

# REGULATIONS

## COUNCIL REGULATION (EU) 2021/1173

of 13 July 2021

### on establishing the European High Performance Computing Joint Undertaking and repealing Regulation (EU) 2018/1488

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Whereas:

- (1) Regulation (EU) 2021/695 of the European Parliament and of the Council <sup>(3)</sup> establishes Horizon Europe – the Framework Programme for Research and Innovation ('Horizon Europe'). Parts of Horizon Europe may be implemented through European Partnerships, with private and/or public sector partners, in order to achieve the greatest possible impact of Union funding and the most effective contribution to the Union's policy objectives.
- (2) In accordance with Regulation (EU) 2021/695 support may be provided to Joint Undertakings established in the framework of Horizon Europe. Such partnerships should be implemented only where other parts of Horizon Europe, including other forms of European Partnerships, would not achieve its objectives or would not generate the necessary expected impacts, and if justified by a long-term perspective and high degree of integration. The conditions under which such partnerships are created are specified in that Regulation.
- (3) Regulation (EU) 2021/694 of the European Parliament and of the Council <sup>(4)</sup> establishes the Digital Europe Programme. The Digital Europe Programme supports the implementation of projects of common interest which aim at the acquisition, deployment and operation of a world-class supercomputing, quantum and data infrastructure, at federation and interconnection, and at widening the use of supercomputing services and the development of key skills.
- (4) Regulation (EU) 2021/1153 of the European Parliament and of the Council <sup>(5)</sup> establishes the Connecting Europe Facility. The Connecting Europe Facility enables projects of common interest to be prepared and implemented within the framework of the trans-European networks policy in the sectors of transport, telecommunications and energy. In particular, the Connecting Europe Facility supports the implementation of those projects of common

<sup>(1)</sup> Opinion of 24 June 2021 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 27 January 2021 (OJ C 123, 9.4.2021, p. 7).

<sup>(3)</sup> Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

<sup>(4)</sup> Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11.5.2021, p. 1).

<sup>(5)</sup> Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 (OJ L 249, 14.7.2021, p. 38).

interest which aim at the development and construction of new infrastructures and services, or at the upgrading of existing infrastructures and services, in the transport, telecommunications and energy sectors. The Connecting Europe Facility contributes to supporting digital connectivity infrastructures of common interest bringing significant spillover societal benefits.

- (5) The Communication from the Commission of 19 February 2020 entitled 'A European Strategy for Data' outlines Europe's strategy for policy measures and investments to enable the data economy for the coming five years. It emphasises the creation of European public common data spaces that will boost growth and create value. Support for the creation of such common European data spaces and federated, secure cloud infrastructures would ensure that more data becomes available for use in the economy and society, while keeping companies and individuals who generate the data in control. High Performance Computing and quantum computing are essential components of the seamless provision of computing resources with different performance characteristics required to maximise the growth and exploitation of European public common data spaces and federated, secure cloud infrastructures for public, industrial and scientific applications.
- (6) The Communication from the Commission of 19 February 2020 entitled 'Shaping Europe's digital future' presents Europe's digital strategy and focuses on key objectives to ensure that digital solutions help Europe to pursue its own way towards a digital transformation that works for the benefit of people. Among the key actions it proposes is investing in building and deploying cutting-edge joint digital capacities, including in supercomputing and quantum technologies, and expanding Europe's supercomputing capacity to develop innovative solutions for medicine, transport and the environment.
- (7) The Communication from the Commission of 10 March 2020 entitled 'A new Industrial Strategy for Europe' reflects an ambitious industrial strategy for Europe to lead the twin transitions towards climate neutrality and digital leadership. The Communication stresses the support, among others, to the development of key enabling technologies that are strategically important for Europe's industrial future, including High Performance Computing and quantum technologies.
- (8) The Communication from the Commission of 27 May 2020 entitled 'Europe's moment: Repair and Prepare for the Next Generation' identified a number of strategic digital capacities and capabilities that included High Performance Computers and quantum technologies as a priority in the Recovery and Resilience Facility, InvestEU and the Strategic Investment Facility.
- (9) Europe's leading role in the data economy, its scientific excellence, and its industrial strength increasingly depend on its ability to develop key High Performance Computing technologies, to provide access to world-class supercomputing and data infrastructures, and to maintain its present leadership in High Performance Computing applications. High Performance Computing is a mainstream technology for the digital transformation of the European economy, enabling many traditional industrial sectors to innovate with higher value products and services. In combination with other advanced digital technologies such as artificial intelligence, big data and cloud technologies, High Performance Computing is paving the way towards innovative societal and industrial applications in critical areas for Europe such as personalised medicine, weather forecast and climate change, smart and green development and transport, new materials for clean energy, drug design and virtual testing, sustainable agriculture, or engineering and manufacturing.
- (10) High Performance Computing is a strategic resource for policy making, powering applications that provide the means to understand and design efficient solutions to address many complex global challenges and for crisis management. High Performance Computing contributes to key policies such as the European Green Deal with models and tools for transforming the increasing number of complex environmental challenges into opportunities

for social innovation and economic growth. An example is the Destination Earth initiative announced in the Communications from the Commission of 11 December 2019 entitled 'The European Green Deal', and of 19 February 2020 entitled 'A European strategy for data' and 'Shaping Europe's digital future'.

- (11) Global events such as the COVID-19 pandemic have shown the importance of investing in High Performance Computing and health-related modelling platforms and tools, as they are playing a key role in the fight against the pandemic, often in combination with other digital technologies such as big data and artificial intelligence. High Performance Computing is being used to accelerate the identification and production of treatments, including vaccines, to predict the virus' spread, to help plan the distribution of medical supplies and resources, and to simulate post-epidemic exit measures in order to evaluate different scenarios. High Performance Computing modelling platforms and tools are critical tools for the current and future pandemics, and they will play a key role in health and personalised medicine.
- (12) Council Regulation (EU) 2018/1488 <sup>(6)</sup> established the European High Performance Computing Joint Undertaking ('EuroHPC Joint Undertaking') with a mission to develop, deploy, extend and maintain in the Union an integrated world-class supercomputing and data infrastructure and to develop and support a highly competitive and innovative High Performance Computing ecosystem.
- (13) In light of developments in High Performance Computing, a revision of Regulation (EU) 2018/1488 to ensure the continuation of the initiative is necessary in order to define a new mission and objectives for the EuroHPC Joint Undertaking, taking into consideration the analysis of the key socioeconomic and technological drivers affecting the future evolution of High Performance Computing and data infrastructures, technologies and applications in the Union and worldwide, and the lessons learnt from the current activities of the EuroHPC Joint Undertaking. The revision would also allow for the alignment of the EuroHPC Joint Undertaking's rules with the new legal framework, in particular Regulation (EU) 2021/695, as well as Regulations (EU) 2021/694 and (EU) 2021/1153.
- (14) In order to equip the Union with the computing performance needed to maintain its research and industrial capacities at a leading edge, Member States' investment in High Performance Computing and quantum computing should be coordinated and the industrial and market take-up of High Performance Computing and quantum computing technologies be reinforced both in the public and private sectors. The Union should increase its effectiveness in turning the technology developments into demand-oriented and application-driven European High Performance Computing and quantum computing systems of the highest quality, establishing an effective link between technology supply, co-design with users, and a joint procurement of world-class systems, and creating a world-class ecosystem in High Performance Computing and quantum computing technologies and applications across Europe. At the same time, the Union should provide an opportunity for its supply industry to leverage on such investments, leading to their uptake in large-scale and emerging application fields such as personalised medicine, climate change, connected and automated driving or other lead markets that are underpinned by artificial intelligence, blockchain technologies, edge computing or more broadly by the digitalisation of the European industry.
- (15) In order for the Union and its Member States to achieve leadership in key digital technologies such as High Performance Computing and quantum computing, they should invest in next generation low-power and energy efficient supercomputing technologies, innovative software and advanced supercomputing systems for exascale and post-exascale computing and quantum computing, and for innovative supercomputing and data applications. This should allow the European supply industry to thrive in a wide range of key technology and application areas that reach beyond High Performance Computing and quantum computing and, in the long run, feed broader ICT markets with such technologies. It would also support the High Performance Computing and quantum computing science and user industry to undergo a digital transformation and boost its innovation potential.

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<sup>(6)</sup> Council Regulation (EU) 2018/1488 of 28 September 2018 establishing the European High Performance Computing Joint Undertaking (OJ L 252, 8.10.2018, p. 1).

- (16) Pursuing a common strategic Union vision in High Performance Computing and quantum computing is essential for realising the ambition of the Union and of its Member States to ensure a leading role in the digital economy. The objective would be to establish in Europe a world-leading hyper-connected, federated and secure High Performance Computing and quantum computing service and data infrastructure ecosystem, and to be in a position to produce innovative and competitive High Performance Computing and quantum computing systems based on a supply chain that is more resilient and will ensure the availability of components, technologies and knowledge, limiting the risk of disruptions.
- (17) A Joint Undertaking represents the best instrument capable of implementing the strategic EU vision in High Performance Computing and quantum computing, thus ensuring that the Union enjoys world-class supercomputing, quantum computing and data capabilities according to its economic potential, matching the needs of European users. The Joint Undertaking is the best instrument to overcome the present limitations, while offering the highest economic, societal, and environmental impact and best safeguarding the Union's interests in High Performance Computing and quantum computing. It can pool resources from the Union, Member States and third countries associated to Horizon Europe, the Digital Europe Programme or the Connecting Europe Facility and the private sector. It can implement a procurement framework and operate world-class High Performance Computing and quantum computing systems. It can launch research and innovation programmes for developing European technologies and their subsequent integration in world-class supercomputing systems.
- (18) The Joint Undertaking will be part of the Institutionalised Partnerships portfolio under Horizon Europe which should strive to strengthen Union's scientific capacities to deal with emerging threats and future challenges in a reinforced European Research Area, secure sustainability-driven Union's value chains and Union's strategic autonomy, and enhance the uptake of innovative solutions addressing climate, environmental, health and other global societal challenges in line with Union strategic priorities, including to reach climate neutrality in the Union by 2050.
- (19) The Joint Undertaking should be financed by the Union programmes under the multiannual financial framework for the years 2021 to 2027 (the 'MFF 2021-2027'). It should be established in 2021 and operate until 31 December 2033 to equip the Union with a world-class federated, secure and hyper-connected supercomputing infrastructure, and to develop the necessary technologies, applications and skills for reaching exascale capabilities around 2022-2024, and post exascale around 2025 – 2027, while promoting a world-class European High Performance Computing and quantum computing innovation ecosystem. In accordance with Article 10(2)(c) of Regulation (EU) 2021/695, Joint Undertakings are to have a clear life cycle approach. In order to adequately protect the financial interests of the Union, the Joint Undertaking should be set up for a period ending 31 December 2033 to allow it to exercise its responsibilities with regard to grant implementation until the last indirect actions launched have been completed and with regard to finalising the activities related to the operation of the EuroHPC supercomputers.
- (20) The public-private partnership in the form of the Joint Undertaking should combine the financial and technical means that are essential to master the complexity of the ever escalating pace of innovation in this area. Therefore, the members of the Joint Undertaking should be the Union, Member States and third countries associated to Horizon Europe, the Digital Europe Programme or the Connecting Europe Facility agreeing on a joint European initiative in High Performance Computing and quantum computing, and associations representing their constituent entities and other organisations with an explicit and active engagement to produce research and innovation results, to develop and deploy high performance computing or quantum computing capabilities, or contributing to address the skills gap and keep the know-how in the field of High Performance Computing and quantum computing in Europe. The Joint Undertaking should be open to new members.
- (21) In accordance with Annex III to Regulation (EU) 2021/695, the financial contributions from members other than the Union should be at least equal to 50 % and should be able to reach up to 75 % of the aggregated Joint Undertaking budgetary commitments. Conversely, the Union contribution, including any additional funds from third countries associated to Horizon Europe, the Digital Europe Programme or the Connecting Europe Facility, should not exceed 50 % of the aggregated Joint Undertaking budgetary commitments.

- (22) The Union contribution should cover the administrative costs of the Joint Undertaking.
- (23) In accordance with point (c) of Article 10(1) of Regulation (EU) 2021/695, the Joint Undertaking is to implement a central management of all financial contributions through a coordinated approach. Accordingly, each Participating State should conclude one or more administrative agreements with the Joint Undertaking laying down the coordination mechanism for the payment of and reporting on contributions to applicants established in that Participating State. In order to ensure coherence with their national strategic priorities, Participating States should be provided with a right of veto over the use of their national financial contributions for applicants established in those Participating States. In order to minimise the administrative burden for beneficiaries, achieve simplification and ensure a more efficient implementation, each Participating State should strive to synchronise its payment schedule, reporting and audits with those of the Joint Undertaking and to converge its cost eligibility with Horizon Europe rules. Beneficiaries established in Participating States that entrusted the payment activities to the Joint Undertaking should sign a single grant agreement with the Joint Undertaking following Horizon Europe rules.
- (24) With a view to regaining a leading position in High Performance Computing technologies, and developing a full High Performance Computing and quantum computing ecosystem for the Union, in 2014, the industrial and research stakeholders in the European Technology Platform for High Performance Computing (ETP4HPC) Association established a contractual public private partnership with the Union. Its mission is to build a European world-class High Performance Computing technology value chain that would be globally competitive, fostering synergies between the three main components of the High Performance Computing ecosystem, namely technology development, applications and supercomputing infrastructure. Considering its expertise, and its role in bringing together the relevant private stakeholders in High Performance Computing, the ETP4HPC should be eligible for membership in the Joint Undertaking.
- (25) With a view to strengthening the data value chain, enhancing community building around data and setting the grounds for a thriving data-driven economy in the Union, in 2014, the industrial and research stakeholders in the Big Data Value Association (BDVA) established a contractual public private partnership with the Union. In 2020 BDVA changed its name to Data, AI and Robotics (DAIRO). Considering its expertise and its role in bringing together the relevant private stakeholders of big data, DAIRO should be eligible for membership in the Joint Undertaking.
- (26) The private associations ETP4HPC and DAIRO have expressed, in writing, their willingness to contribute to the Joint Undertaking's multiannual strategic programme and bring their expertise into the realisation of the objectives of the Joint Undertaking. It is appropriate that those private associations accept the Statutes set out in the Annex to this Regulation by means of a letter of endorsement.
- (27) The Joint Undertaking should address clearly defined topics that would enable academia and European industries at large to design, develop and use the most innovative technologies in High Performance Computing and quantum computing, and to establish an integrated and federated, secure networked infrastructure across the Union with world-class High Performance Computing and quantum computing capability, high-speed connectivity and leading-edge applications and data and software services for its scientists and for other lead users from industry, including small and medium-sized enterprises (SMEs) and the public sector. The Joint Undertaking should aim at the development and use of top class technologies and infrastructures, addressing the demanding requirements of European scientific, industrial and public sector users.
- (28) The mission of the Joint Undertaking should be structured in one administrative pillar and six technical pillars addressing respectively the infrastructure activities, the activities federating the supercomputing services, the technology-related activities, the supercomputing applications related activities, the activities to widen the usage and skills, and the international cooperation activities. The Digital Europe Programme should be used to fund the infrastructure pillar, part of the federation of supercomputing services pillar and the widening usage and skills pillar. The Connecting Europe Facility should be used to fund the remaining activities of the federation of supercomputing

services pillar, i.e. the interconnection of the High Performance Computing, quantum computing and data resources, as well as the interconnection with the Union's common European data spaces and secure cloud infrastructures. Horizon Europe should be used to fund the technology pillar, the application pillar and the international cooperation pillar.

- (29) The Joint Undertaking should be able to cooperate with the Partnership for Advanced Computing in Europe (PRACE) for providing and managing access to a federated and interconnected supercomputing and data infrastructure and its services, as well as for training facilities and skills development opportunities. It should also be able to cooperate with the GÉANT network for the connectivity between the supercomputers of the Joint Undertaking, as well as with other European supercomputing and data infrastructures.
- (30) The Joint Undertaking should contribute to reducing the specific skills gap across the Union by engaging in awareness raising measures and assisting in the building of new knowledge and human capital. This includes the design and support of specific educational and training activities in close cooperation with the relevant public and private actors.
- (31) In line with the external policy objectives and international commitments of the Union, the Joint Undertaking should facilitate cooperation between the Union and international actors by defining a cooperation strategy, including identifying and promoting areas for cooperation in research and development and skills development and implementing actions where there is a mutual benefit, as well as ensuring an access policy of respective High Performance Computing and quantum computing capabilities and applications mainly based on reciprocity.
- (32) The Joint Undertaking should aim at promoting the exploitation of any resulting High Performance Computing technologies in the Union. It should also aim at safeguarding the investments in the supercomputers it acquires. In doing so, it should take appropriate measures to ensure the security of the supply chain of acquired technologies that should cover the whole lifetime of these supercomputers.
- (33) The Joint Undertaking should lay the ground for a longer-term vision and build the first hybrid High Performance Computing infrastructure in Europe, integrating classical computing architectures with quantum computing devices. Structured and coordinated financial support at European level is necessary to help research teams and European industries produce world-class results to ensure the fast and broad industrial exploitation of European research and technology across the Union, generating important spillovers for society, to share risk-taking and joining of forces by aligning strategies and investments towards a common European interest.
- (34) In order to achieve its objectives to design, develop and use the most innovative technologies in High Performance Computing and quantum computing, the Joint Undertaking should provide financial support in particular in the form of grants and procurement following open and competitive calls for proposals and calls for tenders based on annual work programmes. Such financial support should be targeted in particular at proven market failures that prevent the development of the programme concerned, should not crowd out private investments and should have an incentive effect in that it changes the behaviour of the recipient.
- (35) In order to achieve its objectives to increase the innovation potential of industry, and in particular of SMEs, to contribute to reducing the specific skills gap, to support the increase of knowledge and human capital and to upraise High Performance Computing and quantum computing capabilities, the Joint Undertaking should support the creation, and in particular the networking and coordination, of national High Performance Computing Competence Centres across Participating States. Those competence centres should provide High Performance Computing and quantum computing services to industry, academia and public administrations on their demand. They should primarily promote and enable access to the High Performance Computing innovation ecosystem, facilitate access to the supercomputers and quantum computers, address the significant shortages in skilled technical experts by undertaking awareness raising, training and outreach activities, and embark on networking

activities with stakeholders and other national High Performance Computing Competence Centres to foster wider innovations, for example by exchanging and promoting best practice use cases or application experiences, by sharing their training facilities and experiences, by facilitating the co-development and exchange of parallel codes, or by supporting the sharing of innovative applications and tools for public and private users, in particular SMEs.

- (36) The Joint Undertaking should provide a demand-oriented and user-driven framework and enable a co-design approach for the acquisition of an integrated, world-class federated, secure and hyper-connected supercomputing and quantum computing service and data infrastructure in the Union, in order to equip users with the strategic computation resource they need to develop new, innovative solutions and to solve societal, environmental, economic and security challenges. For that purpose, the Joint Undertaking should contribute to the acquisition of world-class supercomputers. The supercomputers of the Joint Undertaking, including quantum computers, should be installed in a Participating State that is a Member State.
- (37) For a cost effective implementation of the Joint Undertaking's mission to develop, deploy, extend and maintain in the Union a world-leading supercomputing ecosystem, the Joint Undertaking should seize the opportunity to upgrade the supercomputers it owns, where appropriate. Thus, the upgrades should lead to an extension of the supercomputers' lifetime, increase the operational performance, and provide new functionalities to address the evolution of user needs. For the purpose of upgrading its supercomputers, the Joint Undertaking should be able to launch a call for expressions of interest as part of the infrastructure pillar. The calls for expression of interest should define the specific eligibility conditions that should apply to a hosting entity which is already hosting a EuroHPC supercomputer.
- (38) The Joint Undertaking should hyper-connect all the supercomputers and data infrastructures it owns or co-owns with state-of-the-art networking technologies, making them widely accessible across the Union, and should interconnect and federate its supercomputing and quantum computing data infrastructure, as well as national, regional and other computing infrastructures with a common platform. The Joint Undertaking should also ensure the interconnection of the federated, secure supercomputing, and quantum computing service and data infrastructures with the common European data spaces, including the European Open Science Cloud, and federated, secure cloud infrastructures announced in the Communication from the Commission of 19 February 2020 entitled 'A European Strategy for Data', for seamless service provisioning to a wide range of public and private users across Europe.
- (39) Horizon Europe and the Digital Europe Programme should, respectively, contribute to the closing of the research and innovation divide within the Union and to deploying wide-range supercomputing capabilities by promoting synergies with the European Regional Development Fund (ERDF), the European Social Fund+ (ESF+), the European Maritime, Fisheries and Aquaculture Fund (EMFAF) and the European Agricultural Fund for Rural Development (EAFRD), as well as the Recovery and Resilience Facility (RRF). Therefore, the Joint Undertaking should seek to develop close interactions with those funds which can specifically help to strengthen local, regional and national research and innovation capabilities.
- (40) The Joint Undertaking should provide a favourable framework for Participating States that are Member States to use financial contributions under the programmes co-financed by ERDF, ESF+, EMFAF and EAFRD for the acquisition of High Performance Computing and quantum computing and data infrastructures and their interconnection. The use of those financial contributions in the Joint Undertaking activities is essential for developing in the Union an integrated, federated, secure and hyper-connected world-class High Performance Computing, quantum computing service and data infrastructure, since the benefits for such infrastructure extend well beyond the users of the Member States. If Member States decide to use those financial contributions for the activities of the Joint

Undertaking, those contributions should be considered as national contributions of the Participating States that are Member States to the budget of the Joint Undertaking, provided that Article 106 and other applicable provisions of Regulation (EU) 2021/1060 of the European Parliament and of the Council <sup>(7)</sup> and the fund-specific regulations are complied with.

- (41) The Joint Undertaking can facilitate the use of RRF funds by Participating States that are Member States. The RRF funds can complement the actions funded by the Joint Undertaking, provided that support under the RRF is additional to the support provided by the Union funds of the Joint Undertaking and that it does not cover the same cost. The use of RRF should not be accounted as national contribution to the budget of the Joint Undertaking, particularly in regard to High Performance Computing and quantum computing service and data infrastructures, as well as on technology, applications and skills development projects.
- (42) The Union's contribution from the Digital Europe Programme funds should partly cover the acquisition costs of high-end supercomputers, quantum computers, industrial-grade supercomputers and mid-range supercomputers to align with the Joint Undertaking's objective to contribute to the pooling of resources for equipping the Union with top-class supercomputers and quantum computers. The complementary costs of these supercomputers and quantum computers should be covered by the Participating States, the Private Members or consortia of private partners. The share of the Union's access time to these supercomputers or quantum computers should be directly proportional to the financial contribution of the Union made for the acquisition of these supercomputers and quantum computers and should not exceed 50 % of the total access time of these supercomputers or quantum computers.
- (43) The Joint Undertaking should be the owner of the high-end supercomputers and quantum computers it has acquired. The operation of each high-end supercomputer or quantum computer should be entrusted to a hosting entity. The hosting entity should be able to represent a single Participating State that is a Member State or a hosting consortium of Participating States. The hosting entity should be able to provide an accurate estimate and to verify the operating costs of the supercomputer, by ensuring, for example, the functional separation, and to the extent possible, the physical separation of the Joint Undertaking's high-end supercomputers or quantum computers and any national or regional computing systems it operates. The hosting entity should be selected by the Governing Board of the Joint Undertaking (the 'Governing Board') following a call for expression of interest evaluated by independent experts. Once a hosting entity is selected, the Participating State where the hosting entity is established or the hosting consortium should be able to decide to call for other Participating States to join and contribute to the funding of the high-end supercomputer or quantum computer to be installed in the selected hosting entity. If additional Participating States join the selected hosting consortium, this should be without prejudice to the Union's access time to the supercomputers. The contributions of the Participating States in a hosting consortium to the supercomputer or quantum computer should be translated into shares of access time to that supercomputer or quantum computer. The Participating States should agree among themselves the distribution of their share of access time to the supercomputer or the quantum computer.
- (44) The Joint Undertaking should remain the owner of supercomputers or quantum computers it acquires until they are depreciated. The Joint Undertaking should be able to transfer this ownership to the hosting entity for decommissioning, disposal or any other use. When the ownership is transferred to the hosting entity or when the Joint Undertaking is being wound up, the hosting entity should reimburse the Joint Undertaking the residual value of the supercomputer or the quantum computer.

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<sup>(7)</sup> Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).



- (45) The Joint Undertaking should jointly with Participating States acquire the mid-range supercomputers. The operation of each mid-range supercomputer should be entrusted to a hosting entity. The hosting entity should be able to represent a single Participating State that is a Member State or a hosting consortium of Participating States. The Joint Undertaking should own the part that corresponds to the Union's share of the financial contribution to the acquisition costs from Digital Europe Programme funds. The hosting entity should be selected by the Governing Board following a call for expression of interest evaluated by independent experts. The share of the Union's access time to each mid-range supercomputer should be directly proportional to the financial contribution of the Union from Digital Europe Programme funds to the acquisition costs of that mid-range supercomputer. The Joint Undertaking should be able to transfer its ownership to the hosting entity at the earliest five years after the successful acceptance test by the Joint Undertaking or when it is being wound up. The hosting entity should reimburse the Joint Undertaking the residual value of the supercomputer.
- (46) To promote an equitable and balanced distribution across the Union of EuroHPC supercomputers and the emergence of a federated infrastructure ecosystem approach, the calls for expression of interest of a EuroHPC supercomputer should define the eligibility conditions that should apply to a Participating State which is already hosting a EuroHPC supercomputer.
- (47) The Joint Undertaking should be able to acquire together with a consortium of private partners industrial-grade supercomputers. The operation of each such supercomputer should be entrusted to an existing hosting entity. The hosting entity should be able to associate itself with the consortium of private partners for the acquisition and operation of such a supercomputer. The Joint Undertaking should own the part that corresponds to the Union's share of financial contribution to the acquisition costs from the Digital Europe Programme funds. The hosting entity and its associated consortium of private partners should be selected by the Governing Board following a call for expression of interest evaluated by independent experts. The share of the Union's access time to such supercomputer should be directly proportional to the financial contribution of the Union from the Digital Europe Programme funds to the acquisition costs of that industrial-grade supercomputer. The Joint Undertaking should be able to reach an agreement with the consortium of private partners to sell such a supercomputer to another entity or decommission it. Alternatively, the Joint Undertaking should be able to transfer the ownership of such a supercomputer to the consortium of private partners. In that case or when the Joint Undertaking is being wound-up, the consortium of private partners should reimburse the Joint Undertaking the residual value of the Union's share of the supercomputer. In the case that the Joint Undertaking and the consortium of private partners decide to proceed to the decommissioning of the supercomputer after the full depreciation of its operation, such costs should be covered by the consortium of private partners.
- (48) For industrial-grade supercomputers the Joint Undertaking should take into account the specific needs of industrial users, for example access procedures, quality and type of services, protection of data, protection of industrial innovation, and intellectual property, usability, trust, and other confidentiality and security requirements.
- (49) The design and operation of the supercomputers supported by the Joint Undertaking should take into consideration energy efficiency and environmental sustainability, using for example low-power technology, dynamic power-saving and re-use techniques like advanced cooling and heat recycling.
- (50) The use of the supercomputers of the Joint Undertaking should focus on civilian applications for public and private users residing, established or located in a Member State or in a third country associated to the Digital Europe Programme or to Horizon Europe, including applications in cybersecurity that may be of dual use. Users should be granted the Union's share of access time according to access policy rules defined by the Governing Board. The use of these supercomputers should also respect international agreements concluded by the Union.

- (51) User allocation of access time to the supercomputers of the Joint Undertaking should be free of charge for public users. It should also be free of charge for private users for their applications related to research and innovation activities funded by Horizon Europe or the Digital Europe Programme, as well as for private innovation activities of SMEs, where appropriate. Such allocation of access time should primarily be based on open calls for expression of interest launched by the Joint Undertaking and evaluated by independent experts. With the exception of SME users undertaking private innovation activities, all users benefiting from free-of-charge access time to the supercomputers of the Joint Undertaking should adopt an open science approach and disseminate knowledge gained through that access, in accordance with Regulation (EU) 2021/695. User allocation of access time for economic activities other than private innovation activities of SMEs, which face particular market failures, should be granted on a pay-per-use basis, based on market prices. Allocation of access time for such economic activities should be allowed but limited and the level of the fee to be paid should be established by the Governing Board. The access rights should be allocated in a transparent manner. The Governing Board should define specific rules to grant access time free of charge, where appropriate, and without a call for expression of interest to initiatives that are considered strategic for the Union. Representative examples of strategic initiatives of the Union include: Destination Earth, the Human Brain Project Flagship, the '1+ Million Genomes' initiative, the common European data spaces operating in domains of public interest, and in particular the health data space, the Centres of Excellence in High Performance Computing, national High Performance Computing Competence Centres and the Digital Innovation Hubs.

Upon the Union's request, the Joint Undertaking should grant direct access time on a temporary or permanent basis to strategic initiatives and existing or future application platforms that it considers essential for providing health-related or other crucial emergency support services for the public good, to emergency and crisis management situations or to cases that the Union considers essential for its security and defence. The Joint Undertaking should be allowed to carry out some limited economic activities for commercial purposes. Access should be granted to users residing, established or located in a Member State or a third country associated to the Digital Europe Programme or to Horizon Europe. The access rights should be equitable to any user and allocated in a transparent manner. The Governing Board should define and monitor the access rights to the Union's share of access time for each supercomputer.

- (52) Access to the Union's share of access time of the precursors to exascale and petascale supercomputers acquired by the EuroHPC Joint Undertaking established under Regulation (EU) 2018/1488 should continue to be granted to users established in the Union or a third country associated to Horizon 2020.
- (53) The supercomputers of the Joint Undertaking should be operated and used in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(8)</sup> and Directives 2002/58/EC <sup>(9)</sup> and (EU) 2016/943 <sup>(10)</sup> of the European Parliament and of the Council.
- (54) Governance of the Joint Undertaking should be assured by two bodies: a Governing Board, and an Industrial and Scientific Advisory Board. The Governing Board should be composed of representatives of the Union and of Participating States. The Governing Board should be responsible for strategic policy-making and funding decisions related to the activities of the Joint Undertaking, including all the public procurement activities. The Industrial and Scientific Advisory Board should include representatives of academia and industry as users and technology suppliers. It should provide independent advice to the Governing Board on the Strategic Research and Innovation Agenda, on the acquisition and operation of the supercomputers owned by the Joint Undertaking, the capability building and widening activities programme and the federation, connectivity and international cooperation activities programme.

<sup>(8)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(9)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>(10)</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

- (55) For the general administrative tasks of the Joint Undertaking, the voting rights of the Participating States should be distributed equally among them. For the tasks corresponding to the setting up of the part of the work programme related to the acquisition of the supercomputers and quantum computers, the selection of the hosting entity, the federation and connectivity activities and the research and innovation activities of the Joint Undertaking, the voting rights of the Participating States that are Member States should be based on the principle of qualified majority. The Participating States that are third countries associated to Horizon Europe, the Digital Europe Programme or the Connecting Europe Facility should also hold voting rights for the respective activities that are supported with budgetary envelopes from each of those programmes. For the tasks corresponding to the acquisition and operation of the supercomputers and quantum computers, only those Participating States and the Union that contribute resources to those tasks should have voting rights.
- (56) The Union's financial contribution should be managed in accordance with the principle of sound financial management and with the relevant rules on indirect management set out in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>(1)</sup>. The rules applicable for the Joint Undertaking to enter into public procurement procedures should be set out in its financial rules.
- (57) To foster an innovative and competitive European High Performance Computing and quantum computing ecosystem of recognised excellence across Europe, the Joint Undertaking should make appropriate use of the procurement and grant instruments, including joint procurement, pre-commercial procurement and public procurement of innovative solutions. This aims at creating links between technologies primarily developed in the Union, co-design with users and the acquisition of first-of-a-kind world-class supercomputing and quantum computing systems.
- (58) In assessing the overall impact of the Joint Undertaking, investments in indirect actions from the Private Members should be taken into account as in-kind contributions consisting of the eligible costs incurred by them in implementing actions, less the contributions by the Joint Undertaking, the Participating States or any other Union contribution to those costs. In assessing the overall impact of the Joint Undertaking, investments in other actions from the Private Members should be taken into account as in-kind contributions consisting of the eligible costs incurred by them in implementing the actions, less the contributions by the Joint Undertaking, the Participating States or any other Union contribution to those costs.
- (59) In order to maintain a level playing field for all undertakings active in the internal market, funding from the Union programmes should be consistent with State aid principles so as to ensure the effectiveness of public spending and prevent market distortions such as crowding out of private funding, the creation of ineffective market structures, the preservation of inefficient firms or the creation of a subsidies-reliant culture.
- (60) Participation in indirect actions funded by the Joint Undertaking should comply with Regulation (EU) 2021/695. The Joint Undertaking should, moreover, ensure the consistent application of those rules based on relevant measures adopted by the Commission. In order to ensure appropriate co-financing of indirect actions by the Participating States, in compliance with Regulation (EU) 2021/695, the Participating States should contribute an amount at least equal to the reimbursement provided by the Joint Undertaking for the eligible costs incurred by beneficiaries in implementing the actions. To that effect, the maximum funding rates set out in the annual work programme of the Joint Undertaking should be fixed by the Governing Board in accordance with Article 34 of Regulation (EU) 2021/695.
- (61) In order to ensure the right balance of stakeholders' participation in the actions funded by the Joint Undertaking, a derogation from Article 34 of Regulation (EU) 2021/695 is necessary to allow a differentiation of reimbursement rates depending on the type of participant, namely SMEs, and the type of action, to be applied invariably across

<sup>(1)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

beneficiaries from all Participating States. For activities funded under the Digital Europe Programme, the Joint Undertaking should allow reimbursement rates depending on the type of participant, namely SMEs, and the type of action, to be applied invariably across beneficiaries from all Participating States.

- (62) Provision of financial support to activities from the Digital Europe Programme should comply with Regulation (EU) 2021/694. In particular, in relation to classified information, actions funded under the Digital Europe Programme should comply with Article 12(1) of that Regulation.
- (63) Provision of financial support to activities from the Connecting Europe Facility should comply with Regulation (EU) 2021/1153.
- (64) Beneficiaries from third countries associated to Horizon Europe, the Digital Europe Programme or the Connecting Europe Facility that are Participating States should be eligible for participation in actions only where a Participating State is a third country associated to one or more programmes related to that action.
- (65) The financial interests of the Union and of the other members of the Joint Undertaking should be protected by proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of lost, wrongly paid or incorrectly used funds and, where appropriate, the application of administrative and financial penalties in accordance with Regulation (EU, Euratom) 2018/1046.
- (66) The Joint Undertaking should operate in an open and transparent way providing all relevant information in a timely manner as well as promoting its activities, including information and dissemination activities, to the wider public. The rules of procedure of the bodies of the Joint Undertaking should be made publicly available.
- (67) For the purpose of simplification, the administrative burden should be reduced for all parties. Double audits and disproportionate amounts of documentation and reporting should be avoided.
- (68) The Commission's internal auditor should exercise the same powers over the Joint Undertaking as those exercised in respect of the Commission.
- (69) The Commission, the Joint Undertaking, the Court of Auditors and the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) should have access to all necessary information and the premises to conduct audits and investigations on the grants, contracts and agreements signed by the Joint Undertaking.
- (70) All calls for proposals and all calls for tenders under this Regulation should take into account the duration of Horizon Europe, of the Digital Europe Programme and of the Connecting Europe Facility, as appropriate, except in duly justified cases. Procurement procedures for the acquisition of the supercomputers and quantum computers of the Joint Undertaking should be in accordance with the applicable provisions of the Digital Europe Programme. In duly justified cases related to availability of remaining budget stemming from the MFF 2021-2027, the Joint Undertaking should be able to launch calls for proposals or calls for tenders by 31 December 2028.
- (71) An interim and a final evaluation of the Joint Undertaking should be conducted by the Commission with the assistance of independent experts. In a spirit of transparency, the relevant independent experts' report should be made publicly available, in compliance with the applicable rules.
- (72) Since the objectives of this Regulation, namely the strengthening of research and innovation capabilities, the development of supercomputing capability building and widening activities, the federation, connectivity and international cooperation and the acquisition of world-class supercomputers, and access to High Performance Computing, quantum computing service and data infrastructure across the Union by means of a Joint Undertaking, cannot be sufficiently achieved by the Member States, but can rather, by reason of avoiding unnecessary duplication,

retaining critical mass and ensuring that public financing is used in an optimal way, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS REGULATION:

#### *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 on the Functioning of the European Union (TFEU) (the 'European High Performance Computing Joint Undertaking', the 'Joint Undertaking') is hereby established for a period until 31 December 2033.
2. In order to take into account the duration of the MFF 2021-2027 and of Horizon Europe, the Digital Europe Programme and the Connecting Europe Facility, calls for proposals and calls for tenders under this Regulation shall be launched by 31 December 2027. In duly justified cases, calls for proposals or calls for tenders may be launched by 31 December 2028.
3. The Joint Undertaking shall have legal personality. In each Member State, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of that Member State. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
4. The seat of the Joint Undertaking shall be located in Luxembourg.
5. 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 apply:

- (1) 'acceptance test' means a test conducted to determine if the requirements of the system specification are met by a EuroHPC supercomputer;
- (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 computer programmes;
- (3) 'affiliated entity' means any legal entity as defined in Article 187(1) of Regulation (EU, Euratom) 2018/1046;
- (4) 'Centre of Excellence in High Performance Computing' means a collaborative project selected in an open and competitive call for proposals to promote the use of upcoming extreme performance computing capabilities enabling user communities in collaboration with other High Performance Computing stakeholders to scale up existing parallel codes towards exascale and extreme scaling performance;
- (5) 'co-design' means a collective approach between technology suppliers and users engaged in a collaborative and iterative design process for developing new technologies, applications and systems;
- (6) 'conflict of interest' means a situation involving a financial actor or other person as referred to in Article 61 of Regulation (EU, Euratom) 2018/1046;
- (7) 'constituent entity' means an entity that constitutes a Private Member of the Joint Undertaking, pursuant to the statutes of each Private Member;

- (8) 'consortium of private partners' means an association of Union legal entities coming together for the purpose of acquiring jointly with the Joint Undertaking an industrial-grade supercomputer; one or more of these private partners may be participating in the Private Members of the Joint Undertaking;
- (9) 'EuroHPC supercomputer' means any computing system fully owned by the Joint Undertaking or co-owned with other Participating States or a consortium of private partners; it can be a classical supercomputer (high-end supercomputer, industrial-grade supercomputer, or mid-range supercomputer), a hybrid classical-quantum computer, a quantum computer or a quantum simulator;
- (10) 'exascale' means a performance level capable of executing ten to the power of eighteen operations per second (or 1 Exaflop);
- (11) 'high-end supercomputer' means a world-class computing system developed with the most advanced technology available at a given point in time and achieving at least exascale levels of performance or beyond (i.e. post-exascale) for applications addressing problems of greater complexity;
- (12) 'hosting consortium' means a group of Participating States or a consortium of private partners that have agreed to contribute to the acquisition and operation of a EuroHPC supercomputer, including any organisations representing these Participating States;
- (13) 'hosting entity' means a legal entity which includes facilities to host and operate a EuroHPC supercomputer and which is established in a Participating State that is a Member State;
- (14) 'hyper-connected' means a communication capability of transferring data at 10 to the power of twelve bits per second (1 Terabit per second) or beyond;
- (15) 'industrial-grade supercomputer' means at least a mid-range supercomputer specifically designed with security, confidentiality and data integrity requirements for industrial users that are more demanding than for a scientific use;
- (16) 'in-kind contributions to indirect actions' funded from Horizon Europe means contributions by the Participating State or the Private Members of the Joint Undertaking or their constituent entities or their affiliated entities, consisting of the eligible costs incurred by them in implementing indirect actions less the contribution of that Joint Undertaking, of the Participating States of that Joint Undertaking and of any other Union contribution to those costs;
- (17) 'in-kind contributions to actions' funded from the Digital Europe Programme or the Connecting Europe Facility means contributions by the Participating State or the Private Members of the Joint Undertaking or their constituent entities or their affiliated entities, consisting of the eligible costs incurred by them in implementing part of the activities of the Joint Undertaking less the contribution of that Joint Undertaking, of the Participating States of that Joint Undertaking and of any other Union contribution to those costs;
- (18) 'mid-range supercomputer' means a world-class supercomputer with at most one order of magnitude lower performance level than a high-end supercomputer;
- (19) 'national High Performance Computing Competence Centre' means a legal entity, or a consortium of legal entities, established in a Participating State, associated with a national supercomputing centre of that Participating State, providing users from industry, including SMEs, academia, and public administrations with access on demand to the supercomputers and to the latest High Performance Computing technologies, tools, applications and services, and offering expertise, skills, training, networking and outreach;
- (20) 'observer State' means a country eligible to participate in the actions of the Joint Undertaking funded by Horizon Europe or the Digital Europe Programme that is not a Participating State;
- (21) 'Participating State' means a country that is a member of the Joint Undertaking;
- (22) 'performance level' means the number of floating point operations per second (flops) that a supercomputer can execute;
- (23) 'Private Member' means any member of the Joint Undertaking other than the Union or Participating States;

- (24) 'quantum computer' means a computing device that harnesses the laws of quantum mechanics to solve certain particular tasks using therefore fewer computational resources than classical computers;
- (25) 'quantum simulator' means a highly controllable quantum device that allows to obtain insights into properties of complex quantum systems or to solve specific computational problems inaccessible to classical computers;
- (26) 'security of the supply chain' of a EuroHPC supercomputer means the measures to include in the selection of any supplier of this supercomputer to ensure the availability of components, technologies, systems and knowhow required in the acquisition and operation of this supercomputer; this includes measures for mitigating the risks related to eventual disruptions in the supply of such components, technologies, and systems, including price changes or lower performance or alternative sources of supply; it covers the whole lifetime of the EuroHPC supercomputer;
- (27) 'Strategic Research and Innovation Agenda' means the document covering the duration of Horizon Europe that identifies the key priorities and the essential technologies and innovations required to achieve the objectives of the Joint Undertaking;
- (28) 'multiannual strategic programme' means a document laying out a strategy for all the activities of the Joint Undertaking;
- (29) 'supercomputing' means computing at performance levels requiring the massive integration of individual computing elements, including quantum components, for solving problems which cannot be handled by standard computing systems;
- (30) 'total cost of ownership' of a EuroHPC supercomputer means the acquisition costs plus the operating costs, including maintenance, until the ownership of the supercomputer is transferred to the hosting entity or is sold, or until the supercomputer is decommissioned without transfer of ownership;
- (31) 'work programme' means the document referred to in Article 2, point (25), of Regulation (EU) 2021/695 or, where relevant, the document which also functions as the work programme referred to in Article 24 of Regulation (EU) 2021/694, or Article 19 of Regulation (EU) 2021/1153.

### Article 3

#### **Mission and objectives**

1. The mission of the Joint Undertaking shall be: to develop, deploy, extend and maintain in the Union a world-leading federated, secure and hyper-connected supercomputing, quantum computing, service and data infrastructure ecosystem; to support the development and uptake of demand-oriented and user-driven innovative and competitive supercomputing systems based on a supply chain that will ensure components, technologies and knowledge limiting the risk of disruptions and the development of a wide range of applications optimised for these systems; and, to widen the use of that supercomputing infrastructure to a large number of public and private users, and support the twin transition and the development of key skills for European science and industry.
2. The Joint Undertaking shall have the following overall objectives:
  - (a) to contribute to the implementation of Regulation (EU) 2021/695 and in particular Article 3 thereof, to deliver scientific, economic, environmental, technological and societal impact from the Union's investments in research and innovation, so as to strengthen the scientific and technological bases of the Union, deliver on the Union strategic priorities and contribute to the realisation of Union objectives and policies, and to contribute to tackling global challenges, including the Sustainable Development Goals by following the principles of the United Nations Agenda 2030 and the Paris Agreement adopted under the United Nations Framework Convention on Climate Change <sup>(12)</sup>;

<sup>(12)</sup> OJ L 282, 19.10.2016, p. 4.

- (b) to develop close cooperation and ensure coordination with other European Partnerships, including through joint calls, as well as to seek synergies with relevant activities and programmes at Union, national, and regional level, in particular with those supporting the deployment of innovative solutions, education and regional development, where relevant;
- (c) to develop, deploy, extend and maintain in the Union an integrated, demand-oriented and user-driven hyper-connected world-class supercomputing and data infrastructure;
- (d) to federate the hyper-connected supercomputing and data infrastructure and interconnect it with the European data spaces and cloud ecosystem for providing computing and data services to a wide range of public and private users in Europe;
- (e) to promote scientific excellence and support the uptake and systematic use of research and innovation results generated in the Union;
- (f) to further develop and support a highly competitive and innovative supercomputing and data ecosystem broadly distributed in Europe contributing to the scientific and digital leadership of the Union, capable of autonomously producing computing technologies and architectures and their integration on leading computing systems, and advanced applications optimised for these systems;
- (g) to widen the use of supercomputing services and the development of key skills that European science and industry need.

3. The Joint Undertaking shall contribute to safeguarding the interests of the Union when procuring supercomputers and supporting the development and uptake of High Performance Computing technologies, systems and applications. It shall enable a co-design approach for the acquisition of world-class supercomputers, while safeguarding the security of the supply chain of procured technologies and systems. It shall contribute to the Union's strategic autonomy, support the development of technologies and applications reinforcing the European High Performance Computing supply chain and promote their integration in supercomputing systems that address a large number of scientific, societal, environmental and industrial needs.

#### Article 4

##### **Pillars of activity**

1. The Joint Undertaking shall implement the mission referred to in Article 3 according to the following pillars of activities:
- (a) administration pillar, covering the general activities for the operation and management of the Joint Undertaking;
  - (b) infrastructure pillar, encompassing the activities for the acquisition, deployment, upgrading and operation of the secure, hyper-connected world-class supercomputing, quantum computing and data infrastructure, including the promotion of the uptake and systematic use of research and innovation results generated in the Union;
  - (c) federation of supercomputing services pillar, covering all activities for providing Union-wide access to federated, secure supercomputing and data resources and services throughout Europe for the research and scientific community, industry, including SMEs, and the public sector, in particular in cooperation with PRACE and GÉANT; those activities shall include:
    - (i) support to the interconnection of the High Performance Computing, quantum computing and data resources owned fully or partially by the Joint Undertaking or made available on a voluntary basis by the Participating States;
    - (ii) support to the interconnection of the supercomputing, and quantum computing data infrastructures with the Union's common European data spaces and federated, secure cloud and data infrastructures;
    - (iii) support to the development, acquisition and operation of a platform for the seamless federation and secure service provisioning of supercomputing and quantum computing service and data infrastructure, establishing a one-stop shop access point for any supercomputing or data service managed by the Joint Undertaking, providing any user with a single point of entry;



- (d) technology pillar, addressing ambitious research and innovation activities for developing a world-class, competitive and innovative supercomputing ecosystem across Europe addressing hardware and software technologies, and their integration into computing systems, covering the whole scientific and industrial value chain, for contributing to the Union's strategic autonomy; it shall also focus on energy-efficient High Performance Computing technologies, contributing to environmental sustainability; those activities shall address inter alia:
- (i) low-power micro-processing components, interconnection components, system architecture and related technologies such as novel algorithms, software codes, tools, and environments;
  - (ii) emerging computing paradigms and their integration into leading supercomputing systems through a co-design approach; these technologies shall be linked with the development, acquisition and deployment of high-end supercomputers, including quantum computers, and infrastructures;
  - (iii) technologies and systems for the interconnection and operation of classical supercomputing systems with other, often complementary computing technologies, such as quantum computing or other emerging computing technologies and ensure their effective operation;
  - (iv) new algorithms and software technologies that offer substantial performance increases;
- (e) application pillar, addressing activities for achieving and maintaining European excellence in key computing and data applications and codes for science, industry, including SMEs, and the public sector; those activities shall address inter alia:
- (i) applications, including new algorithms and software developments, for public and private users that benefit from the exploitation of the resources and capabilities of high-end supercomputers and their convergence with advanced digital technologies such as artificial intelligence, high performance data analytics, cloud technologies, etc. through the co-design, development and optimisation of High Performance Computing-enabled large-scale and emerging lead-market codes and applications;
  - (ii) support, among others, to Centres of Excellence in High Performance Computing in applications and large-scale High Performance Computing-enabled pilot demonstrators and test-beds for big data applications and advanced digital services in a wide range of scientific, public and industrial sectors;
- (f) widening usage and skills pillar, aiming at developing capabilities and skills that foster excellence in supercomputing, quantum computing, and data use, taking into account synergies with other programmes and instruments, in particular Digital Europe Programme, widening the scientific and industrial use of supercomputing resources and data applications and fostering the industrial access and use of supercomputing and data infrastructures for innovation adapted to industrial needs, as well as providing Europe with a knowledgeable leading scientific community and a skilled workforce for scientific leadership and digital transformation of industry and public administration, including the support and networking of national High Performance Computing Competence Centres and Centres of Excellence in High Performance Computing;
- (g) international cooperation pillar, in line with the external policy objectives and international commitments of the Union, defining, implementing and participating in activities relevant to the promotion of international collaboration in supercomputing to solve global scientific and societal challenges, while promoting competitiveness of the European High Performance Computing supply and user ecosystem.

2. In addition to the activities referred to in paragraph 1, the Joint Undertaking may be entrusted with the implementation of additional tasks in the event of cumulative, complementary or combined funding between Union programmes in accordance with the relevant Commission work programme.

*Article 5***Union's financial contribution**

1. The Union financial contribution to the Joint Undertaking including EEA appropriations shall be up to EUR 3 081 300 000, including EUR 92 000 000 for administrative costs, on the condition that that amount is at least matched by the contribution of Participating States, distributed as follows:

- (a) up to EUR 900 000 000 from Horizon Europe;
- (b) up to EUR 1 981 300 000 from the Digital Europe Programme;
- (c) up to EUR 200 000 000 from the Connecting Europe Facility.

2. The Union financial contribution referred to in paragraph 1 shall be paid from the appropriations in the general budget of the Union allocated to each relevant programme.

3. Additional Union funds complementing the contribution referred to in paragraph 1 of this Article may be allocated to the Joint Undertaking to support its pillars of activities referred to in Article 4, except those referred to in Article 4(1)(a).

4. Contributions from Union programmes corresponding to additional activities entrusted to the Joint Undertaking in accordance with paragraph 3 shall not be accounted for in the calculation of the Union maximum financial contribution.

5. Additional Union funds complementing the contribution referred to in paragraph 1 of this Article may be allocated to the Joint Undertaking from third countries associated to Horizon Europe, the Digital Europe Programme or the Connecting Europe Facility in accordance with their respective association agreements. Those additional Union funds shall not affect the Participating States' contribution referred to in Article 7(1), unless the Participating States agree otherwise.

6. The Union financial contribution referred to in paragraph 1(a) of this Article shall be used for the Joint Undertaking to provide financial support to indirect actions as defined in Article 2, point (43), of Regulation (EU) 2021/695, corresponding to the research and innovation activities of the Joint Undertaking.

7. The Union financial contribution referred to in paragraph 1(b) shall be used for capability building across the whole Union, including the acquisition, upgrade and operation of High Performance Computers, quantum computers or quantum simulators, the federation of the High Performance Computing and quantum computing service and data infrastructure and the widening of its use, and the development of advanced skills and training.

8. The Union financial contribution referred to in paragraph 1(c) shall be used for the interconnection of the High Performance Computing and data resources and the creation of an integrated pan-European hyper-connected High Performance Computing and data infrastructure.

*Article 6***Other Union contributions**

Contributions from Union programmes other than those referred to in Article 5(1) that are part of a Union co-financing to a programme implemented by one of the Participating States that is a Member State shall not be accounted for in the calculation of the Union maximum financial contribution referred to in Article 5.

*Article 7***Contributions of members other than the Union**

1. The Participating States shall make a total contribution that is commensurate to the Union's contribution referred to in Article 5(1). The Participating States shall arrange among them their collective contributions and how they will deliver them. This shall not affect the ability of each Participating State to define its national financial contribution in accordance with Article 8.
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 900 000 000 to the Joint Undertaking.
3. The contributions referred to in paragraphs 1 and 2 of this Article shall consist of contributions as set out in Article 15 of the Statutes.
4. The contributions referred to in Article 15(3)(f) of the Statutes may be provided by each Participating State to beneficiaries established in that Participating State. Participating States may complement the Joint Undertaking's contribution, within the applicable maximum reimbursement rate set out in Article 34 of Regulation (EU) 2021/695, Article 14 of Regulation (EU) 2021/694 and in Article 14 of Regulation (EU) 2021/1153. Such contributions shall be without prejudice to State aid rules.
5. The members of the Joint Undertaking other than the Union shall report by 31 January of each year to the Governing Board as defined in Article 15 of the Statutes, on the value of the contributions referred to in paragraphs 1 and 2 of this Article made in the previous financial year.
6. For the purpose of valuing the contributions referred to in points Article 15(3)(b) to (f) of the Statutes, the costs shall be determined in accordance with the usual cost accounting practices of the entities concerned, with the applicable accounting standards of the country where the entity is established and with 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 or by the audit authorities of the Participating States. The valuation method may be verified by the Joint Undertaking, should there be any uncertainty arising from the certification. If there are remaining uncertainties, the valuation method may be audited by the Joint Undertaking.
7. The Commission may terminate, proportionally reduce or suspend the Union financial contribution to the Joint Undertaking or trigger the winding up procedure referred to in Article 23 of the Statutes in the following cases:
  - (a) if the Joint Undertaking fails to meet the conditions for the Union contribution; or
  - (b) if the members other than the Union or their constituent entities or their affiliated entities fail to contribute, contribute only partially or do not respect the time frames with regard to the contribution referred to in paragraphs 1 and 2 of this Article; or
  - (c) as a result of the evaluations referred to in Article 24.

The Commission's decision to terminate, proportionally reduce or suspend the Union financial contribution shall not hinder the reimbursement of eligible costs incurred by the members other than the Union before the decision is notified to the Joint Undertaking.

*Article 8***Management of contributions from the Participating States**

1. Each Participating State shall make an indicative commitment of the amount of their national financial contributions in indirect actions to the Joint Undertaking. Such a commitment shall be made annually to the Joint Undertaking prior to the adoption of the work programme.

In addition to the criteria set out in Article 22 of Regulation (EU) 2021/695, in Article 18 of Regulation (EU) 2021/694 or in Article 11 of Regulation (EU) 2021/1153, the work programme may include, as an annex, eligibility criteria regarding the participation of national legal entities.

Each Participating State shall entrust the Joint Undertaking with the evaluation of the proposals in accordance with Horizon Europe rules.

The selection of proposals shall be based on the ranking list provided by the evaluation committee. The Governing Board may deviate from that list in duly justified cases as set out in the work programme to ensure the overall consistency of the portfolio approach.

Each Participating State shall have a right of veto on all issues concerning the use of its own national financial contributions to the Joint Undertaking for applicants established in those Participating States, on the basis of national strategic priorities.

2. Each Participating State shall conclude one or more administrative agreements with the Joint Undertaking laying down the coordination mechanism for the payment of and reporting on contributions to applicants established in that Participating State. Such an agreement shall include the schedule, conditions of payment, reporting and audit requirements.

Each Participating State shall strive to synchronise its payment schedule, reporting and audits, with those of the Joint Undertaking and to converge its cost eligibility rules with Horizon Europe's rules.

3. In the agreement referred to in paragraph 2, each Participating State may entrust the Joint Undertaking with the payment of its contribution to its beneficiaries. After the selection of proposals, the Participating State shall commit the amount necessary for payments. The audit authorities of the Participating State may audit their respective national contributions.

#### *Article 9*

### **Hosting entity**

1. EuroHPC supercomputers shall be located in a Participating State that is a Member State. In case a Participating State is already hosting a EuroHPC supercomputer which is a high-end or a mid-range supercomputer, it shall not be eligible to participate in a new call for expression of interest for the incremental generation of such supercomputers before at least five years from the selection date following a previous call for expression of interest. In the case of the acquisition of quantum computers and quantum simulators, or the upgrade of a EuroHPC supercomputer with quantum accelerators, that period is reduced to two years.

2. For the EuroHPC supercomputers referred to in Articles 11, 12 and 14, the hosting entity may represent a Participating State that is a Member State or a hosting consortium. The hosting entity and the competent authorities of the Participating State or Participating States in a hosting consortium shall enter into an agreement to that effect.

3. The Joint Undertaking shall entrust to a hosting entity the operation of each individual EuroHPC supercomputer fully owned by the Joint Undertaking, or jointly owned in accordance with Articles 11, 12 and 14.

4. Hosting entities referred to in paragraph 2 of this Article shall be selected in accordance with paragraph 5 of this Article and the Joint Undertaking's financial rules referred to in Article 19.

5. Following a call for expression of interest, the hosting entity referred to in paragraph 2 of this Article and the corresponding Participating State where the hosting entity is established or the corresponding hosting consortium 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 EuroHPC supercomputer, including an accurate estimate and a verification method of the operating costs of this supercomputer during its lifetime;

- (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) 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 Participating States of the hosting consortium to cover the share of the total cost of ownership of the EuroHPC supercomputer that is not covered by the Union contribution as set out in Article 5 or any other Union contribution as set out in Article 6, either until its ownership is transferred by the Joint Undertaking to that hosting entity or until the supercomputer is sold or decommissioned if there is no transfer of ownership.

6. For the industrial-grade EuroHPC supercomputers referred to in Article 13, the hosting entity shall enter into an agreement with a consortium of private partners for preparing the acquisition and for operating such supercomputers or partitions of EuroHPC supercomputers.

Hosting an industrial-grade supercomputer shall respect the following conditions:

- (a) the Joint Undertaking shall entrust to the hosting entity the operation of each individual industrial-grade EuroHPC supercomputer jointly owned in accordance with Article 13;
- (b) hosting entities shall be selected in accordance with paragraph 5 of this Article and the Joint Undertaking's financial rules referred to in Article 19;
- (c) following a call for expression of interest, the hosting entity and its associated consortium of private partners shall be selected by the Governing Board through a fair and transparent process based, *inter alia*, on the following:
  - (i) the criteria set out in paragraphs 5(a) to 5(e) of this Article; and
  - (ii) the provision of an appropriate supporting document proving the commitment of the consortium of private partners to cover the share of the total cost of ownership of the EuroHPC supercomputer that is not covered by the Union contribution as set out in Article 5 or any other Union contribution as set out in Article 6.

7. The selected hosting entity may decide to invite, subject to the prior agreement of the Commission, additional Participating States, or a consortium of private partners, to join the hosting consortium. The financial or in-kind contribution or any other commitment of the joining Participating States, or Private Members, shall not affect the Union financial contribution and the corresponding ownership rights and percentage of access time allocated to the Union with regard to that EuroHPC supercomputer as defined in Articles 11, 12, 13, and 14.

#### *Article 10*

#### **Hosting agreement**

1. The Joint Undertaking shall conclude a hosting agreement with each selected hosting entity prior to launching the procedure for the acquisition of a EuroHPC supercomputer.
2. The hosting agreement shall address in particular the following elements regarding the EuroHPC supercomputers:
  - (a) the rights and obligations during the procedure for acquisition of the supercomputer, including the acceptance tests of the supercomputer;
  - (b) the liability conditions for operating the supercomputer;
  - (c) the quality of service offered to the users when operating the supercomputer, as set out in the service level agreement;
  - (d) the plans regarding the supercomputer's energy efficiency and environmental sustainability;
  - (e) the access conditions of the Union's share of access time to the supercomputer, as decided by the Governing Board in accordance with Article 17;

- (f) the accounting modalities of the access times;
  - (g) the share of the total cost of ownership that the hosting entity shall arrange to be covered by the Participating State where the hosting entity is established or by the Participating States in the hosting consortium;
  - (h) the conditions for the transfer of ownership referred to in Articles 11(5), 12(7), 13(6) and 14(6), including, in the case of EuroHPC supercomputers, provisions for the calculation of their residual value and for their decommissioning;
  - (i) the obligation of the hosting entity to provide access to the EuroHPC supercomputers, while ensuring the security of the supercomputers, the protection of personal data in accordance with Regulation (EU) 2016/679, the protection of privacy of electronic communications in accordance with Directive 2002/58/EC, the protection 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;
  - (j) the obligation of the hosting entity to put in place a certified audit procedure covering the costs of operation of the EuroHPC supercomputer and the access times of the users;
  - (k) 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 use of access time in the previous financial year;
  - (l) the specific conditions applicable when the hosting entity operates a EuroHPC supercomputer for industrial usage.
3. The hosting agreement shall be governed by Union law, supplemented, for any matter not covered by this Regulation or by other Union legal acts, by the law of the Member State where the hosting entity is established.
4. The hosting agreement shall contain an arbitration clause, within the meaning of Article 272 TFEU, granting jurisdiction over all matters covered by the hosting agreement to the Court of Justice of the European Union.
5. After the hosting agreement is concluded, and without prejudice to paragraph 2 of this Article, the Joint Undertaking, supported by the selected hosting entity, shall launch the procedures for the acquisition of the EuroHPC supercomputer in accordance with the financial rules of the Joint Undertaking referred to in Article 19.
6. For mid-range supercomputers, after the hosting agreement is concluded, the Joint Undertaking, or the hosting entity shall launch on behalf of both contracting parties the procedures for the acquisition of the EuroHPC supercomputer in accordance with the financial rules of the Joint Undertaking referred to in Article 19.

#### Article 11

### Acquisition and ownership of high-end supercomputers

1. The Joint Undertaking shall acquire the high-end supercomputers and shall own them.
2. The Union financial contribution referred to in Article 5(1) shall cover up to 50 % of the acquisition costs plus up to 50 % of the operating costs of the high-end supercomputers.

The remaining total cost of ownership of the high-end supercomputers shall be covered by the Participating State where the hosting entity is established or by the Participating States in the hosting consortium, possibly supplemented by the contributions referred to in Article 6.

3. The selection of the supplier of the high-end supercomputer shall be based on tender specifications that shall take into account the user requirements and the general system specifications provided by the selected hosting entity in its application for the call for expression of interest. The selection shall also address the security of the supply chain.
4. The Joint Undertaking may act as first user and acquire high-end supercomputers that integrate demand-oriented, user driven and competitive technologies primarily developed in the Union.

5. The Governing Board may decide in the work programme, if duly justified for security reasons, to condition the participation of suppliers in the acquisition of the high-end supercomputers in accordance with Article 12(6) of Regulation (EU) 2021/694 or to limit the participation of suppliers for security reasons or actions directly related to the Union's strategic autonomy, in accordance with Article 18(4) of that Regulation.

6. Without prejudice to the winding up of the Joint Undertaking, as referred to in Article 23(4) of the Statutes, at the earliest five years after the successful acceptance test by the Joint Undertaking of the high-end supercomputers installed in a hosting entity, the ownership of the high-end supercomputer may be transferred to the respective hosting entity, sold to another entity or decommissioned upon decision of the Governing Board and in accordance with the hosting agreement. In the case of transfer of ownership of a high-end supercomputer, the hosting entity shall reimburse the Joint Undertaking the residual value of the supercomputer that is transferred. If there is no transfer of ownership to the hosting entity but a decision for decommissioning, the relevant costs shall be shared equally by the Joint Undertaking and the hosting entity. The Joint Undertaking shall not be liable for any costs incurred after the transfer of ownership of the high-end supercomputer or after its sale or decommissioning.

#### Article 12

### Acquisition and ownership of quantum computers and quantum simulators

1. The Joint Undertaking shall acquire quantum computers and quantum simulators, that could range from pilots and experimental systems to prototypes and operational systems as stand-alone machines or hybridised with high-end or mid-range High Performance Computing machines and accessible via the cloud, and shall own them.

2. The Union financial contribution referred to in Article 5(1) shall cover up to 50 % of the acquisition costs plus up to 50 % of the operating costs of the quantum computers and quantum simulators.

The remaining total cost of ownership of the quantum computers and quantum simulators shall be covered by the Participating State where the hosting entity is established or by the Participating States in the hosting consortium, possibly supplemented by the contributions referred to in Article 6.

3. The selection of the supplier of the quantum computers and quantum simulators shall be based on tender specifications that shall take into account the user requirements and the general system specifications provided by the selected hosting entity in its application for the call for expression of interest. The selection shall also address the security of the supply chain.

4. The Joint Undertaking may act as first user and acquire quantum computers and quantum simulators that integrate technologies primarily developed in the Union.

5. The Governing Board may decide in the work programme, if duly justified for security reasons, to condition the participation of suppliers in the acquisition of the quantum computers and quantum simulators in accordance with Article 12(6) of Regulation (EU) 2021/694 or to limit the participation of suppliers for security reasons or actions directly related to the Union's strategic autonomy, in accordance with Article 18(4) of that Regulation.

6. The quantum computers and quantum simulators shall be located in a hosting entity of a EuroHPC supercomputer or a supercomputing centre located in the Union.

7. Without prejudice to the winding up of the Joint Undertaking, as referred to in Article 23(4) of the Statutes, at the earliest four years after the successful acceptance test by the quantum computer or quantum simulator installed in a hosting entity, the ownership of the quantum computer or quantum simulator may be transferred to that hosting entity, sold to another entity or decommissioned upon decision of the Governing Board and in accordance with the hosting agreement. In the case of transfer of ownership of a quantum computer or quantum simulator, the hosting entity shall

reimburse the Joint Undertaking the residual value of the supercomputer that is transferred. If there is no transfer of ownership to the hosting entity but a decision for decommissioning, the relevant costs shall be shared equally by the Joint Undertaking and the hosting entity. The Joint Undertaking shall not be liable for any costs incurred after the transfer of ownership of the quantum computer or quantum simulator or after its sale or decommissioning.

#### Article 13

##### **Acquisition and ownership of industrial-grade EuroHPC supercomputers**

1. The Joint Undertaking shall acquire, together with a consortium of private partners, at least mid-range supercomputers, or partitions of EuroHPC supercomputers, primarily destined for use by industry, and shall own them or co-own them with a consortium of private partners.
2. The Union financial contribution referred to in Article 5(1) shall cover up to 35 % of the acquisition costs of the EuroHPC supercomputers, or the partitions of the EuroHPC supercomputers. The remaining total cost of ownership of the EuroHPC supercomputers, or the partitions of the EuroHPC supercomputers, shall be covered by the consortium of private partners.
3. The selection of the supplier of an industrial-grade EuroHPC supercomputer shall be based on tender specifications that shall take into account the user requirements and the general system specifications provided by the selected hosting entity in its application for the call for expression of interest. The selection shall also address the security of the supply chain.
4. The Governing Board may decide in the work programme, if duly justified for security reasons, to condition the participation of suppliers in the acquisition of the industrial grade EuroHPC supercomputers in accordance with Article 12(6) of Regulation (EU) 2021/694 or to limit the participation of suppliers for security reasons or actions directly related to the Union's strategic autonomy, in accordance with Article 18(4) of that Regulation.
5. The EuroHPC supercomputers or the EuroHPC supercomputer partitions for industrial use shall be hosted in a hosting entity of a EuroHPC supercomputer.
6. Without prejudice to the winding up of the Joint Undertaking, as referred to in Article 23(4) of the Statutes, at the earliest four years after the successful acceptance test by the Joint Undertaking of the EuroHPC supercomputers installed in a hosting entity, the ownership of the EuroHPC supercomputer may be transferred to the consortium of private partners, sold to another entity or decommissioned upon decision of the Governing Board and in accordance with the consortium of private partners. In the case of transfer of ownership of a EuroHPC supercomputer, the consortium of private partners shall reimburse the Joint Undertaking the residual value of the EuroHPC supercomputer that is transferred. If there is no transfer of ownership to the consortium of private partners but a decision for decommissioning, the relevant costs shall be covered by the consortium of private partners. The Joint Undertaking shall not be liable for any costs incurred after the transfer of ownership of the EuroHPC supercomputer or after its sale or decommissioning.

#### Article 14

##### **Acquisition and ownership of the mid-range supercomputers**

1. The Joint Undertaking shall acquire, jointly with the contracting authorities of the Participating State where the hosting entity is established or with the contracting authorities of the Participating States in the hosting consortium, the mid-range supercomputers and shall co-own them.



2. The Union financial contribution referred to in Article 5(1) shall cover up to 35 % of the acquisition costs and up to 35 % of operating costs of the mid-range supercomputers. The remaining total cost of ownership of the mid-range supercomputers shall be covered by the Participating State where the hosting entity is established or the Participating States in the hosting consortium, possibly supplemented by the contributions referred to in Article 6.
3. The selection of the supplier of the mid-range supercomputer shall be based on tender specifications that shall take into account the user requirements and the general system specifications provided by the selected hosting entity in its application for the call for expression of interest. The selection shall also address the security of the supply chain.
4. The Joint Undertaking may act as first user and acquire mid-range supercomputers that integrate demand-oriented, user driven and competitive technologies primarily developed in the Union.
5. The Governing Board may decide in the work programme, if duly justified for security reasons, to condition the participation of suppliers in the acquisition of the mid-range supercomputers in accordance with Article 12(6) of Regulation (EU) 2021/694 or to limit the participation of suppliers for security reasons or actions directly related to the Union's strategic autonomy, in accordance with Article 18(4) of that Regulation.
6. Without prejudice to the winding up of the Joint Undertaking, as referred to in Article 23(4) of the Statutes, the part of the ownership of the supercomputer owned by the Joint Undertaking shall be transferred to the hosting entity after the full depreciation of the supercomputer. The hosting entity shall reimburse the Joint Undertaking the residual value of the supercomputer that is transferred. The Joint Undertaking shall not be liable for any costs incurred after the transfer of ownership of the mid-range supercomputer.

#### Article 15

### Upgrading of supercomputers

1. The Joint Undertaking may launch a call for expressions of interest to upgrade the EuroHPC supercomputers it owns or co-owns. The maximum EU contribution to such upgrades may not exceed EUR 150 million for the period 2021-2027.
2. A hosting entity shall be eligible to respond to this call for expressions of interest at the earliest one year after the selection date of the hosting entity of the EuroHPC supercomputer, and no later than three years after this date. A EuroHPC supercomputer may be upgraded only once.
3. The hosting entity shall be selected by the Governing Board through a fair and transparent process based, inter alia, on the following criteria:
  - (a) justification of the upgrade;
  - (b) compatibility with the original EuroHPC supercomputer;
  - (c) increase in operational capacity performance of the EuroHPC supercomputer;
  - (d) 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 Participating States of the hosting consortium to cover the share of the upgrading cost of the EuroHPC supercomputer that is not covered by the Union contribution as set out in Article 5 or any other Union contribution as set out in Article 6, either until its ownership is transferred by the Joint Undertaking to that hosting entity or until the supercomputer is sold or decommissioned if there is no transfer of ownership.
4. The Joint Undertaking shall acquire, jointly with the contracting authorities of the Participating State where the selected hosting entity is established or with the contracting authorities of the Participating States in the selected hosting consortium, the upgrade of the supercomputer and shall own it under the same conditions of ownership of the original EuroHPC supercomputer.

5. The Union financial contribution for the upgrade shall cover up to 35 % of the acquisition costs of the upgrade, depreciated over the expected remaining lifetime of the original supercomputer and up to 35 % of the additional operating costs. The total cost of the upgrade shall not exceed 30 % of the total acquisition cost of the original EuroHPC supercomputer.

6. The share of the Union's access time to the upgraded EuroHPC supercomputer shall remain unchanged over the lifetime of the machine. If the upgrade entails an increase of capacity, the additional access time shall be directly proportional to the Union contribution.

#### Article 16

##### **Use of EuroHPC supercomputers**

1. Without prejudice to Article 17(9), the use of EuroHPC supercomputers shall be open to users from the public and private sectors and shall focus on civilian applications. Except for the industrial-grade EuroHPC supercomputers, their use shall be primarily for research and innovation purposes falling under public funding programmes, for public sector applications and for private innovation activities of SMEs, where appropriate.

2. The Governing Board shall define the general access conditions for using the EuroHPC supercomputers in accordance with Article 17 and may define specific access conditions for different types of users or applications. The security and quality of service shall be the same for all users within each user category, except for the industrial-grade EuroHPC supercomputers, whose security and quality of service shall be compliant with industrial requirements, in accordance with Article 13(1).

3. Users residing, established or located in a Member State or in a third country associated to Horizon 2020 shall be granted access to the Union's share of access time of the supercomputers acquired by the EuroHPC Joint Undertaking established by Regulation (EU) 2018/1488.

4. Users residing, established or located in a Member State or in a third country associated to the Digital Europe Programme or to Horizon Europe shall be granted the Union's share of access time to EuroHPC supercomputers acquired after 2020.

5. In duly justified cases, taking into account the interests of the Union, the Governing Board shall decide to grant access time to EuroHPC supercomputers to entities residing, established or located in any third country and to international organisations.

#### Article 17

##### **Allocation of Union's access time to the EuroHPC supercomputers**

1. The share of the Union's access time to each high-end and quantum EuroHPC supercomputer shall be directly proportional to the financial contribution of the Union referred to in Article 5(1) to the total cost of ownership of the EuroHPC supercomputer and shall thus not exceed 50 % of the total access time of the EuroHPC supercomputer.

2. The share of the Union's access time to each mid-range EuroHPC supercomputer shall be directly proportional to the financial contribution of the Union, referred to in Article 5(1), to the acquisition and operating cost of the supercomputer and shall not exceed 35 % of the total access time of the supercomputer.

3. The share of the Union's access time to each industrial-grade EuroHPC supercomputer shall be directly proportional to the financial contribution of the Union, referred to in Article 5(1), to the acquisition cost of the supercomputer and shall not exceed 35 % of the total access time of the supercomputer.

4. Each Participating State where a hosting entity is established or each Participating State in a hosting consortium shall be allocated the remaining access time to each EuroHPC supercomputer. In the case of a hosting consortium, the Participating States shall agree among themselves the distribution of access time to the supercomputer.

5. The Governing Board shall define the access rights to the Union's share of access time to the EuroHPC supercomputers.
6. Use of the Union's share of access time to the EuroHPC supercomputers shall be free of charge for the users from the public sector referred to in Article 16(4). It shall also be free of charge for industrial users for applications related to research and innovation activities funded by Horizon Europe or the Digital Europe Programme as well as those awarded a Seal of Excellence under Horizon Europe or the Digital Europe Programme and for private innovation activities of SMEs, where appropriate. As a guiding principle, allocation of access time for such activities shall be based on a fair and transparent peer review process defined by the Governing Board following continuously open calls for expression of interest launched by the Joint Undertaking.
7. With the exception of SME users undertaking private innovation activities, other users shall adopt an open science approach to disseminating knowledge gained through access to the supercomputers of the Joint Undertaking, in accordance with Article 14 of Regulation (EU) 2021/695. The Governing Board shall define further the applicable open science rules.
8. The Governing Board shall define specific rules for access conditions that depart from the guiding principles referred to in paragraph 6. These concern the allocation of access time for projects and activities considered as strategic for the Union.
9. Upon request of the Union, the Executive Director shall grant direct access to the EuroHPC supercomputers to initiatives that the Union considers essential for providing health- or climate-related or other crucial emergency support services for the public good, to emergency and crisis management situations or to cases that the Union considers essential for its security and defence. The modalities and conditions for the implementation of such access shall be defined in the access conditions adopted by the Governing Board.
10. The Governing Board shall define the conditions that apply for industrial use to provide access to the Union's share of access time to secure High Performance Computing and data resources for applications other than those specified in paragraph 6.
11. The Governing Board shall regularly monitor the Union's share of access time granted per Participating State and per user category, including for commercial purposes. It may decide among others to:
  - (a) re-adapt access times per category of activity or user, with the aim to optimise the use capabilities of the EuroHPC supercomputers;
  - (b) propose additional support measures for providing fair access opportunities to users that would aim to raise their level of skills and expertise in High Performance Computing systems.

#### *Article 18*

##### **Union's access time to EuroHPC supercomputers for commercial purposes**

1. Specific conditions shall apply to all industry users for commercial purposes on the Union's share of access time. This service for commercial use shall be a pay-per-use service, based on market prices. The level of the fee shall be established by the Governing Board.
2. The fees generated by the commercial use of the Union's share of access time shall constitute revenue to the Joint Undertaking budget and shall be used to cover operational costs of the Joint Undertaking.
3. The access time allocated to commercial services shall not exceed 20 % of the Union's total access time of each EuroHPC supercomputer. The Governing Board shall decide on the allocation of the Union's access time for the users of commercial services, taking into account the outcome of the monitoring referred to in Article 17(11).
4. The quality of commercial services shall be the same for all users.

*Article 19***Financial rules**

1. The Joint Undertaking shall adopt its specific financial rules in accordance with Article 71 of Regulation (EU, Euratom) 2018/1046.
2. The financial rules shall be published on the website of the Joint Undertaking.

*Article 20***Staff**

1. The Staff Regulations of Officials of the European Union ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('Conditions of Employment'), laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 <sup>(13)</sup>, 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').
3. 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.
4. Where exceptional circumstances so require, the Governing Board may decide to 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.
5. 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.
6. 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.
7. The staff of the Joint Undertaking shall consist of temporary staff and contract staff.
8. All costs related to staff shall be borne by the Joint Undertaking.

*Article 21***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 20(6) 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.

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<sup>(13)</sup> OJ L 56, 4.3.1968, p. 1.

*Article 22***Privileges and Immunities**

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

*Article 23***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 case 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 respect, 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 held liable for any damage resulting from the actions of the hosting entity regarding the operation by the hosting entity of the supercomputers owned by the EuroHPC Joint Undertaking.

*Article 24***Monitoring and evaluation**

1. The activities of the Joint Undertaking shall be subject to continuous monitoring and periodic reviews in accordance with its financial rules, to ensure the highest impact and excellence, as well as the most effective and efficient use of resources. The outcomes of monitoring and periodic reviews shall feed into the monitoring of European Partnerships and evaluations of the Joint Undertaking as part of the Horizon Europe evaluations referred to in Articles 50 and 52 of Regulation (EU) 2021/695.
2. The Joint Undertaking shall organise the continuous monitoring of its management and implementation activities and periodic reviews of the outputs, results and impacts of the projects implemented in line with Article 50 of, and Annex III to, Regulation (EU) 2021/695.
3. Evaluations of the Joint Undertakings' operations shall be carried out in a timely manner to feed into the interim evaluation and final evaluation of Horizon Europe and the related decision-making process as specified in Article 52 of Regulation (EU) 2021/695.
4. The Commission shall carry out an interim and a final evaluation of the Joint Undertaking as part of the Horizon Europe evaluations referred to in Article 52 of Regulation (EU) 2021/695. The interim evaluation shall be performed with the assistance of independent experts on the basis of a transparent process once there is sufficient information available about the implementation of Horizon Europe, but no later than four years after the start of the implementation of Horizon Europe. The evaluations shall examine how the Joint Undertaking fulfils its mission in accordance with its economic, technological, scientific, societal and policy objectives, including climate-related objectives, and evaluate the effectiveness, efficiency, relevance, coherence, and Union added value of its activities as part of Horizon Europe, its

synergies and complementarities with relevant European, national and, where relevant, regional initiatives, including synergies with other parts of Horizon Europe, such as missions, clusters or thematic or specific programmes. The evaluations shall take into account the views of stakeholders, at both European and national levels, and shall, where relevant, also include an assessment of the long-term scientific, societal, economic and policy-relevant impact of the Joint Undertaking. They shall also include an assessment of the most effective policy intervention mode for any future action, as well as the relevance and coherence of any possible renewal of the Joint Undertaking in the overall European Partnerships landscape and its policy priorities.

5. On the basis of the conclusions of the interim evaluation referred to in paragraph 4 of this Article, the Commission may act in accordance with Article 7(7) or take any other appropriate action.

6. The Commission may carry out further evaluations of themes or topics of strategic relevance, with the assistance of external independent experts selected on the basis of a transparent process, to examine the progress made by the Joint Undertaking towards the objectives set, identify the factors contributing to the implementation of the activities and identify best practices. By carrying out those further evaluations, the Commission shall fully consider the administrative impact on the Joint Undertaking.

7. The Joint Undertaking shall perform periodic reviews of its activities to inform the interim evaluation and final evaluation of the Joint Undertaking as part of Horizon Europe evaluations referred to in Article 52 of Regulation (EU) 2021/695.

8. Periodic reviews and evaluations shall inform the winding up or possible renewal of the Joint Undertaking, in line with Annex III to Regulation (EU) 2021/695. 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 23 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.

9. The Commission shall publish and communicate the results of the evaluations of the Joint Undertaking, which shall include conclusions of the evaluation and observations by the Commission, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions as part of the Horizon Europe evaluations referred to in Article 52 of Regulation (EU) 2021/695.

#### *Article 25*

### **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 or the Conditions of Employment.

2. With regard to any matter not covered by this Regulation or by other Union legal acts, the law of the Member State where the seat of the Joint Undertaking is located shall apply.

*Article 26***Complaints to the Ombudsman**

Decisions taken by the Joint Undertaking in implementing this Regulation may form the subject of a complaint to the Ombudsman in accordance with Article 228 TFEU.

*Article 27***Ex post audits**

1. *Ex post* audits of expenditure on actions funded by the Horizon Europe budget shall be carried out in accordance with Article 53 of Regulation (EU) 2021/695 as part of the Horizon Europe indirect actions, in particular in line with the audit strategy referred to in Article 53(2) of that Regulation.
2. *Ex post* audits of expenditure on activities funded by the Digital Europe Programme budget shall be carried out by the Joint Undertaking in accordance with Article 27 of Regulation (EU) 2021/694.
3. *Ex post* audits of expenditure on activities funded by the Connecting Europe Facility budget shall be carried out by the Joint Undertaking in accordance with Article 26 of Regulation (EU) 2021/1153 as part of the Connecting Europe Facility actions.

*Article 28***Protection of the financial interests of the members**

1. The Joint Undertaking shall grant Commission staff and other persons authorised by the respective Joint Undertaking or the Commission, as well as the Court of Auditors or, for the purpose of the audit referred to in Article 8(3), the audit authorities of the Participating States, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.
2. OLAF and EPPO 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 2185/96 <sup>(14)</sup> and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council <sup>(15)</sup> and 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 an agreement, a decision or a contract funded under this Regulation.
3. Without prejudice to paragraphs 1 and 2 of this Article, agreements, decisions and contracts resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the respective Joint Undertaking, the Court of Auditors, EPPO and OLAF, and, for the purpose of the audit referred to in Article 8(3), the audit authorities of the Participating States, to conduct such audits, on-the spot checks and investigations in accordance with their respective competences.
4. 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.
5. The Joint Undertaking shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) <sup>(16)</sup>. The Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

<sup>(14)</sup> 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).

<sup>(15)</sup> 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).

<sup>(16)</sup> OJ L 136, 31.5.1999, p. 15.

*Article 29***Confidentiality**

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 30***Transparency**

Regulation (EC) No 1049/2001 of the European Parliament and of the Council <sup>(17)</sup> shall apply to documents held by the Joint Undertaking.

*Article 31***Processing of personal data**

Where the implementation of this Regulation requires the processing of personal data, they shall be processed in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(18)</sup>.

*Article 32***Access to results and information on proposals**

1. The Joint Undertaking shall provide the Union institutions, bodies, offices or agencies, as well as the authorities of Participating States, access to all information related to the indirect actions it funds. Such information shall include results of beneficiaries participating in indirect actions of the Joint Undertaking or any other information deemed necessary for developing, implementing, monitoring and evaluating Union policies or programmes. Such access rights are limited to non-commercial and non-competitive use and shall comply with applicable confidentiality rules.
2. For the purposes of developing, implementing, monitoring and evaluating Union policies or programmes, the Joint Undertaking shall provide the Commission with information included in submitted proposals. This shall apply *mutatis mutandis* to Participating States regarding proposals which include applicants established in their territories, limited to non-commercial and non-competitive use and in accordance with applicable confidentiality rules.

*Article 33***Rules for participation and dissemination applicable to indirect actions funded under Horizon Europe**

1. Regulation (EU) 2021/695 shall apply to the indirect actions funded by the Joint Undertaking under Horizon Europe. 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.
2. Regulation (EU) 2021/695 shall also apply to the indirect actions funded by the Participating State contributions referred to in Article 15(3)(f) of the Statutes.

<sup>(17)</sup> 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).

<sup>(18)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).



*Article 34***Reimbursement rates**

For indirect actions funded under Horizon Europe, by way of derogation from Article 34 of Regulation (EU) 2021/695, and for activities funded under the Digital Europe Programme, the Joint Undertaking may apply different reimbursement rates for Union funding within an action depending on the type of participant, namely SMEs, and the type of action. The reimbursement rates shall be indicated in the work programme.

*Article 35***Rules applicable to the activities funded under the Connecting Europe Facility**

Regulation (EU) 2021/1153 shall apply to the activities funded by the Joint Undertaking under the Connecting Europe Facility.

*Article 36***Rules applicable to the activities funded under the Digital Europe Programme**

Regulation (EU) 2021/694 shall apply to the activities funded by the Joint Undertaking under the Digital Europe Programme.

*Article 37***Support from the host Member State**

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

*Article 38***Repeal**

1. Without prejudice to actions initiated under Regulation (EU) 2018/1488, including annual implementation plans and financial obligations related to those actions, Regulation (EU) 2018/1488 is repealed.

As regards the actions initiated under Articles 10, 11, 13 and 14 of Regulation (EU) 2018/1488, as well as Articles 6 and 7 of the Statutes annexed to that Regulation, it shall continue to apply until their completion and to the extent necessary.

Actions arising from calls for proposals and calls for tenders provided for in annual implementation plans adopted under Regulation (EU) 2018/1488 shall also be regarded as actions initiated under that Regulation.

2. References to Regulation (EU) 2018/1488 shall be construed as references to this Regulation.

*Article 39***Transitional provisions**

1. This Regulation shall not affect the rights and obligations of staff engaged under Regulation (EU) 2018/1488. To that effect, the employment contracts of staff shall continue under this Regulation in accordance with the Staff Regulations and Conditions of Employment.

2. The Executive Director appointed under Regulation (EU) 2018/1488 shall, for the remaining period of the term of office, be assigned to the functions of the Executive Director provided for in this Regulation with effect from the entry into force of this Regulation. The other conditions of contract shall remain unchanged.
3. Unless otherwise agreed between members, all rights and obligations, including assets, debts or liabilities of the members held pursuant to Regulation (EU) 2018/1488, shall be transferred to the members pursuant to this Regulation.
4. At its first meeting after the entry into force of this Regulation, the Governing Board shall adopt a list of decisions adopted under Regulation (EU) 2018/1488 that shall continue to apply under this Regulation. Any unused appropriations under Regulation (EU) 2018/1488 shall be transferred to the Joint Undertaking established under this Regulation.
5. All rights and obligations including assets, debts or liabilities of the Joint Undertaking and any unused appropriations under Regulation (EU) 2018/1488 shall be transferred to the Joint Undertaking established under this Regulation.

#### *Article 40*

#### **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, 13 July 2021.

*For the Council*  
*The President*  
A. ŠIRCELJ

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## ANNEX

**STATUTES OF THE EUROPEAN HIGH PERFORMANCE COMPUTING JOINT UNDERTAKING***Article 1***Tasks**

The Joint Undertaking shall carry out the following tasks:

- (a) mobilise public and private sector funds for the financing of the activities of the Joint Undertaking;
- (b) support the implementation of the mission, the objectives and the pillars of activities of the Joint Undertaking listed in Articles 3 and 4 of this Regulation; those activities will be funded by the Union's budget stemming from Regulation (EU) 2021/695 establishing Horizon Europe, Regulation (EU) 2021/694 establishing Digital Europe Programme and Regulation (EU) 2021/1153 establishing the Connecting Europe Facility, in accordance with the scope of their respective Regulations and by contributions from the relevant Participating States to the Joint Undertaking; for that purpose the Joint Undertaking shall launch calls for proposals, calls for tenders, and any other instrument or procedure provided for in Horizon Europe, the Digital Europe Programme, and the Connecting Europe Facility;
- (c) initiate and manage the calls for expression of interest for hosting or upgrading EuroHPC supercomputers and evaluate the offers received, with the support of independent external experts;
- (d) select the hosting entity of the EuroHPC supercomputers in a fair, open and transparent manner, in accordance with Article 9 of this Regulation;
- (e) conclude a hosting agreement in accordance with Article 10 of this Regulation with the hosting entity for the operation and maintenance of the EuroHPC supercomputers and monitor the contractual compliance with the hosting agreement, including the acceptance test of the acquired supercomputers;
- (f) define general and specific conditions for allocating the Union's share of access time to the EuroHPC supercomputers and monitor access to those supercomputers in accordance with Article 17 of this Regulation;
- (g) ensure the contribution of its operations to the achievement of the objectives of Horizon Europe, the strategic multiannual planning, reporting, monitoring and evaluation and other requirements of that programme such as the implementation of the common policy feedback framework;
- (h) initiate open calls for proposals and award funding in accordance with Regulation (EU) 2021/695, and within the limits of available funds, to indirect actions, mainly in the form of grants;
- (i) initiate open calls for proposals and calls for tenders and award funding in accordance with Regulation (EU) 2021/694 and Regulation (EU) 2021/1153 within the limits of available funds;
- (j) monitor the implementation of the actions and manage grant agreements and procurement contracts;
- (k) ensure the efficiency of the European High Performance Computing initiative, on the basis of a set of appropriate measures;
- (l) monitor overall progress towards achieving the objectives of the Joint Undertaking;
- (m) 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;
- (n) develop close cooperation and ensure coordination with other European Partnerships, as well as operational synergies in common back office functions with other Joint Undertakings;

- (o) define the multiannual strategic programme, draw up and implement the corresponding annual work programmes for their execution and make any necessary adjustments to the multiannual strategic programme;
- (p) engage in information, communication, exploitation and dissemination activities by applying *mutatis mutandis* Article 51 of Regulation (EU) 2021/695, including making the detailed information on results from calls for proposals available and accessible in a common Horizon Europe e-database;
- (q) perform 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) Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden;
- (c) Montenegro, North Macedonia, Switzerland and Turkey, on the condition that those third countries are associated to at least one of the relevant programmes referred to in Article 5(1) of this Regulation;
- (d) 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) and Data, AI and Robotics (DAIRO) registered under Belgian law with its registered office in Brussels (Belgium).

2. Each Participating State shall appoint its representative in the Governing Board and shall designate the national entity or entities responsible for fulfilling its obligations under this Regulation.

## Article 3

### Changes to membership

1. Provided that they contribute in accordance with Article 7 of this Regulation or to the financing referred to in Article 15 of these Statutes to achieve the mission and objectives of the Joint Undertaking set out in Article 3 of this Regulation, Member States or third countries associated to Horizon Europe or the Digital Europe Programme that are not listed in Article 2(1)(b) of these Statutes may apply to become members of the Joint Undertaking.

2. Any application of a Member State or a third country associated to Horizon Europe or the Digital Europe Programme for membership of the Joint Undertaking shall be addressed to the Governing Board. The candidate countries shall provide a written acceptance of these Statutes, and of any other provisions governing the functioning of the Joint Undertaking. The candidates shall also provide their motivation for requesting membership to the Joint Undertaking and indicate how their national supercomputing strategy is aligned with the Joint Undertaking's objectives. The Governing Board shall assess the application, taking into account the relevance and the potential added value of the candidate as regards the achievement of the mission and objectives of the Joint Undertaking and may decide to ask for clarifications regarding the candidature before endorsing the application.

3. Provided that it contributes to the financing referred to in Article 15 of these Statutes to achieve the mission and objectives of the Joint Undertaking set out in Article 3 of this Regulation, and that it accepts these Statutes, any legal entity that is not listed in Article 2(1)(c) of these Statutes and is established in a Member State that directly or indirectly supports research and innovation in a Member State may apply to become a Private Member of the Joint Undertaking in accordance with paragraph 4 of this Article.

4. Any application for membership to become a Private Member of the Joint Undertaking made in accordance with paragraph 3 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 mission and objectives of the Joint Undertaking and shall decide on the application.
5. Any member may terminate its membership in the Joint Undertaking. Such termination shall become effective and irrevocable six months after notification to the Executive Director, who shall inform the other members of the Governing Board and the Private Members thereof. 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.
6. Each Private Member shall inform the Joint Undertaking once a year of any significant changes in the composition of the Private Member. Where the Commission considers that the change in composition is likely to affect the Union's or the Joint Undertaking's interests on grounds of security, it may propose to the Governing Board to terminate the membership of the concerned Private Member. The termination shall become effective and irrevocable within six months of the decision of the Governing Board or on the date specified in that decision, whichever is earlier.
7. Membership in the Joint Undertaking may not be transferred to a third party without the prior agreement of the Governing Board.
8. Upon any change to the membership pursuant to this Article, the Joint Undertaking shall immediately publish on its website an updated list of the members together with the date of such change.

#### *Article 4*

### **Bodies of the Joint Undertaking**

1. 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.
2. When carrying out its tasks, each body of the Joint Undertaking shall only pursue the objectives set out in this Regulation and shall only act within the scope of the activities of the Joint Undertaking for the purpose of which it was established.

#### *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.
2. The Commission and each Participating State shall appoint one representative to the Governing Board.

#### *Article 6*

### **Functioning of the Governing Board**

1. The representatives of the members of the Governing Board shall make every effort to achieve consensus. Failing consensus, a vote shall be held.

2. The Union shall hold 50 % of the voting rights. The voting rights of the Union shall be indivisible.
3. For the tasks referred to in Article 7(3) of these Statutes, the remaining 50 % of the voting rights shall be distributed equally among all Participating States.

For the purpose of this paragraph, decisions of the Governing Board shall be taken by a majority consisting of the Union's vote and at least 50 % of all votes of the Participating States, including the votes of the members who are absent.

4. For the tasks referred to in Article 7(4) of these Statutes, except points (f), (g) and (h), the remaining 50 % of the voting rights shall be held by the Participating States that are Member States.

For the purpose of this paragraph, decisions of the Governing Board shall be taken by a qualified majority. Qualified majority shall be deemed established if it represents the Union and at least 55 % of the Participating States that are Member States, comprising at least 65 % of the total population of these States. To determine the population, the figures set out in Annex III to Council Decision 2009/937/EU <sup>(1)</sup> shall be used.

5. For the tasks referred to in Article 7(4)(f), (g) and (h) of these Statutes, and for each EuroHPC supercomputer, the voting rights of the Participating States shall be distributed in proportion to their committed financial contributions and to their in-kind contributions to that supercomputer until either its ownership is transferred to the hosting entity in accordance with Article 9(3) of this Regulation or until it is sold or decommissioned; the in-kind contributions shall only be taken into account if they have been certified *ex ante* by an independent expert or auditor.

For the purpose of this paragraph, decisions of the Governing Board shall be taken by a majority of at least 75 % of all votes, including the votes of the members who are absent.

6. For the tasks referred to in Article 7(5), 7(6) and 7(7) of these Statutes, decisions of the Governing Board shall be taken in two stages.

At the first stage, the remaining 50 % of the voting rights shall be distributed equally among all Participating States. Decisions of the Governing Board shall be taken by a majority consisting of the Union's vote and at least 55 % of all votes of Participating States, including the votes of the members who are absent.

At the second stage, the Governing Board shall decide by the qualified majority referred to in paragraph 4 of this Article.

7. Without prejudice to the previous paragraphs, countries that were members of the Joint Undertaking under Regulation (EU) 2018/1488 and contributed to the acquisition or operation of the supercomputers acquired by the EuroHPC Joint Undertaking, established under that Regulation, but which are no longer members of the EuroHPC Joint Undertaking, shall maintain voting rights limited exclusively to decisions relating to those supercomputers in accordance with Articles 6(5) and 7(5) of the Statutes of the EuroHPC Joint Undertaking annexed to Regulation (EU) 2018/1488.

8. The Governing Board shall elect a chair for a period of two years. The mandate of the chairperson may be extended only once, following a decision by the Governing Board.

9. The vice chair of the Governing Board shall be the representative of the Commission, substituting the chair where necessary.

10. 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) of these Statutes. The meetings of the Governing Board shall be convened by its chair and shall usually take place at the seat of the Joint Undertaking.

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(<sup>1</sup>) Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

The Executive Director shall have the right to attend the meetings and take part in the deliberations 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 in the Governing Board, who shall receive all relevant documents and may participate in the deliberations of the Governing Board unless decided otherwise by the Governing Board on a case-by-case basis. Those delegates shall have no voting rights and shall ensure the confidentiality of sensitive information in accordance with Article 29 of this Regulation and be subject to the rules of conflict of interest.

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

12. The Governing Board shall adopt and publish its own rules of procedure. Those rules shall include specific procedures for identifying and avoiding conflicts of interest and for ensuring the confidentiality of sensitive information.

13. The chairs of the Research and Innovation Advisory Group and of the Infrastructure Advisory Group of the Joint Undertaking shall be invited, whenever issues falling within their tasks are discussed, to attend meetings of the Governing Board as observers and take part in its deliberations, but shall have no voting rights. They shall ensure the confidentiality of sensitive information in accordance with Article 29 of this Regulation and be subject to the rules of conflict of interest.

14. The chairs of the Private Members of the Joint Undertaking shall be invited to attend the meetings of the Governing Board as observers and take part in its deliberations, but shall have no voting rights. They shall ensure the confidentiality of sensitive information in accordance with Article 29 of this Regulation and be subject to the rules of conflict of interest.

#### *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 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) discuss and adopt the financial rules of the Joint Undertaking in accordance with Article 19 of this Regulation;
- (d) discuss and 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) appoint, dismiss, extend the term of office of, provide guidance to and monitor the performance of the Executive Director;
- (f) discuss and approve the consolidated annual activity report, including the corresponding expenditure referred to in Article 18(1) of these Statutes;
- (g) exercise the powers of the appointing authority with respect to staff in accordance with Article 20 of this Regulation;

- (h) where appropriate, establish implementing rules to the Staff Regulations and the Conditions of Employment in accordance with Article 20(3) of this Regulation;
- (i) 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 21(2) of this Regulation;
- (j) where appropriate, set up advisory groups in addition to the bodies of the Joint Undertaking referred to in Article 4 of these Statutes;
- (k) lay down rules and specific criteria for the selection, appointment and dismissal of members of the advisory groups set up in accordance with point (j), including considerations of gender and geographical diversity, and approve the rules of procedure laid down autonomously by these advisory groups;
- (l) discuss and approve the organisational structure of the Programme Office upon recommendation of the Executive Director;
- (m) where appropriate, submit to the Commission a request to amend this Regulation proposed by a member of the Joint Undertaking;
- (n) define the general and specific access conditions to use the Union's share of access time of the EuroHPC supercomputers, in accordance with Article 17 of this Regulation;
- (o) establish the level of the fee of the commercial services referred to in Article 18 of this Regulation, and decide on the allocation of the access time for those services;
- (p) discuss and approve the Joint Undertaking's communication policy upon recommendation by the Executive Director;
- (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 EuroHPC supercomputers and generated revenues referred to in Article 16 of this Regulation:

- (a) discuss and adopt the part of the multiannual strategic programme that is related to the acquisition of EuroHPC supercomputers referred to in Article 18(1) of these Statutes;
- (b) discuss and adopt the part of the annual work programme that is related to the acquisition of EuroHPC supercomputers and the selection of hosting entities and the corresponding expenditure estimates referred to in Article 18(4) of these Statutes;
- (c) approve the launch of calls for expression of interest, in accordance with the annual work programme;
- (d) approve the selection of the hosting entities for the EuroHPC supercomputers selected through a fair, open and transparent process in accordance with Article 9 of this Regulation;
- (e) decide annually on the use of any revenue generated by the fees for commercial services referred to in Article 18 of this Regulation;
- (f) approve the launch of calls for tenders, in accordance with the annual work programme;
- (g) approve the tenders selected for funding;
- (h) decide on the possible transfer of ownership of the EuroHPC supercomputers to a hosting entity, their sale to another entity or their decommissioning, in accordance with Articles 11(5), 12(7) and 14(6) of this Regulation;
- (i) decide on the possible transfer of ownership of the EuroHPC supercomputers to a consortium of private partners, their sale to another entity or their decommissioning, in accordance with Article 13(6) of this Regulation.



5. The Governing Board shall, in particular, carry out the following tasks related to the research and innovation activities, as well as the data use and skills activities of the Joint Undertaking:

- (a) discuss and adopt the part of the multiannual strategic programme that is related to the research and innovation activities referred to in Article 18(1) of these Statutes at the beginning of the initiative and amend it throughout the duration of Horizon Europe, if necessary; the multiannual strategic programme shall identify, inter alia, the other European partnerships with which the Joint Undertaking shall establish a formal and regular collaboration, as well as possibilities for synergies between the Joint Undertaking's actions and national or regional initiatives and policies based on information received by the Participating States;
- (b) discuss and adopt the part of the annual work programme that is related to the research and innovation activities and the corresponding expenditure estimates referred to in Article 18(4) of these Statutes to implement the multiannual strategic programme, including the content of the calls for proposals, the applicable funding rate per call topic, as well as the related rules for submission, evaluation, selection, award and review procedures;
- (c) approve the launch of calls for proposals, in accordance with the annual work programme;
- (d) approve the list of actions selected for funding on the basis of the recommendation of the Executive Director pursuant to Article 8 of this Regulation;
- (e) be responsible for the close and timely monitoring of the progress of the Joint Undertaking's research and innovation programme and individual actions in relation to the priorities of the Commission and the multiannual strategic programme and take corrective measures where needed to ensure that the Joint Undertaking meets its objectives.

6. The Governing Board shall, in particular, carry out the following tasks related to the capability building and widening activities of the Joint Undertaking:

- (a) discuss and adopt the part of the multiannual strategic programme that is related to the capability building and widening activities referred to in Article 18(1) of these Statutes;
- (b) discuss and adopt the part of the annual work programme that is related to the capability building and widening activities and the corresponding expenditure estimates referred to in Article 18(4) of these Statutes;
- (c) approve the launch of calls for proposals and calls for tenders, in accordance with the annual work programme;
- (d) approve the list of actions selected for funding on the basis of the recommendation of the Executive Director.

7. The Governing Board shall, in particular, carry out the following tasks related to the federation and connectivity of the High Performance Computing and data infrastructure activities, as well as the international cooperation activities of the Joint Undertaking:

- (a) discuss and adopt the part of the multiannual strategic programme that is related to the federation and connectivity of the High Performance Computing and data infrastructure activities, as well as the international cooperation activities referred to in Article 18(1) of these Statutes;
- (b) discuss and adopt the part of the annual work programme that is related to the federation and connectivity of the High Performance Computing and data infrastructure activities, as well as to the international cooperation activities and the corresponding expenditure estimates referred to in Article 18(4) of these Statutes;
- (c) approve the launch of calls for proposals and calls for tenders, in accordance with the annual work programme;
- (d) approve the list of actions selected for funding on the basis of the recommendation of the Executive Director.

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

1. The Commission shall propose a list of candidates for Executive Director after consultation of the members of the Joint Undertaking other than the Union. For the purpose of such consultation the members of the Joint Undertaking other than the Union shall appoint by common accord their representatives as well as an observer on behalf of the Governing Board.

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.

2. The Executive Director shall be a member of staff and shall be engaged as a temporary agent of the Joint Undertaking under Article 2(a) 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 four years. By the end of that period, the Commission, associating the members other than the Union 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 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 pursuant to Article 7(3)(e) of these Statutes acting on a proposal from the Commission associating the members other than the Union as appropriate.

7. The Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director for any period that the position of Executive Director is vacant.

*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 carry out, in particular, the following tasks in an independent manner:

(a) submit for discussion and adoption to the Governing Board the draft multiannual strategic programme referred to in Article 18(1) of these Statutes;

(b) prepare and submit to the Governing Board for discussion and adoption the draft annual budget, including the corresponding staff establishment programme 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 to the Governing Board for discussion and adoption the draft annual work programme including the scope of the calls for proposals, calls for expression of interest and calls for tenders needed to implement the research and innovation activities programme, the procurement programme, the capability building and widening

activities programme and the federation, connectivity and international cooperation activities programme, 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 the annual accounts to the Governing Board for its opinion;
- (e) prepare and submit for approval to the Governing Board the consolidated annual activity report, including the information on corresponding expenditure;
- (f) sign individual grant agreements, contracts and decisions in his or her remit on behalf of the Joint Undertaking;
- (g) sign procurement contracts;
- (h) monitor the operations of the EuroHPC 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) propose the Joint Undertaking's communication policy to the Governing Board;
- (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 20(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) arrange, as appropriate, for the establishment of an internal audit capability of the Joint Undertaking;
- (n) allocate access time for emergencies and crisis management, in agreement with the access policy defined by the Governing Board;
- (o) 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;
- (p) 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 19 of this Regulation;
- (b) manage the calls for proposals as provided for in the annual work programme and administer the grant agreements and decisions;
- (c) manage the calls for tenders as provided for in the annual work programme 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 respond 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, of which up to six shall be appointed by the Private Members taking into account their commitments to the Joint Undertaking and up to six shall be appointed by the Governing Board, in accordance with Article 7(3)(k) of these Statutes.
3. The Research and Innovation Advisory Group may include up to six observers proposed by Participating States and appointed by the Governing Board.
4. The Infrastructure Advisory Group shall consist of twelve members. The Governing Board shall appoint the members of the Infrastructure Advisory Group, in accordance with Article 7(3)(k) of these Statutes.
5. The members of the Research and Innovation Advisory Group and of the Infrastructure Advisory Group shall be appointed for a period of up to two years, renewable once.
6. The Research and Innovation Advisory Group and the Infrastructure Advisory Group shall meet at least once a year in order to coordinate their activities.

*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**

1. The Research and Innovation Advisory Group shall:
  - (a) draw up its contribution to the draft multiannual strategic programme in relation to research and innovation activities referred to in Article 18(1) of these Statutes and review it regularly in accordance with the evolution of the scientific and industrial demand;

- (b) organise public consultations open to all public and private stakeholders having an interest in the fields of High Performance Computing and quantum computing to inform them about, and collect feedback on, the draft multiannual strategic programme and the related draft activities of the research and innovation work programme for a given year.
2. The contribution to the draft multiannual strategic programme referred to in paragraph 1 shall include:
- (a) the strategic research and innovation agenda identifying the research and innovation priorities for the development and uptake of technologies and end-user applications for High Performance Computing across different application areas, in order to support the development of an integrated High Performance Computing, quantum computing and data ecosystem in the Union, to increase the Union's resilience and to help create new markets and societal applications and measures to promote the development and uptake of European technology;
  - (b) potential international cooperation activities in research and innovation that add value and are of mutual interest;
  - (c) training and education priorities for addressing key competences and the skills gap in High Performance Computing and quantum computing technologies and applications, in particular for industry.

#### Article 14

#### **Tasks of the Infrastructure Advisory Group**

1. The Infrastructure Advisory Group shall provide advice to the Governing Board for the acquisition and operation of the EuroHPC supercomputers. For that purpose, it shall:
- (a) draw up its contribution to the draft multiannual strategic programme referred to in Article 18(1) of these Statutes in relation to acquisition of EuroHPC computers and capability building and widening activities and review it regularly in accordance with the evolution of scientific and industrial demand;
  - (b) organise public consultations open to all public and private stakeholders having an interest in the field of High Performance Computing, including quantum computing, to inform them about, and collect feedback on, the draft multiannual strategic programme for the acquisition and operation of the EuroHPC supercomputers and the related draft activities of the work programme for a given year.
2. The contribution to the draft multiannual strategic programme referred to in paragraph 1 shall address:
- (a) the acquisition of the EuroHPC supercomputers taking into account, inter alia, the planning of the acquisition, the needed capacity increases, the types of applications and user communities to be addressed, the relevant user requirements and appropriate system architectures, the user requirements, and the architecture of the infrastructure;
  - (b) the federation and interconnection of this infrastructure, taking into account, inter alia, the integration with national High Performance Computing or quantum computing infrastructures, and the architecture of the hyper-connected and federated infrastructure; and
  - (c) the capability building, including the national High Performance Computing Competence Centres and widening and training activities for end-users, as well as opportunities for promoting the take-up and use of European technology solutions notably by the national High Performance Computing Competence Centres.

#### 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 92 000 000 and shall be covered by means of the financial contributions referred to in Article 5(1) of this Regulation.

If part of the Union 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 by the Participating State where the hosting entity is established or by the Participating States in a hosting consortium to the Joint Undertaking, including the Union contributions that are considered to be contributions of the Participating State pursuant to Article 15(3) of Regulation (EU) 2021/695, for the acquisition of the high-end EuroHPC supercomputers or quantum machines and for their operation until their ownership is transferred to the hosting entity, they are sold or decommissioned in accordance with Articles 11(5) and 12(7) of this Regulation, less the contributions by the Joint Undertaking and any other Union contribution to those costs;
- (c) in-kind contributions by the Participating State where the hosting entity is established or by the Participating States in a hosting consortium, including the Union contributions that are considered to be contributions of the Participating State pursuant to Article 15(3) of Regulation (EU) 2021/695, consisting of the operating costs of the EuroHPC 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;
- (d) financial contributions by the Participating State where the hosting entity is established or by the Participating States in a hosting consortium, including the Union contributions that are considered to be contributions of the Participating State pursuant to Article 15(3) of Regulation (EU) 2021/695, consisting of the costs incurred for the acquisition, jointly with the Joint Undertaking, of the mid-range EuroHPC supercomputers, less the contributions by the Joint Undertaking and any other Union contribution to those costs;
- (e) financial contributions by a consortium of private partners consisting of the costs incurred for the acquisition and operation, jointly with the Joint Undertaking, of the industrial-grade EuroHPC supercomputers, less the contributions by the Joint Undertaking and any other Union contribution to those costs, until their ownership is transferred to the hosting entity, they are sold or decommissioned in accordance with Article 13(6) of this Regulation;
- (f) financial contributions by Participating States to the eligible costs incurred by beneficiaries established in that Participating State, including the Union contributions that are considered to be contributions of the Participating State pursuant to Article 15(3) of Regulation (EU) 2021/695, 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, less the contributions by the Joint Undertaking and any other Union contribution to those costs. Such contributions shall be without prejudice to state-aid rules;
- (g) in-kind contributions by the Private Members or their constituent entities and affiliated entities as defined in Article 9(7) of this Regulation.

4. The resources of the Joint Undertaking entered in its budget shall be composed of the following contributions:

- (a) Union 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;
- (e) 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. The Joint Undertaking or any of its members shall not be obliged to cover the defaulting members' financial contribution.
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 EuroHPC supercomputers whose ownership the Joint Undertaking has transferred to a hosting entity in accordance with Articles 11(5), 12(7), 13(6) and 14(6) 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

##### **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. The Commission may provide multi-annual commitments.

#### Article 17

##### **Financial year**

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

#### Article 18

##### **Operational and financial planning**

1. The multiannual strategic programme shall specify the strategy and plans for achieving the objectives of the Joint Undertaking set out in Article 3 of this Regulation. It shall include the following: the acquisition of supercomputers; the research and innovation activities including the strategic research and innovation agenda; the capability building and widening activities; the federation, connectivity and international cooperation activities. It shall also include the multiannual financial perspectives received from the Participating States and the Commission.
2. Private Members shall draft the Strategic Research and Innovation Agenda and shall submit it to the Research and Innovation Advisory Group.
3. The Industrial and Scientific Advisory Board shall consolidate the multiannual strategic programme and submit it to the Executive Director. It shall be the basis for the Executive Director to draft the annual work programme.
4. The draft annual work programme shall include the research and innovation activities, the procurement activities, the capability building and widening activities, the federation and connectivity activities, the international cooperation activities, the administrative activities and the corresponding expenditure estimates for the following year.
5. The Executive Director shall submit to the Governing Board the administrative agreements referred to in Article 8(2) of this Regulation supporting the expenditure estimates.
6. The annual work programme shall be adopted by the end of the year prior to its implementation. The annual work programme shall be made publicly available.

7. The Executive Director shall prepare the draft annual budget for the following year and shall submit it to the Governing Board for adoption.
8. The annual budget for a particular year shall be adopted by the Governing Board by the end of the year prior to its implementation.
9. 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 general budget of the Union.

#### Article 19

##### **Operational and financial reporting**

1. The Executive Director shall report annually to the Governing Board on the performance of his or her duties in accordance with the financial rules of the Joint Undertaking referred to in Article 19 of this Regulation. The consolidated 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 time 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 indirect actions 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 those objectives.
2. The accounting officer of the Joint Undertaking shall send the provisional accounts to the Commission's accounting officer and the Court of Auditors in accordance with the financial rules of the Joint Undertaking.
3. The Executive Director shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors in accordance with the financial rules of the Joint Undertaking.
4. The discharge procedure shall be carried out in accordance with the financial rules of the Joint Undertaking.

#### Article 20

##### **Internal audit**

1. The Commission's internal auditor shall exercise the same powers over the Joint Undertaking as those exercised in respect of the Commission.
2. The Joint Undertaking shall be capable of performing its own internal audit.

#### Article 21

##### **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 financial contributions made to the Joint Undertaking.
2. The Joint Undertaking shall take out and maintain appropriate insurance.



*Article 22***Conflict of interest**

1. The Joint Undertaking, its bodies and staff shall avoid any conflict of interest in carrying out their activities.
2. The Governing Board shall adopt rules for the prevention and management of conflicts of interest in respect of the persons serving in the Governing Board and in the other bodies or groups of the Joint Undertaking.

*Article 23***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 or all members other than the Union withdraw 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 entities or consortium of private partners, sold or decommissioned upon decision of the Governing Board and in accordance with the hosting agreement. The members of the Joint Undertaking shall not be liable for any costs incurred after the transfer of ownership of a supercomputer or its sale or decommissioning. In the event of transfer of ownership, the hosting entity or the consortium of private partners 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 general budget of the Union.
  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.
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