



Article 169

Frequently Asked Questions

1. Why coordination of national research programmes?

The main objective of the coordination of national research programmes is to reduce fragmentation of research efforts carried out at national or regional level in Europe. In ensuring better coordination of research activities and the convergence of research and innovation policies at national and EU levels, some important goals can be achieved:

- Critical mass can be reached in certain research areas, ensuring better use of scarce resources
- Through joint action, common answers can be found to common problems
- Global issues can be addressed at EU level and common approaches can be developed (e.g. ethics, standards, etc.)
- The Member States involved are given the opportunity to exchange “good practices” and learn from each other

More generally, the coordination of national research programmes will enable Member States to avoid unnecessary overlaps of efforts, to exchange information, expertise and good practices in a specific field.

2. What is an Article 169 initiative?

Article 169 of the EC Treaty allows the participation of the Community in the RTD programmes undertaken by several Member States (apart from any Community framework), including the participation in the structures created for the execution of those programmes.

In practical terms, Article 169 of the Treaty foresees the participation of the Community in the joint implementation of national programmes. Therefore the Community does not only support the simple coordination of national programmes but rather participates actively in an integration process of national research programmes.

3. What are the lessons learned from the "EDCTP" initiative (the Article 169 "pilot initiative")?

The 6th Framework Programme saw the first application of Article 169 of the Treaty through the “European and Developing Countries Clinical trials Partnership” (EDCTP)¹ initiative. The

¹ Decision n° 1209/2003/EC of the European Parliament and the Council of 16 June 2003 on Community participation in a research and development programme aimed at developing new clinical interventions to combat HIV/AIDS, malaria and tuberculosis through a long-term partnership between Europe and developing countries

Commission's proposal for EDCTP was presented in August 2002 and adopted through a co-decision procedure on 16 June 2003.

EDCTP was a crucial and innovative initiative. With a high political visibility and strong support, this pilot initiative was deemed the most mature amongst a number of potential topics.

Although EDCTP has only been operational for 3 years at the end of FP 6, a number of important lessons have been drawn which were useful in the identification and preparation of future Article 169 initiatives, notably:

- Necessity of a clear and firm commitment from the participating Member States

A clear and firm commitment of the Member States must be assured from the start in technical/scientific and financial terms.

- Necessity of well-prepared joint programme / priorities

A clear definition of the joint programme and the priorities for each Article 169 action is essential.

- Necessity of a well-organized implementation structure

If a legal structure is created specifically for the execution of the joint programme, the participating States shall clearly define who become a member and on which conditions. It would be preferable that the legal structure exists before the formal adoption of the proposal by the Council and the European Parliament since it will be the recipient of the Community funding.

4. What are the relevant "criteria" for the identification of potential Article 169 initiatives?

On the basis of the first EDCTP experience, the Commission has drawn up a set of criteria to identify, together with Member States, other "Article 169" potential initiatives. The following criteria have been identified in the FP 7 Decision:

Criteria	Comments
Relevance to EU objectives	The field of the potential topic should be of major interest for the Community as a whole (e.g. by contributing to European competitiveness, solving problems of direct relevance across the European Union, addressing major issues, relating to the implementation of Community policies), and should have a high political visibility and relevance.
Framework Programme relevance	<u>As regards "objective"</u> : Demonstration that an Article 169 initiative in that topic shall allow the Community to reach one of its objectives: enhance coordination of national programmes. <u>As regards "content"</u> : The field of the potential topic shall be covered by the Framework Programme both in terms of scientific content and of budget allocation.
Pre-existing basis	National research programmes on the topic concerned should exist or be envisaged. In addition to this, preparatory activities related to inter-programme

coordination should be ongoing, for example in the context of the ERA-NET scheme.

European added value	Coordination and further integration in a topic generating a clear European added value (i.e. its research objectives cannot be achieved by any single Member State, its results would require facilitated access or dissemination beyond what "national RTD programmes" can afford).
Critical mass	<p>The proposed topic should involve enough Member States to obtain a significant impact as regards the envisaged integration (i.e. reach a critical mass of resources).</p> <p>The national research programmes concerned shall be of a significant size in terms of efforts deployed (both in terms of budget as of manpower).</p>
Instrument relevance	<p>Demonstration that Article 169 is the most appropriate instrument to allow the achievement of the Framework Programme goals in the field concerned (i.e.: integration, avoiding fragmentation, leverage effect, etc.).</p> <p>Demonstration that implementing an Article 169 in that field is more appropriate than an implementation through the FP7 funding schemes or at a national level.</p>

5. How many Article 169 initiatives will be implemented under FP7?

Based on the criteria defined in FP 7, four Article 169 initiatives have been identified in the FP 7 Specific Programmes, which have been adopted on 19 December 2006:

Three of these are under the "Cooperation" specific programme:

- "AAL" - a joint research programme on "Ambient Assisted Living" (use of new ICT in order to enhance the quality of the lives of elderly people);
- "BONUS-169"- a joint research programme in the field of Baltic Sea research;
- "EMRP" - a joint research programme in the field of Metrology (the science of measurement).

One is under the "Capacities" specific programme:

- "Eurostars" - a joint research programme for research performing SMEs and their partners.

6. When will these initiatives be implemented?

The four Article 169 initiatives identified in the specific programmes are well advanced in their preparation.

However, to date, 'Eurostars' and 'AAL' appear to be the most advanced ones for submission of a proposal under 'Article 169' in 2007.

Concerning 'BONUS-169' and 'EMRP', the Commission will encourage the participating Member States to maintain their momentum and continue their preparation. As a consequence, an ERA-NET "plus" action has been identified in the relevant FP 7 Work Programmes for both initiatives.

The ERA-NET "plus" scheme is particularly relevant here as it will allow 'BONUS-169' and 'EMRP' to experiment with the organisation of their first joint calls for proposals and so pave the way for the planned 'Article 169' decision later, based on a review of plans and commitments to reach fuller integration.

7. What will be the procedure for further Article 169 initiatives during the FP7 (“2nd train” of Article 169 initiatives)?

Depending on the experience with this first series of potential Article 169 initiatives, further initiatives could be proposed as a "second train" during the lifetime of FP7. In developing these proposals, account will be taken of the outcome of the mid-term evaluation of the Article 169 initiatives which are up and running.

The Commission is, however, conscious of the need to remain open to further initiatives, to take account of newly emerging areas which are not foreseen at the beginning of FP 7, or to enable initiatives which are not yet sufficiently mature to be implemented at a later stage.

Following the mid-term review of the FP7, new Article 169 decisions may be adopted after a modification of the Specific Programmes decisions.

8. Who can participate in an Article 169 initiative?

Article 169 of the Treaty is addressed to the Member States. However, since funding will be provided from FP 7, the participation of candidate countries, associated States and third countries could be taken into consideration, depending on the FP7 Rules. Therefore:

- EFTA countries would be allowed to participate since they have a permanent Association Agreement which associates them fully to the Framework Programme.
- Associated States would also be allowed to participate if they have signed a S&T cooperation agreement covering the ongoing Framework Programme or the part of it related to the topic of the Article 169 proposal.
- Third countries could also be involved if they have concluded a S&T cooperation agreement covering the ongoing Framework Programme or the part of it related to the topic of the Article 169 proposal.

Moreover, the dedicated structure for the involvement of non-EU Member States which will have to be established should correspond to the specific needs and objectives of the participating States and address issues such as the rights and equal treatment of all participating States.

9. Is there a minimum EC requirement regarding the critical mass (funding) to be earmarked by the participating Member States in order to see their Art. 169 candidate being seriously considered for FP7?

No, there isn't.

However, the proposed topic should involve enough Member States to obtain a significant impact (i.e. reach a critical mass of resources). And the national research programmes must be of a significant size in terms of efforts deployed (both in terms of budget as of manpower).

10. Can an on-going Article 169 initiative be enlarged to the participation of a new Member or Associated State? What is the procedure? Would the Community then increase its contribution?

Yes, an on-going Article 169 initiative may be enlarged to the participation of a new Member or Associated State.

The procedure will depend on the provisions of the final decision of the Council and the Parliament on the Article 169 initiative concerned. It will nonetheless require an amendment to the agreement between the Community and the dedicated implementation structure and possibly a new "Article 169" decision.

An additional EC contribution is possible but will require a new "Article 169" decision to be adopted, again, by co-decision.

11. FP 7 mentions a dedicated implementation structure for the implementation of Article 169 initiatives: will it necessarily take the form of an EEIG, as for the EDCTP initiative?

There is no obligation to choose an EEIG as the dedicated implementation structure for the implementation of an Article 169 initiative. The participating States can opt for an existing structure or can decide to set up a specific structure for implementing the joint programme. Neither the Treaty, nor FP 7 foresees a specific model for joint implementation. The decision should be taken on a case by case basis.

In any case, the participating States must:

- decide on the appropriate legal statute of the structure. States have to be sure that the structure allows their full participation and involvement (i.e. in the EDCTP initiative, a problem arose as some participating States were not able to become members of the EEIG) and the implementation of the joint programme.

- decide who will be members of the structure. Where the participating States will not be members of the structure directly (either because they don't want to, or because they cannot take part in it) but designate an organization to do so, they have to determine the legal relationship to be established with those organizations in order to ensure the latter acts on behalf of the State(s).

- legally establish such a structure within well defined time frames. Since the structure will be the recipient of Community funds, the structure must legally exist before the adoption of the decision by the Council and the European Parliament.

12. Where to find information on EEIG (Regulation, template of statutes ...)?

Legal basis: Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG): Official Journal L 199, 31/07/1985 P. 0001 – 0009

The link to the Official Journal of the European Union is the following: http://europa.eu.int/eur-lex/lex/RECH_reference_pub.do

Explanatory information may be found under the following link: <http://europa.eu.int/scadplus/leg/en/lvb/l26015.htm>

The information handbook "The EEIG: an instrument for transnational cooperation: a practical handbook for SMEs - 2nd edition (Luxembourg: Eur-Op, 1999 - 165 p., Eur-Op catalogue n° CT-11-97-229-**-C All languages)" is also available and may be ordered under the following link: <http://europa.eu.int/comm/enterprise/library/index.htm#how>

13. FP 7 mentions that the Community financial support will be provided subject to the definition of a financing plan based on formal commitments from competent national authorities : will this financing plan imply that participating States have to contribute "in cash" to a "common pot"?

In implementing Article 169 of the Treaty, the involved Member States should define and commit themselves to a joint programme.

The key lesson from the EDCTP case is that an Article 169 initiative can only function effectively if there are three levels of integration between the national programmes involved: scientific, management and financial integration. EDCTP has also shown that the latter is of particular importance and that from the outset, the clear, multi-annual commitment of the participating countries should be assured in financial terms.

Scientific integration can be achieved through the common definition and implementation of the scientific and technological activities under the joint programme. This requires the central organisation of calls for proposals, the application of common rules for the evaluation and the selection of these proposals and centralised monitoring of project implementation.

Management integration requires the setting up of a Dedicated Implementation Structure which shall be endowed with a legal personality and exist legally by the time of adoption by the Council and the European Parliament of the decision on the Article 169 initiative concerned. The legal structure shall be of a form that allows for the full active involvement of all participating countries, and notably that of non-Member States. The Dedicated Implementation Structure will implement the governance model which has been agreed by the funding partners and will be responsible for the implementation of the joint programme and its monitoring. It will also sign the grant agreement with the Commission and be responsible for the receipt, allocation and monitoring of the Community financial contribution.

Financial integration requires that participating countries define a multi-annual financing plan that corresponds to the joint programme and contribute to the financing of the joint execution of the joint programme, including making a certified statement on the amount of public funding earmarked.

In fact, the ultimate objective of an Article 169 initiative should be for the participating States to create a 'common pot', whereby the Member States transfer (part of) their national research budgets for the duration of the joint programme. The implementation of the joint programme would be financed via this 'common pot' and the research projects would therefore be financed centrally, independently of the intensity of commitment of participating countries for the funding of the joint programme.

However, discussions during the preparatory work of the four potential Article 169 initiatives for FP 7 have shown that, while there are no major legal barriers to the constitution of a 'real common pot' which could not be overcome, the option of a 'virtual common pot', whereby every interested country or organisation could continue to fund its own participants, remains in many instances the only one which is immediately applicable without further procedural delays.

The 'virtual common pot' can only succeed in achieving the objective of financial integration where the following conditions are met:

- the participating States commit themselves to co-finance the proposals selected and to contribute to the “virtual common pot” once the selection decision has been taken;
- the participating States ensure the full implementation of the joint programme, e.g. through the funding of the selected projects, even in cases where their earmarked funds are exhausted. Member States will be required to find appropriate solutions in order to ensure that the ranking list will be followed. At a minimum, the main principles underlying these solutions will be described in the technical part of the Decision;
- the Community financial contribution cannot be used to compensate for national contributions in those cases where the Member States have spent their earmarked funds.

14. Who will implement the Article 169 initiative?

As foreseen in FP7, the joint implementation of well identified national research programmes will require the establishment or existence of a dedicated implementation structure.

However, the participating States may directly be involved in the carrying out of some parts of the agreed joint programme.

15. Who will receive the EC contribution?

The dedicated implementation structure will be the recipient of the Community funding. It will be responsible for the programme management (i.e. the effective implementation of the joint research programme), the financial management (i.e. receiving, allocating and monitoring the Community financial contribution) and the contractual management (i.e. sole contractor with the Commission and link with the entities mandated by their national Ministries) of the joint research programme.

16. Will a contract be signed between the Commission and the dedicated implementation structure?

Yes, the Commission has to conclude an agreement with the dedicated implementation structure.

17. Commitment of the Member States to launch an article 169 initiative: At what level, when and for how long?

The implementation of Article 169 of the Treaty involves a lengthy co-decision process; this requires a clear and firm commitment of the Member States from the outset, both in scientific and financial terms.

Participating States must therefore:

- declare their willingness to participate in an Article 169 proposal
- ensure that their respective national RTD programmes, which form part of the Article 169 proposal, will be implemented for the duration of the Community participation.

- commit financial and human resources at national level to the Article 169 proposal, indicating in particular the level of such commitment (notably in respect to the principle of co-financing and additionality).

As regards Article 169 initiatives under FP7, clear commitment from the participating States – at Ministerial level - should be expressed before launching the co-decision process.

18. How flexible may be the use of an Article 169 budget to possibly support contractors that are established in countries which are not part of the initiative?

The conditions for participating shall be those of the national programmes concerned, provided they are compatible with EC legislation, plus any additional requirements which may be imposed by the grant agreement.

19. What are the incidences of launching a potential Article 169 initiative for FP 7 on an ongoing ERA-NET action under the same topic? (continue? stop? modify?)

The ERA-NET action and the potential Article 169 initiative are two different processes, although the ERA-NET action can be the “pre-existing” basis for launching Article 169 initiatives.

Launching an Article 169 initiative does not imply that an ongoing ERA-NET action should be terminated or its description of work completely reviewed. With regard to the timeframe of FP 7, the two processes should be implemented in parallel.

However, in order to bridge the gap between an ongoing ERA-NET and a planned Article 169 initiative, FP 7 gives Member States the possibility to submit a proposal for an ERA-NET "Plus" action.

Under ERA-NET "Plus" actions, the Commission provides an incentive to the organisation of joint calls between national or regional research programmes by 'topping-up' joint transnational funding with Community funding. ERA-NET "Plus" will thus allow Member States to experiment with the organisation of their first joint calls for proposals and so pave the way for planned 'Article 169' initiatives at a later stage.

20. Is it mandatory to use the FP7 funding schemes to implement a joint research programme undertaken by Member States?

No, it isn't mandatory nor necessary to use the FP7 funding schemes to implement a joint research programme.