



## **DECISION OF THE PUBLIC AUTHORITIES BOARD OF THE ECSEL JOINT UNDERTAKING**

### **Adopting the template Administrative Agreement between the ECSEL Participating States and the ECSEL Joint Undertaking based on Article 17.2 of the Statutes**

THE PUBLIC AUTHORITIES BOARD OF THE ECSEL JOINT UNDERTAKING,

Having regard to the Statutes annexed to Council Regulation (EU) No 561/2014 of 6 May 2014 on the establishment of the ECSEL Joint Undertaking, and in particular Article 17(3) of the Statutes of the Regulation,

Having regard to the Decision of the Governing Board of the ECSEL Joint Undertaking of assigning to the Public Authorities Board the approval of the template Administrative Agreement between the Joint Undertaking and National Funding Authorities (decision ECSEL-GB-2014.05),

Whereas:

- (1) The agreements for the cooperation between the ECSEL Participating States and the ECSEL Joint Undertaking shall be established by means of an administrative agreement to be concluded between the entities designated by the ECSEL Participating States for that purpose and the ECSEL Joint Undertaking;
- (2) Agreements for the cooperation between the ECSEL Participating States and the ECSEL Joint Undertaking can take two forms, as defined in Article 17(1) and Article 17(2) of the Statutes of the ECSEL Joint Undertaking. Two templates Administrative Agreements should therefore be defined;
- (3) This decision concerns the model foreseen in Article 17(2), where an ECSEL Participating State does not entrust the ECSEL Joint Undertaking with the implementation of its contributions to the participants in indirect actions through the grant agreements with participants concluded by the ECSEL Joint Undertaking;

- (4) The Public Authorities Board should approve the template of the Administrative Agreement to be signed between the ECSEL Participating States and the ECSEL Joint Undertaking;

HAS ADOPTED THIS DECISION:

*Article 1*

The template Administrative Agreement based upon Article 17(2) of the Statutes annexed to Council Regulation 564/2014, between ECSEL Participating States and the ECSEL Joint Undertaking, as annexed to this Decision, is hereby approved.

*Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 19 November 2014

For the Public Authorities Board

*(signed)*  
Ben Ruck  
Chairperson of the Public Authorities Board

Annex:           Template administrative Agreement based on Article 17(2) of the Statutes

## **Annex: Administrative Agreement based on Article 17(2) of the Statutes**

This Administrative Agreement ('hereinafter the Agreement') is between the following Parties:

On the one part,

**The ECSEL Joint Undertaking** ('hereinafter the ECSEL JU'), with seat in Avenue de la Toison d'Or / Guldenvlieslaan 56-60, 1160 Brussels, represented for the purposes of signing this Agreement by its Executive Director [forename and surname];

and

on the other part,

[full official name, ACRONYM], hereinafter the **National Funding Authority** (NFA), designated by [ECSEL Participating State] according to Article 2(2) of the Joint Undertaking's Statutes, [official legal status or form][official registration No] [official address in full][VAT number],

Hereinafter "the Parties".

The Parties referred to above have agreed to enter into the Agreement under the terms and conditions below.

WHEREAS:

- 1) Council Regulation (EU) No 561/2014 of 6/05/2014 establishing the ECSEL Joint Undertaking<sup>1</sup> (hereinafter Regulation (EU) No 561/2014 establishing ECSEL JU) foresees that ECSEL Joint Undertaking should provide financial support to participants in indirect actions, following open and competitive calls for proposals,
- 2) Regulation (EU) No 1291/2013 of the European Parliament and of the Council establishing the Framework Programme for Research and Innovation "Horizon 2020" may be implemented through public-private partnerships where all the partners concerned commit to supporting the development and implementation of research and of innovation activities,
- 3) The evaluation and selection procedures related to Calls for Proposals, as approved by ECSEL Public Authorities Board, govern the steps followed by the ECSEL JU related to the Calls for proposals, the procedures for evaluation and selection of proposals, the

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<sup>1</sup> OJ L 169/152, 7.6.2014, p.27

allocation of public funding following such Calls, and the subsequent establishment of grant agreements with beneficiaries,

- 4) Regulation (EU) No 561/2014 establishing ECSEL JU foresees that ECSEL Participating States designate the national funding authority or authorities (NFAs) responsible for fulfilling the obligations related to the activities of the ECSEL JU.
- 5) Regulation (EU) No 561/2014 establishing ECSEL JU foresees that the Agreement for the cooperation between the ECSEL Participating States and the ECSEL JU is established by means of an Administrative Agreement to be concluded between the entity(ies) designated by the ECSEL Participating States for that purpose and the ECSEL JU,
- 6) [EPS name] has designated [name of NFA] as national funding authority;
- 7) According to Article 17.2 of the Statutes annexed to Regulation (EU) No 561/2014 establishing the ECSEL JU, when an NFA does not entrust the ECSEL JU with the implementation of its contribution, it shall take all necessary measures to establish its own grant agreements within a similar timeframe as the ECSEL JU grant agreements. The verification of the eligibility of costs performed by the ECSEL JU may be used by the NFA as part of its own payment process,

THE PARTIES HAVE AGREED AS FOLLOWS:

#### **Article 1 – Scope and duration of the Agreement**

1. The Agreement defines the rights and obligations of the Parties with regards to the allocation of public funds to participants in indirect actions following ECSEL JU calls for proposals.
2. The Agreement shall be read in conjunction with the following acts and decisions:
  - a. Regulation (EU) No 561/2014 establishing ECSEL JU,
  - b. Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for the participation and dissemination in "Horizon 2020"<sup>2</sup>,
  - c. Regulation (EU) No 1291/2013 of the European Parliament and of the Council establishing the Framework Programme for Research and Innovation "Horizon 2020"<sup>3</sup>,
  - d. ECSEL JU's evaluation and selection procedures related to calls for proposals (decision ECSEL-PAB-2014.02),
  - e. ECSEL JU's model grant agreement,
  - f. ECSEL JU's work plan, as adopted for a given period by ECSEL Governing Board.
3. Unless otherwise stated in the Agreement, all the terms used herein shall have the same meaning as defined in the acts and decisions described in Paragraph 2 of this Article.
4. The Agreement shall not involve the exchange of funds between the Parties nor shall it establish any obligation on the part of either party to make any payment to the other party.

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<sup>2</sup> OJ L 347/81, 20.12.2013.

<sup>3</sup> OJ L 347, 20.12.2013, P 104.

5. The Agreement shall be valid between the Parties until 31 December 2024.

## Article 2 – Definitions

For the purpose of the Agreement, the following definitions shall apply:

1. “ECSEL Governing Board” (hereinafter “GB”) means the body of the ECSEL JU as referred to in Articles 4, 5, 6 and 7 of the Statutes of Regulation 561/2014 establishing ECSEL JU;
2. “ECSEL Public Authorities Board” (hereinafter “PAB”) means the body of the ECSEL JU as referred to in Articles 4, 10, 11 and 12 of the Statutes of Regulation 561/2014 establishing ECSEL JU;
3. “Indirect actions” means research and innovation activities to which ECSEL JU and the NFA provide financial support and which are undertaken by participants;
4. “Participant” means any legal entity carrying out an action or part of an action having rights and obligations with regard to ECSEL JU and the NFA;
5. “ECSEL JU Grant Agreement” means the grant agreement signed between the ECSEL JU and the participants in indirect actions;
6. “National grant agreement” means the grant agreement signed between the NFA and the participants.

## Article 3 – Communications between the Parties

Any communication relating to the Agreement shall be made by email, using the following addresses:

For the ECSEL JU  
Andreas Wild, Executive Director  
[Andreas.Wild@ecsel.europa.eu](mailto:Andreas.Wild@ecsel.europa.eu)

For the national funding authority  
Contact person(s):  
E-mail address(es):

## Article 4 – Specific criteria and rules from the NFA for inclusion in the work plan

1. Within 30 days following a request of the ECSEL JU Executive Director [the NFA] shall communicate:
  - a. The estimate of expenditure for the next year(s) covered by the work plan,
  - b. The specific rules regarding the eligibility of costs for national funding,
  - c. The specific criteria regarding the eligibility of individual applicants to receive national funding,

- d. The reimbursement rate of the eligible costs to be used (if relevant, by category of participants and/or by type of action) for national funding.
2. The specific criteria and rules referred to in paragraph 1 shall be presented by the Executive Director to the GB for inclusion in the work plan. Once adopted, the decision shall be binding for the Parties.
3. In exceptional circumstances, should any specific criteria and rules described in paragraph 1 of this Article not be communicated to the Executive Director in time for inclusion in the decision adopting the work plan, these shall be included therein upon an amending decision of the GB, provided they were sent at the latest 30 days before the call closure.

#### **Article 5 – National grant agreements**

1. The [NFA] shall take all necessary measures to establish and sign national grant agreements with participants within a maximum period of 3 months from the date of informing applicants their proposals have been selected. The NFA shall inform the ECSEL JU if an event or circumstance which is beyond the control and without the fault or negligence of the NFA and which, by the exercise of reasonable diligence the NFA was unable to prevent, leads to a delay in the signature of a particular NGA.
2. The description of the indirect action, as annexed to ECSEL JU grant agreement, as communicated by the ECSEL JU, shall apply without any modifications to the national grant agreement.
3. The [NFA] shall not request or impose any additional specific criteria or rules other than those described in Article (4) paragraph 1 of the Agreement and published in the work plan.
4. The Parties hereby agree to communicate to one another within 15 days following the date they become aware of the following:
  - a. the date of signature of the ECSEL JU grant agreement/national grant agreement, including, where relevant, the amount of national funding and the start date of the action and the period of those agreements;
  - b. any amendment/termination of the ECSEL JU grant agreement/national grant agreement including the change of parties in those agreements;
  - c. any breach of the ECSEL JU grant agreement/national grant agreement.

#### **Article 6 – Technical monitoring and reporting**

1. Technical monitoring and reporting shall be carried out by the ECSEL JU in accordance with the rules and obligations of the H2020 Framework programme as defined in the corresponding ECSEL JU Grant agreement and any act or decision applicable therein.
2. The NFA shall not require additional technical monitoring and reporting other than those required by the ECSEL Joint Undertaking.

3. The technical reports and the results of the technical monitoring carried out by the ECSEL JU shall be made available to [the NFA] within 30 days after their approval and certification by the Executive Director.
4. The technical reporting and monitoring carried out by the ECSEL JU shall take into account specific requirements, as communicated in due time by the [NFA], when these are needed to accept the cost reimbursement claims of participants.

#### **Article 7 – Financial monitoring and payments**

1. The ECSEL JU shall make available to the NFA the verification of the eligibility of costs, performed according to the H2020 rules, which the NFA may use as part of its own payment process. Verification of the eligibility of costs may be performed by the NFA according to the specific national rules.
2. If the ECSEL JU grant agreement or national grant agreement is subject to a right to repayment, documents relevant to exercising that right (e.g. agreements and payment records) shall be kept by the Parties for the period of possible recovery, in accordance with applicable European or national laws.
3. The Parties hereby agree to communicate to one another details about the final financial completion of indirect actions.

#### **Article 8 – Confidentiality**

1. The Parties shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the entrusted tasks and which are explicitly indicated in writing as confidential.
2. The Parties shall not use confidential information and documents for any reason other than fulfilling the obligations under the Agreement, unless otherwise foreseen in writing.
3. The Parties shall be bound by the obligation referred to in the above paragraph during the implementation of the Agreement and for a period of five years starting from the date of its termination, unless:
  - a) the concerned Party agrees to release the other Party from the confidentiality obligations earlier;
  - b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Party bound by that obligation;
  - c) the disclosure of the confidential information is required by law.

## **Article 9 – Processing of personal data**

1. Where the implementation of the entrusted tasks requires the processing of personal data by the ECSEL JU, it shall be processed by the ECSEL JU pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Such data shall be processed by the following data controller: ECSEL JU Executive Director, solely for the purposes of the implementation, management and monitoring of the Agreement, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of the applicable rules.

2. Where the implementation of the entrusted tasks requires the processing of personal data by the NFA, it shall be processed in compliance with applicable national law on data protection.

## **Article 10 – Audits and controls**

1. Both parties shall ensure the exercise of the control rights of the European Commission, the European Anti-Fraud Office and the Court of Auditors according to Article 14§3 of Council Regulation (EU) No 561/2014 with respect to this agreement.

## **Article 11 – Applicable law and settlement of disputes**

1. The Agreement is governed by Union law.
2. Any dispute which cannot be settled amicably shall be submitted to the jurisdiction of the General Court or, on appeal, the Court of Justice of the European Union
3. Nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities which are accorded to the ECSEL JU by its constituent act or international law.

## **Article 12 – Liability**

1. The ECSEL JU cannot be held liable for any damage caused to the [NFA] or to third parties as a consequence of implementing the Agreement, including for gross negligence.
2. The NFA cannot be held liable for any damage caused by the ECSEL JU or third parties involved in the implementation of the entrusted tasks, as a consequence of implementing the Agreement.



### **Article 13 – Amendment to the Agreement**

1. The Agreement may be amended at any time by the mutual written consent of the Parties. Any amendment to the Agreement shall be made in writing.
2. Any request for amendment shall be duly justified and shall be sent to the other Party in due time before it is due to take effect, except in cases duly substantiated by the Party requesting the amendment and accepted by the other Party.
3. Amendments shall enter into force on the date on which the last Party signs or on the date of approval of the request for amendment. Amendments shall take effect on a date agreed by the Parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

### **Article 14 – Termination of the Agreement**

1. If either Party believes that the agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, either Party may terminate the Agreement by formally notifying the other Party thereof. Termination shall take effect 60 days from receipt of the notification, unless agreed otherwise by the Parties.
2. Without prejudice to paragraph 1, the NFA shall remain bound by its obligations incurred from previous calls for proposals.

### **Article 15 – Repeal and transitional provisions**

Actions initiated under similar agreements concluded between the Parties before entering into the Agreement shall continue to be governed by those agreements until their completion.

### **Article 16 – Entry into force of the Agreement**

The Agreement shall enter into force on the date on which the last Party signs.

## **SIGNATURES**

For ECSEL Joint Undertaking,

Andreas Wild, Executive Director

For the NFA,

*[insert name, surname, function]*

*(signature)*

Done at Brussels, [date]

In duplicate in English

*(signature)*

Done at [xxxx], [date]