



**European Cooperation  
in the field of Scientific  
and Technical Research  
- COST -**

**Secretariat**

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**COST 247/1/09  
REV 1**

**NOTE**

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From : The CSO President  
To : Delegations

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Subject : Examination of COST Legal Status:  
- Questions and answers related to COST Office Association

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Delegations will find attached a revised working document compiled in response to the requests of more information by the CSO, as well as by the Research Working Party of the EU Council concerning the COST Office Association model.

## Working document

### **COST LEGAL STATUS AND GOVERNANCE** **QUESTIONS (in bold) AND ANSWERS (in italics) RELATED TO COST** **OFFICE ASSOCIATION <sup>1</sup>**

**1. In the COST Office Association are financial contributions by the COST Member States required?**

*As it is clearly stated in the Draft Declaration of the COST Ministerial Conference no financial implications for the COST Member States derive from the setting up of the COST Office Association.*

*From a legal point of view, the AISBL (association internationale sans but lucratif) Members are not obliged to financially contribute to the AISBL, i.e. no minimum capital required.*

**2. Where the funds for the COST Office Association would derive from?**

*As it is clearly stated in the draft Statutes of the COST Office Association the funds of the Association come from subsidies, gifts and donations from any natural person or legal entity after acceptance by the General Assembly.*

*Practically speaking, the financial contribution from the RTD Framework Programmes of the European Community would constitute the financial resource of the Association. Every contractual and financial agreements of the Association will be conditioned by the availability of these funds.*

**3. In the case of the COST Office Association can the funds from the RTD Framework Programmes be ensured in the future?**

*The funds attributed to COST depend on the EU Council and the European Parliament which co-decide on a proposal from the European Commission. The funds are guaranteed by the relevant decisions of the European Parliament and the Council till the end of FP7. It is not institutionally feasible to obtain any advance assurances from any of these Institutions regarding the future*

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<sup>1</sup> This document refers exclusively to the COST Office Association model on which the CSO (as well as the Research Working Party of the EU Council) requested more information, compared to the status quo option. The detailed examination of the draft Statutes of the Association would be carried out subsequently, depending on the CSO decisions.

*Framework Programme prior to its formal adoption and the possible contribution of the Programme to COST under any model for COST legal status.<sup>2</sup> However, there is a general consensus - in the Reports (Kneucker and Monfret) commissioned by the European Commission for the mid-term and at the end of FP6 and inside the Research Working Party of the EU Council - that COST is a very effective instrument in the ERA, that the customer satisfaction of current users of COST is very high and that the future of COST should be ensured. It is therefore reasonable to expect that COST will be supported by the RTD Framework Programmes in the future.*

#### **4. Can the European Commission entrust funds to the COST Office Association AISBL?**

*In the present formal framework of FP7 set up by the decisions on the Specific Programme "Cooperation"<sup>3</sup> and the Rules for Participation as well as the Financial Regulation of the European Communities<sup>4</sup>, there would be no difference between the Status Quo and the COST Office Association. With the Status Quo the Commission entrusts funds to an asbl (ESF) which is the implementing agent for COST. With the COST Office Association the Commission would entrust funds to an aisbl (COST Office Association) which would be the implementing agent for COST. Any applicable requirements as to the financial capacities of the Association would need to be assessed as was the case with the ESF ("ex-ante audit").*

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<sup>2</sup> It will, however, remain an obligation for the EU under the Treaty (both under the present Treaty establishing the European Community and the draft Lisbon Treaty) to adopt a "multiannual framework programme" for RTD activities.

<sup>3</sup> Extracts from the "Cooperation" Specific Programme (Official Journal of the European Union, L54, 22.2.2007): "Financial support for the administration and coordination activities of COST will be provided so that COST can continue to contribute to coordination and exchanges between nationally funded research teams"; "Of which at least EUR 210 million and up to EUR 250 million for COST, subject to the mid-term evaluation. This financial support will be provided through a grant which will be paid on the basis of a grant agreement between the Commission and a legal entity designated by COST as its implementing agent and communicated to the Commission by the General Secretariat of the Council and identified in the Work Programme."

<sup>4</sup> See Article 54 of the Council Regulation 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (Official Journal L 248, 16.9.2002, p. 1-48): "...the Commission may...entrust tasks of public authority and in particular budget implementation tasks to...national public-sector bodies or bodies governed by private law with a public-service mission providing adequate financial guarantees and complying with the conditions provided for in the implementing arrangements...".

## **5. Will the European Commission become a member of the COST Office Association?**

*If so decided, the Statutes of the Association can provide for such possibility. The Commission would have to take its decision in line with its general policy in regard of such memberships.*

## **6. In the COST Office Association what would happen if the funds from the Framework Programmes would stop?**

*All the contracts and commitments which the Association enters into should provide for this eventuality so that the liabilities of the Association would never exceed the funding from the FP. Similar provisions are made by ESF in the present contractual situation.*

*As to a possible "moral obligation" of COST member states to fund COST in the possible event of a non-continuation of Community funding, the political question can be expected to be the same for COST member states irrespective of the legal status of COST. In such a hypothetical situation, the political reflection on the fate of COST is unlikely to be limited to members of the Association alone.*

## **7. In the COST Office Association are members liable?**

*No. According to Belgian Law they are not personally liable for the debts of the Association. A distinction however has to be made between the liability of the members of the Association and of the members of the Administrative Board.*

*- Liability of the Members of the Association: The members of the Association are legal entities. By law, they are not liable for the debts of the Association. They will not be therefore liable in case of bankruptcy.*

*- Liability of the Members of the Administrative Board: The members of the Administrative Board are individuals. By law, they are not personally liable for the debts of the Association. They will not be therefore liable in case of bankruptcy. But they are liable for personal misconducts limited to the duration and the terms of their defined mandate. Insurance may be contracted to cover such a liability.*

*- The Association is responsible for misconducts of its organs and staff.*

**8. What would happen if consensus is not reached concerning the solution of the COST Office Association inside the COST Committee of Senior Officials (CSO) and what time table can be envisaged?**

*Consensus would be certainly desirable.*

*However, if consensus cannot be reached by the representatives of the COST Members States in the CSO, the procedure that will be followed is the following.*

*The CSO takes note of the declared intention of interested COST Member States (through their representatives in the CSO) to set up the COST Office Association. It may be provided that any COST Member State which is not amongst the "founding members" of the Association can, upon notification, become a member at a later date. Members States wishing to establish the COST Office Association, represented to this effect by persons authorised to commit their respective governments, approve and sign the statutes during the constitutive Assembly. The signed statutes are sent by a lawyer for registration. Registration and publication of the COST Office Association (COA) as an AISBL (association internationale sans but lucratif) is obtained. The Association can act as a legal entity. The present COST structure (CSO, JAF, Domain Committees, COST Fund) remains in place and would be very similar to EUREKA's.*

*The COST Ministerial Conference 2010 may endorse these developments.*

*At the appropriate moment, the CSO appoints the COA as its implementing agent. This would simply imply passing from an "external" implementing agent (ESF) to an "internal" implementing agent (COA).*

*Negotiations with the European Commission (EC) start.*

*A transition plan is negotiated with the ESF involving transition of staff, premises and functions to secure future collaboration. Potential transition costs could be charged as direct cost to the contract by ESF.*

**9. The COST Office was of paramount importance for COST activities in the last six years. In the case of the COST Office Association what could be the procedures to transfer the COST Office from the ESF to the Association, what would be the cost and the time needed for this transfer? Would there be any problems from a legal point of view of transferring the present ESF COST Office staff (both those contracted under Belgian and Alsatian law) to the aisbl COST Office Association?**

*For this transfer, appropriate discussion should take place with ESF (see also previous question) and with the Commission in order to insert appropriate provisions in the current EC-ESF Grant Agreement.*

*For the financial aspects, it may be recalled that the present Grant agreement (Appendix B of Annex I) on COST provides that: "In the event of the non-continuation of the current ESF/COST arrangement or of a situation at the end of FP7 requiring specific transition arrangements, the corresponding decommissioning and transition costs can be charged as direct eligible costs to the contract...".*

Although there are many technicalities that would need to be settled, no major strictly legal obstacles have been identified.

**10. In the case of the COST Office Association will the cost of management of COST be lower or greater than in the case of the Status Quo?**

In the case of FP7 (annual) forecast 2009-2010 under the Status Quo the funds attributed to COST can be estimated as follows:

<i>COST Actions and Science Activities</i>	24.614 k€
<i>COST Office activities &amp; staff (incl ESF staff)</i>	6.427 k€
<i>Contribution to COSMOS</i>	152 k€
<i>ESF indirect costs ("Overhead")</i>	2.160 k€

In the case of the COST Office Association the contributions to COSMOS ("Collaborative Research, Science Management and Operating System") and the overhead costs<sup>5</sup> would contribute directly to COST activities.

**11. What are the main differences between the COST Committee of Senior Officials and the General Assembly of the COST Office Association?**

	<i>Committee of Senior Officials</i>	<i>General Assembly</i>
<i>Composition</i>	<p>Consists of two delegates from each COST Member State designated by their Government.</p> <p>The Council of the European Union, represented by its General Secretariat, and the European Commission are also represented at meetings of the CSO.</p> <p>The COST Office shall be in attendance at the meetings of the CSO.</p>	<p>Constituted by one representative of each Member of the Association.</p> <p>The Secretariat of the Council of the EU and the European Commission have the right to attend the General Assembly as observers.</p>
<i>Meeting</i>	Three times a year.	At least once a year.
<i>Decision making process</i>	By consensus (no single member may alone block a decision by the CSO) for certain matters and by 3/4 of the COST Member States for all other decisions	By a two-thirds majority of the Members' representatives present or represented in the meeting.

<sup>5</sup> See also question 13.

<i>Role and Responsibilities</i>	<p><i>Is charged with the oversight and strategic development of COST:</i></p> <p><i>To decide on admission of new COST Member States or Cooperating States</i></p> <p><i>To approve reciprocal arrangements</i></p> <p><i>To formulate the general strategy of COST</i></p> <p><i>To decide on any issue with financial implications for Member States' contributions to the COST Fund</i></p> <p><i>To decide on the various Domain Committees and their terms of reference (The Domain Committees would <u>not</u> be bodies of the COST Office Association but would be serviced by it as is presently done by the COST Office.)</i></p> <p><i>To approve the COST Actions to be launched<sup>6</sup> and prepares the relevant Memorandum of Understanding to be signed by the interested countries (this task could be delegated to JAF)</i></p> <p><i>To approve the participation of institutions from non-COST countries in COST Actions ( this task has been delegated to JAF)</i></p> <p><i>To supervise the work of the Association</i></p>	<p><i>Is charged with the general policy of the COST Office:</i></p> <p><i>To approve the activity plan and the budget for each financial year including revisions and the sources of revenues</i></p> <p><i>To approve the annual activity report and the financial statement for each completed financial year</i></p> <p><i>To decide on any new membership following acceptance by the COST Committee of Senior Officials as full Member of COST and to decide on membership's withdrawal</i></p> <p><i>To appoint the members to the Administrative Board of the Association</i></p> <p><i>To appoint each year two independent Auditors in charge of conducting a posteriori the auditing of the accounts and activities of the Association</i></p> <p><i>To modify the Statutes of the Association or decide on the dissolution of the Association</i></p> <p><i>To appoint the Director of the Association</i></p> <p><i>To deliberate and decide upon any other matter serving the objectives of the Association</i></p>
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<sup>6</sup> This could/should be the responsibility of the COST Office Association, based on recommendations of the CSO.

**12. Can the members of the CSO be appointed as members of the Association?**

*According to the Belgian law there are some requirements as to the bodies of an association including a "general assembly" consisting of the representatives of the members and which cannot be directly and formally subordinate or assimilated to an outside body like the CSO, whilst in practise the members of the General Assembly of the COST Office Association would be the same persons as the CSO members (i.e. one among the two appointed by each member state).*

*As to the legal entities that would be members of the Association, a COST member state could participate either as a "state" or through a government agency or other national organisation as it sees fit.*

**13. Can the COST Office Association obtain a VAT exemption?**

*This depends on the decisions of the appropriate Belgian authorities.*

*In the present situation of the EC-ESF contract, the VAT cannot be claimed back and is not eligible. Hence, it is paid by other sources, i.e. the ESF General Budget (which is fed by the Member Organisation's contribution to ESF and the 7% overhead flat rate from the grant agreement with the European Commission for COST).*

**14. In the case of a COST Office Association could the General Secretariat of the EU Council continue to provide the COST Secretariat?**

*This would have to be assessed. It has to be noted that the COST structure (CSO, JAF, DC, COST Fund) remains the same.*

**15. In the case of a COST Office Association could the CSO and JAF continue to be considered "Council Bodies"?**

*This would have to be assessed.*

**16. In the case of a COST Office Association what could be the impact on the performance of COST?**

*From the scientific perspective, given that the COST Office could be "transferred" to the Association and the functions of Domain and Management Committees would remain unchanged, the scientific community and the Actions would not be affected by the change.*

*From the management perspective:*

- *on one hand, the present arrangements with the ESF provide certain synergies, notably in the financial and personnel management, whilst this also involves an additional "expense" for COST for the services concerned which could be used for science activities;*
- *on the other hand, an Association directly controlled by the COST countries would be at liberty to design its operations (e.g. IT, staffing policy) to suit its specific mission; a legal personality for COST could also provide a more stable long term perspective for COST.*

## **17. What are the arguments for not postponing the decision on the Legal Status of COST?**

*The recommendations of the Report (usually referred to as the Monfret Report) of the Panel set up by the European Commission for the final review of the contract between the European Commission (EC) and the European Science Foundation (ESF) for COST in FP6 concerning the legal Status of COST are: "either COST should create an independent legal entity or ESF should take over the full operations of COST including the strategy formulation and the linkages with Members States".*

*The EU Council Decision on the Specific Programme "Cooperation" concerning COST was "at least EUR 210 million and up to EUR 250 million should be attributed to COST, subject to the mid-term evaluation". Early 2010 the mid-term evaluation of the EC-ESF grant agreement for COST will take place.*

*Avoiding or delaying a decision on the legal Status of COST as recommended in the Monfret Report might have a very negative impact in the mid term evaluation.*

*Early 2010 a COST Ministerial Conference is envisaged to take place in Spain: this would be a very good occasion to endorse a decision on the Legal Status of COST.*

*In 2010 preparatory work with a view to the eight Framework Programme will start: it would desirable that COST could be an instrument of the ERA with an already established Legal Status.*

## **18. What is the orientation of the COST scientific community about the Legal Status of COST?**

*The orientation of the COST scientific community consisting of some 30.000 European scientists is clearly indicated in the Statement (attached in the Annex) of 31 March 2009 of the Chairs of the nine COST Scientific Domains. The orientation is clearly in favour of an "independent COST".*

Moreover, letters of support in favour of an “independent COST” have been received from the following outstanding personalities:

*Prof. M. Reetz (Director of the Max Planck Institute in Mülheim),*  
*Prof. K.C. Nicolaou (Scripps Institute, La Jolla, CA, USA),*  
*Prof. E. Winterfeldt (former president German Chemical Society and former member DFG senate)*  
*Prof. W. Koch (Executive Director German Chemical Society)*  
*Dr. K. Wagemann (Deputy Chief Executive DECHEMA)*  
*Prof. Dr. Eckhard Ottow (Vice President Head of Medicinal Chemistry Bayer Schering Pharma)*  
*Prof. F. Neuwirth (President European Meteorological Society)*  
*Prof. G. Henderson (Co-Chair International Geotraces Programme)*  
*Dr. K. Tørseth (Director Atmospheric Climatic Research)*  
*Prof. P. Bessemoulin (President WMO Commission Climatology)*  
*Prof. D. Kabat (Chair and Director Royal Dutch Academy of Sciences)*  
*Prof. K. Forsén (CEO Vaisala Oyj)*  
*Prof. L. Oro (President European Association Chemical Molecular Sciences)*  
*Dr. H.J. Klockner (Head Research -Verband der Chemischen Industrie)*  
*Prof. T. Pulkkinen (President European Geosciences Union)*  
*Prof. P. Tundo (President Organic Biomolecular Chemistry)*  
*Dr. F.J.J. Brouwer (Chair EUMETNET Council)*  
*Prof. M. Hapgood (Chair ESA Space Weather WT)*  
*Prof. B. Dieterink (Chair Association Hydro Meteorological Industry)*  
*Prof. Dr. P. Builtjes (President European Association of Science of Air Pollution)*

## **19. What are the alternatives emerged for the Legal Status of COST?**

*In the latest meeting of the COST Committee of Senior Officials (CSO) in March 2009 the orientations of the Member States regarding the Legal Status of COST were recorded and two main options emerged:*

*“Status Quo” (No legal personality for COST. COST continues to make use of ESF as Implementing Agent.)*

*and*

*“COST Office Association” (A new non-profit legal entity is set up by COST member states that could be designated as the Implementing Agent for COST).*

*A broad support for the COST Office Association emerged in the COST CSO 174<sup>th</sup> meeting on 26/27 May 2009 where 23 Member States and 1 Cooperating State (Israel) expressed their position in favour of the COST Office Association, 6 declared themselves either not ready to decide or flexible and 4 in favour of the Status Quo.*

**20. What were the main arguments in support of the COST Office Association compared to the Status Quo?**

*The **status quo** has been called a “juridical monster”. The fact that two bodies (EC and ESF) agree on a contract concerning a third body (COST) which does not have a legal personality and consequently is not a party in the contract but, at the same time, the approval of this third body (COST) is needed. This is indeed not the best solution from a legal point of view.*

*It does not follow any of the two recommendations of the Monfret Report with a probable negative impact in the Mid Term Review of early 2010.*

*There are serious concerns about the long-term viability of present arrangements for COST as an independent mechanism.*

*With the **COST Office Association**, the present framework would remain in place, including notably the CSO as the decision-making body of COST.*

*It would mean simply the passage from an external to an internal implementing agent.*

*COST would maintain its intergovernmental character, its traditions, its characteristics and could be a very efficient instrument at the disposal of the member states mainly for the following two objectives:*

- *coordination of bottom-up research activities and provision of input for policy making*
- *contribution to the internationalization and the global dimension of the European Research Area.*

*It would allow to adhere to the conclusions of the EU Council of December 2008 on “Vision 2020” and “Joint Programming” where the Council concluded that “EUREKA and COST continue to be essential to the creation of a true spirit of cooperation” and “encouraged the continued use of intergovernmental initiatives (EUREKA, COST) aimed at coordinating programmes conducted by national agencies and research organizations in several Member States”.*

**Statement of the Chairs of the COST Domains on behalf of the European scientific community: For an independent COST Programme in Europe**

COST is a cost-effective (direct COST funding represents only 1% of the total value of COST activities) initiative supporting the excellence of science in Europe. It was created in 1970 and represents the oldest network system for science in Europe. For almost 40 years many success stories of scientific outcome have been recorded and many of them have been applied in downstream industries, services and public utilities within Europe. It now includes 35 Member States.

**COST is an intergovernmental framework for European Cooperation in Science and Technology, allowing the coordination of nationally-funded research at the European level.**

COST has clearly shown its strength in non-competitive research, pre-normative cooperation, and solving environmental, cross-border and public utility problems. It has been successfully used to maximise European synergy and added value in research cooperation and it is a useful tool to further European integration and coordination. COST Actions (projects) are objective-driven networks with clearly defined objectives that can be clustered under thematic headings. These headings are excellent indicators for themes under which actual coordination of national efforts already take place.

Ease of access for institutions from non-member countries (neighbourhood countries, developing countries, developed countries) on the basis of mutual benefits, makes COST a very successful tool for addressing topics of global nature and thus contributing to the internationalisation of the ERA. Maintaining the Status Quo in the relationship between COST and the ESF (European Science Foundation) would inexorably lead to transferring COST activities into the ESF portfolio. The resulting option to completely integrate COST into the ESF (private association of funding agencies and academies) would destroy the most valuable bottom-up framework in Europe by diluting its solid existing networks in applied sciences, e.g. green chemistry, telematics and transport, urban planning and development, civil engineering and architecture, Earth system observing and forecasting information systems, health, energy technology, sustainable manufacturing, agricultural and forest sciences, information communication technologies and biosciences/biotechnologies.

Additionally, since COST has a high visibility and credibility among researchers in Europe, merging it under ESF, which has its emphasis on basic sciences and science policy, would create confusion and disappointment in the scientific community. This would be a terrible blow for science and especially its applications for the benefit of society in Europe. COST is an essential building block of the European Research Area (ERA), providing a unique dimension and architecture for cooperation and coordination of public and private R&D, whereby increasing European competitiveness. COST contributes to ERA also by being in many instances a precursor of research projects and activities in the EU Framework Programmes.

It is of great importance for basic and applied science in Europe to keep COST as an independent research networking system with its long-term strategy determined by the national ministries rather than academies and thus contributing to the provision of input for policy making.

With view of the up-coming Ministerial Conference in 2010 a clear position for a strong and independent COST is needed. In order to keep up the high quality of research and the spirit of COST, a strong and independent COST Office is essential for the continued success and development of efficient research networking in Europe.

Therefore, we vigorously support a strong and independent COST Programme for the continued success of science, economy and society in Europe.

**The Chairpersons of the COST Domain Committees, 31 March 2009:**

Prof. Hans Stødkilde-Jørgensen, Biomedicine and Molecular Biosciences

Prof. Dieter Schinzer Chemistry and Molecular Sciences and Technologies

Prof. Sylvain Joffre Earth System Science and Environmental Management

Dr. Jose Pueyo Food and Agriculture

Prof. Sjur Baardsen Forests, their Products and Services

Prof. Martina Hartl Individuals, Societies, Cultures and Health

Prof. Soulla Louca Information and Communication Technologies

Prof. Eva Olsson Materials, Physical and Nanosciences

Prof. Cristina Pronello Transport and Urban Development