legal status of each contractor and its expected EC contribution, and the contractors' financial viability where the financial collective responsibility does not protect the full amount of the EC contribution to the project. The Contract Preparation Forms indicate the cases when this review has to take place and when it may take place.

2. When is it applied?

If a contractor breaches the contract¹ and the consortium does not make good this breach by continuing to carry out the project², the Commission may, as a last resort and if all

¹ Breach of contract triggers the collective responsibility provisions of the contract. Normal termination without cause does not.

other approaches have been explored, hold the other contractors liable for the debt of that contractor under certain conditions.

Where the contract or the participation of a contractor is terminated for breach of contractual obligations or irregularity, and where the defaulting contractor does not honour the reimbursement of the amount it owes, the Commission will implement the financial collective responsibility of the consortium. The consortium then reimburses the amount due to the Commission. (This provision can be applied only in those contracts in which financial collective responsibility applies.)

3. How is it applied?

The amount due to the Commission can not exceed the maximum Community financial contribution. Neither can it exceed the amount of the Community financial contribution due from the defaulting contractor.

The amount due from the defaulting contractor is allocated among all the remaining contractors (who are not public bodies, international organisations or contractors whose participation is guaranteed by a Member State or Associated State), except where the defaulting contractor is a public body or an international organisation or a contractor whose participation is guaranteed by a Member State or Associated State. Such a defaulting contractor is solely responsible for its debts and any guarantees established by the Member State or Associated State may be called upon.

The allocation of the amount due among the relevant remaining contractors is based on their relative share of the amount due.

a) where the amount to be recovered relates to **pre-financing**, the recovery has to take into account the shares of the provisional Community financial contribution based on estimated costs (as indicated in the table in the technical annex (Annex I) to the contract);

b) where the amount to be recovered relates to a **settled payment**, the recovery has to take into account the shares of Community financial contribution based on certified costs accepted by the Commission.

The share of the debt of the defaulting contractor can not exceed the Community financial contribution each of the remaining contractors is entitled to receive. The amount a contractor is entitled to receive is:

a) where the amount to be recovered relates to **pre-financing** it is based on the expected Community financial contribution to the contractor's provisional costs (as indicated in the table in the technical annex (Annex I) to the contract);

b) where the amount to be recovered relates to a **settled payment** it is based on the Community financial contribution to the contractor's certified costs accepted by the Commission.

The consortium is not responsible for:

a) any amount owed by a defaulting contractor for any contractual breach discovered after the final implementation date of the contract (which is determined by the maximum

² If the breach is rectified by the rest of the consortium, by their continuing the project to its normal end by whatever means are appropriate and agreed by the Commission, the financial collective responsibility is not applied.

periods beyond the end date of the duration of the project for the contractor(s) to submit the required activity reports and financial statements, for the Commission to approve them, and for it to make the final payment);

b) liquidated damages due by any contractor;

c) other financial penalties and other sanctions that may be imposed on a defaulting contractor.

Some examples of the impact on sample consortia can be found in section 5.1.6 of the Guide to Financial Issues (January 2004 version).