

Convention
concerning the Construction and Operation of a
Facility for Antiproton and Ion Research in Europe

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The Governments of

the Republic of Austria,
the People's Republic of China,
the Republic of Finland,
the French Republic,
the Federal Republic of Germany,
the Hellenic Republic,
the Republic of India,
the Republic of Italy,
the Republic of Poland,
Romania,
the Russian Federation,
the Slovak Republic,
the Republic of Slovenia,
the Kingdom of Spain,
the Kingdom of Sweden,
the United Kingdom of Great Britain and Northern Ireland,

Hereinafter referred to as "the Contracting Parties",

Desiring to further strengthen Europe's and the Contracting Party countries' position in research in the world, and to intensify scientific cooperation across disciplinary and national boundaries;

Recognizing that an internationally unique and technically innovative accelerator system will in future be of great significance for the performance of state of the art research in many different scientific fields concerned with the basic structure of matter and related areas;

Expecting other countries to participate in the activities undertaken together under this Convention;

Having decided to promote the construction and operation of a Facility for Antiproton and Ion Research in Europe for the use of the international scientific community, based on criteria of scientific excellence;

Have agreed as follows:

Article 1

Establishment of the Facility

(1) The construction and operation of the Facility for Antiproton and Ion Research in Europe, as described in Technical Document 1, hereinafter referred to as "the FAIR facility", shall be entrusted to a limited liability company, hereinafter referred to as "the Company", which shall be subject to German law, unless otherwise provided under this Convention. The Articles of Association of the Company are attached hereto as an Annex (without specifying the shares or names of the Shareholders). The Company shall undertake activities for peaceful ends only.

(2) The Shareholders of the Company shall be appropriate bodies designated for this purpose by the Contracting Parties. The Contracting Parties shall designate such Shareholders by written notice received by the other Contracting Parties.

(3) The Company and the GSI Helmholtzzentrum für Schwerionenforschung GmbH will collaborate in the construction, commissioning and operation of the FAIR facility on the basis of long-term agreements.

Article 2

Name and seat

The Company shall be known as the "Facility for Antiproton and Ion Research in Europe GmbH" (FAIR GmbH) and shall have its registered office in Darmstadt.

Article 3

Organs

(1) The organs of the Company shall be the Shareholders' Assembly, hereinafter referred to as "the Council", and the Managing Directors, collectively forming the Management Board.

(2) Delegates to the Council shall be appointed and have their appointments terminated in accordance with a procedure determined by the Contracting Parties concerned.

Article 4

Movement of personnel and scientific equipment

(1) Subject to the requirements of national legislation, each Contracting Party shall within its jurisdiction facilitate the movement and residence of nationals of the Contracting Party countries employed by or seconded to the Company or doing research using the Company's facilities and of the family members of such nationals.

(2) Each Contracting Party shall within its territory and in accordance with the law in force facilitate the issuance of transit documents for temporary imports and exports of scientific equipment and samples to be used for research using the Company's facilities.

Article 5

Finance

(1) Each Contracting Party shall ensure that the Shareholder(s) which it has designated has/have sufficient resources to cover the Shareholders' contribution to the annual budget of the Company.

(2) The construction of the FAIR facility shall start on the basis of the funding commitments set out in Article 6 in accordance with the document "The Modularized Start Version – A stepwise approach to the realization of the Facility for Antiproton and Ion Research in Europe (FAIR)", attached as Part B of Technical Document 1.

(3) The construction costs shall be the sum of all expenditures on construction (personnel costs, recurrent expenditure and capital expenditure).

(4) The construction costs of the Modularized Start Version, as described in Part B of Technical Document 1, are expected to be

1,027 million euro

(one thousand and twenty-seven million euro)

at January 2005 prices.

- (5) A table showing the estimated annual incidence of expenditure for both construction and operation, including provision for development of the FAIR facility is attached as Technical Document 2.
- (6) The final goal remains the realization of the FAIR facility as described in the Baseline Technical Report, a summary of which is attached as Part A of Technical Document 1.
- (7) The Council shall review at least annually the actual and forecast construction costs. If at any time it appears to the Council, having regard to the expected costs specified above and the specifications set out in Technical Document 2, that the FAIR facility may not be satisfactorily completed, the Council, on the advice of the Managing Directors, shall adopt cost reduction measures.
- (8) The Council acting unanimously may approve a modification of the construction costs.
- (9) An estimation of the annual operating costs for full operation of the FAIR facility is given in Technical Document 2.

Article 6 Contributions

- (1) The German Contracting Party shall make available for the Company's use, free of charge and ready to build on, the site in Darmstadt marked on the plan attached as Technical Document 3.
- (2) At the time of signing this Convention, the Contracting Parties commit to make the following contributions towards construction costs in cash and/or in kind (all amounts refer to January 2005 prices):

by the Republic of Austria,
by the People's Republic of China,
5.00 M€ by the Republic of Finland,
27.00 M€ by the French Republic,
705.00 M€ by the Federal Republic of Germany,
by the Hellenic Republic,
36.00 M€ by the Republic of India,
by the Republic of Italy,

23.74 M€ by the Republic of Poland,
11.87 M€ by Romania,
178.05 M€ by the Russian Federation,
by the Slovak Republic,
12.00 M€ by the Republic of Slovenia,
11.87 M€ by the Kingdom of Spain,
10.00 M€ by the Kingdom of Sweden,
by the United Kingdom of Great Britain and Northern Ireland.

(3) The Contracting Parties expect that during the construction period further efforts will be made permitting the FAIR facility as described in the Baseline Technical Report to be realized.

(4) The procedure for the acceptance of in-kind contributions and the related evaluation method is supplied with this Convention as Technical Document 4.

(5) Use of the FAIR facility by the scientific community of a Contracting Party presupposes that the Shareholder(s) of that Contracting Party participate appropriately in covering the operating costs of the FAIR facility. The corresponding repartition scheme shall be agreed by the Council not later than three years after the start of the construction period.

(6) The Contracting Parties shall ensure that their Shareholders contribute to operating costs in accordance with the agreed scheme.

(7) Changes of contributions to construction costs and to operating costs, the admission of new Shareholders, increases in the shares held by an existing Shareholder, as well as the transfer of shares or parts thereof of the Company mentioned in Article 1 shall be governed by the Articles of Association, attached as an Annex, which authorise the Council to take decisions on such matters.

Article 7

Coverage of potential VAT costs

(1) The Company shall be subject to the general regulations for value added tax (VAT) under German law.

(2) As far as a Shareholder's contributions to construction costs and to operating costs are subject to VAT, this VAT due will be borne by the Contracting Party that levies the tax.

(3) As far as a Shareholder's contributions to construction costs and to operating costs are not subject to VAT and this results in an exclusion from, or a reduction of, the Company's right to deduct or claim a refund of the VAT paid by the Company to third parties, this non-deductible VAT will be borne by the Contracting Party that levies the tax.

Article 8

Arrangements with other users

Arrangements for long-term use of the FAIR facility by Governments or groups of Governments not acceding to this Convention, or by establishments or organisations thereof, may be made by the Company subject to the unanimous approval of its Council.

Article 9

Intellectual Property

(1) In accordance with the objects of the present Convention the term "Intellectual Property" shall be understood in accordance with Article 2 of the Convention Establishing the World Intellectual Property Organization signed on 14 July 1967.

(2) With respect to questions of Intellectual Property, the relations between the Contracting Parties will be governed by the national legislation of the Contracting Party countries, as well as on the basis of the corresponding provisions of agreements on cooperation in science and technology between the European Community and non-EU Contracting Parties.

Article 10

School

The German Contracting Party shall support efforts for educational access to public or private international schools in the Federal Republic of Germany for children of the Company's staff, or of other staff seconded to or active with the Company.

Article 11

Disputes

- (1) The Contracting Parties shall endeavour to settle by negotiations any dispute concerning the interpretation or application of this Convention.
- (2) If the Contracting Parties cannot reach agreement on the settlement of a dispute, each of the Contracting Parties concerned may submit the dispute for decision to an arbitral tribunal.
- (3) Each Contracting Party being a party to the dispute shall appoint an arbitrator; nevertheless, if the dispute is between one of the Contracting Parties and two or more other Contracting Parties the latter shall choose one arbitrator in common. The arbitrators thus appointed shall choose a national of a country other than the countries of the Contracting Parties in dispute to act as umpire and to assume the functions of Chairman of the arbitral tribunal, with a casting vote in the event that the votes of the arbitrators are equally divided. The arbitrators shall be appointed within two months from the date of the request for a settlement by means of arbitration, the Chairman within three months from that date.
- (4) If the time limits specified in the foregoing paragraph are not observed and no other arrangement is made, each party to the dispute may request the President of the Court of Justice of the European Union or, if appropriate, of the International Court of Justice to make the necessary appointments.
- (5) The arbitral tribunal shall take its decisions by a simple majority.
- (6) The arbitral tribunal shall take its decisions on the basis of paragraph 1 of Article 38 of the Statute of the International Court of Justice. Its decisions shall be binding.
- (7) The tribunal shall determine its rules of procedure in accordance with Chapter III of Part IV of the Convention for the Pacific Settlement of International Disputes signed at The Hague on 18 October 1907.
- (8) Each party to the dispute shall bear its own costs and an equal share of the costs of the arbitral proceedings.
- (9) The tribunal shall base its decisions on the rules of law applicable to the dispute under consideration.

Article 12

Depositary and entry into force

- (1) This Convention shall enter into force on the first day of the second month after all signatory Governments have notified the Government of the Federal Republic of Germany as depositary of this Convention that the national approval procedure has been completed.
- (2) The Government of the Federal Republic of Germany shall promptly inform all signatory Governments of the date of each notification provided for in the foregoing paragraph and the date of entry into force of this Convention.
- (3) Before the entry into force of this Convention, the Contracting Parties may agree that part or all of the Articles set out in this Convention be applied provisionally.

Article 13

Accession

- (1) After the entry into force of this Convention, any Government may accede thereto with the consent of all Contracting Parties upon the conditions negotiated. The conditions of accession shall be the subject of an agreement between the Contracting Parties and the acceding Government or group of Governments.
- (2) Governments signing this Convention within a period of twelve months after its initial signing shall do so under the same conditions as the Contracting Parties.

Article 14

Duration

- (1) This Convention is concluded for an initial period ending on 31 December 2025 and shall remain in force after that date for successive periods of ten years each, with a reaffirmation of the scientific and technical direction of the FAIR facility issued for each new ten-year period on the basis of a review paper approved by the Council of the Company.
- (2) A Contracting Party may withdraw from this Convention with three years' notice, such notice to be given to the Government of the Federal Republic of Germany.

Withdrawal may take effect only on 31 December 2025 or at the end of each successive period of ten years.

(3) This Convention shall remain effective as between the remaining parties. The conditions and effects of withdrawal from this Convention by a Contracting Party, in particular its share in the costs of dismantling the Company's plant and buildings and compensation for losses, shall be settled by agreement among the Contracting Parties before the withdrawal of a Contracting Party takes effect.

Article 15 Decommissioning

The German Contracting Party shall be responsible for the costs of dismantling the FAIR facility beyond the sum of twice the annual operating budget based on the average of the last five years of operation.

Article 16 Amendments to the Annex and to the Technical Documents

(1) The Contracting Parties agree that by decision of the Council of the Company the Annex to this Convention as well as the Technical Documents may be amended without any requirement for the Convention to be revised, provided that such amendments do not conflict with this Convention. Amendments to the Annex shall require the approval of the Council of the Company by unanimous vote.

(2) This Convention has as an integral part the following Annex:

Articles of Association of the "Facility for Antiproton and Ion Research in Europe GmbH" (FAIR GmbH).

Furthermore, it refers to the following Technical Documents:

- Technical Document 1: Description of the FAIR facility to be constructed and the stages of construction (Part A) and The Modularized Start Version – A stepwise approach to the realization of the Facility for Antiproton and Ion Research in Europe (FAIR) (Part B),
- Technical Document 2: Detailed breakdown of the construction costs and table showing the estimated annual incidence of expenditure for construction and operation,
- Technical Document 3: Map of the site where the FAIR facility is to be constructed,
- Technical Document 4: Procedure for the acceptance of in-kind contributions and the related evaluation method.

In witness whereof, the undersigned representatives, having been authorized thereto by their respective Governments, have signed the present Convention.

Done at Wiesbaden this 4 October 2010, in the English, French, German, Russian and Spanish languages, apart from the Technical Documents, which are only done in the English language, all texts being equally authentic, in a single original, which shall be deposited in the archives of the Government of the Federal Republic of Germany, which shall transmit a certified true copy to all Contracting Parties and acceding Governments, and subsequently notify them of any amendments.

For the Government of the Republic of Austria

For the Government of the People's Republic of China

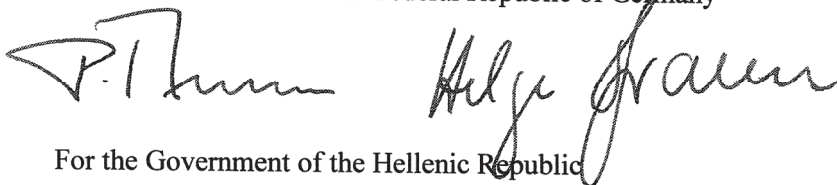
For the Government of the Republic of Finland



For the Government of the French Republic



For the Government of the Federal Republic of Germany



For the Government of the Hellenic Republic

For the Government of the Republic of India



For the Government of the Republic of Italy

For the Government of the Republic of Poland



For the Government of Romania

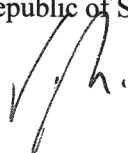


For the Government of the Russian Federation

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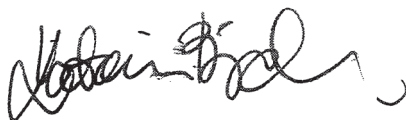
For the Government of the Slovak Republic

For the Government of the Republic of Slovenia

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For the Government of the Kingdom of Spain

For the Government of the Kingdom of Sweden

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For the Government of the United Kingdom of Great Britain and Northern Ireland

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Annex to the FAIR Convention

Articles of Association

of the

“Facility for Antiproton and Ion Research in Europe GmbH”
(FAIR GmbH)

The undersigned
[funding agencies]

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Hereinafter referred to as “the Shareholders” (“*Gesellschafter*” within the meaning of the German Law on Companies with Limited Liability);

Having regard to the Convention concerning the Construction and Operation of a Facility for Antiproton and Ion Research in Europe, hereinafter referred to as “the Convention”, signed in [fill in location] on [fill in signing date], between the Contracting Parties defined in the preamble of the Convention and hereinafter referred to as “the Contracting Parties”;

Noting that the [fill in country] organisation [fill in name] and the [fill in country] organisation [fill in name] have formed a consortium [fill in name] for their participation in the Company and that the [number and name] organisations have formed a consortium [fill in name] for their participation in the Company and that, although all organisations have signed the present Articles of Association, only the consortium [fill in name] represented by the [fill in name] and the consortium [fill in name] represented by [fill in name] are Shareholders of the Company;

Hereby agree to establish a limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*) under German law, in particular the German Law on Companies with Limited Liability (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbHG*), namely, the “Facility for Antiproton and Ion Research in Europe GmbH” (FAIR GmbH), hereinafter referred to as “the Company”.

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Chapter I
General provisions

Article 1

Name, registered office, financial year, definition of a SHARE

(1) The Company is a limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*) with the name

“Facility for Antiproton and Ion Research in Europe GmbH” (FAIR GmbH).

(2) The Company shall have its registered office in Darmstadt, Federal Republic of Germany.

(3) The financial year shall be the calendar year. The first year of business shall be a short financial year ending on 31 December of that year.

(4) In the following text the word “SHARE” (in capital letters) (*“Geschäftsanteil”* within the meaning of the *GmbHG*) represents a fraction of the Company which a Shareholder has subscribed in consideration of its primary deposit (*“Stammeinlage”* within the meaning of the *GmbHG*). The value of the SHARE shall be in proportion to the corresponding fraction of the share capital (see Article 5) subscribed by the Shareholder.

Article 2

Relationship to the GSI Helmholtzzentrum für Schwerionenforschung GmbH

The Company and the GSI Helmholtzzentrum für Schwerionenforschung GmbH in Darmstadt will collaborate closely in the construction, commissioning and operation of the Facility for Antiproton and Ion Research in Europe (hereinafter referred to as “the FAIR facility”) on the basis of long-term agreements.

Article 3

Objects

(1) The Company shall pursue exclusively and directly public-benefit objects within the meaning of the chapter headed “Tax-privileged purposes” (*“Steuerbegünstigte Zwecke”*)

in the German Fiscal Code (*Abgabenordnung – AO*). The objects of the Company shall be the advancement of science and research.

(2) These objects shall be put into effect in particular through

- a) the construction, operation, and further development of the FAIR facility including facility specific research and development; and
- b) scientific research and development with antiprotons and ions conducted using the FAIR facility.

(3) The Company may take on further tasks associated with research and technical development, such as, technology transfer, scientific education programmes, development of accelerators and scientific machines and equipment for research purposes.

(4) The results of the research work undertaken at and/or by the Company, in principle, shall be published or otherwise made generally accessible.

Article 4

Public-benefit character

(1) The Company shall act altruistically and shall not primarily pursue its own economic purposes.

(2) The Company's funds and resources shall be used exclusively for the objects set out in Article 3. The Shareholders may receive neither profit shares nor any other allocations from the funds and resources of the Company.

(3) No person may be favoured by means of expenditure not related to the objects of the Company or disproportionately high remuneration.

Article 5

Share capital

The share capital ("*Stammkapital*" within the meaning of the *GmbHG*) of the Company shall amount to € 25,000.00 (in words: twenty-five thousand euro).

Article 6
Shareholders

(1) In accordance with the Convention and the contributions of the respective Contracting Parties, each Shareholder shall subscribe one or more SHARES with the following total nominal value ("*Nennbetrag*" within the meaning of the *GmbHG*) based on its relative contribution to the construction costs:

Serial number of the SHARE	Shareholder	Nominal value in euro and percentage of total share capital	
	[]	€	%
	[]	€	%
	[]	€	%
	[]	€	%
	[]	€	%
	[]	€	%

(2) Each Shareholder shall subscribe at least 1% of the share capital. The primary deposits ("*Stammeinlagen*" within the meaning of the *GmbHG*) shall be paid in cash with the full amount due immediately upon incorporation.

Article 7
Organs

The organs of the Company shall be:

- a) the Shareholders' Assembly ("*Gesellschafterversammlung*" within the meaning of the *GmbHG*), hereinafter referred to as "the Council"; and
- b) the Managing Directors ("*Geschäftsführer*" within the meaning of the *GmbHG*).

Chapter II
The Council

Article 8
Members of the Council

The Shareholders of each Contracting Party may be represented in the Council by a maximum of two delegates, representing all Shareholders of that Contracting Party. Delegates to the Council shall be appointed and have their appointments terminated by all Shareholders of each Contracting Party. The Shareholders of each Contracting Party shall inform the Chairperson of the Council in writing of any appointment or termination of appointments of its delegates to the Council without undue delay.

Article 9
Chairperson and Vice-Chairperson of the Council

The Council shall elect a Chairperson and a Vice-Chairperson from the delegations of the Shareholders of different Contracting Parties for a period of office not exceeding two years. Following their election, the Chairperson and Vice-Chairperson shall become *supra partes* and leave their delegations. Consecutive re-election shall be permitted only once for a second term not exceeding two years.

Article 10
Meetings of the Council

- (1) The Council shall meet at least twice a year.
- (2) Meetings of the Council shall be convened by the Chairperson of the Council.
- (3) Meetings of the Council shall be convened also at the request of at least two Shareholders of different Contracting Parties. Extraordinary meetings of the Council may be convened also at the request of the Managing Directors, where required in the interests of the Company.

Article 11
Powers of the Council

(1) Save as otherwise provided in these Articles of Association, the Council shall be responsible in all cases provided by law. The Council may issue instructions to the Managing Directors.

(2) The following matters shall require approval of the Council by unanimous vote:

- a) admission of new Shareholders;
- b) transfer ("*Übertragung*" within the meaning of the *GmbHG*) of SHARES or parts thereof between Shareholders of different Contracting Parties;
- c) share capital increases;
- d) amendments to these Articles of Association;
- e) mergers or splits of the Company;
- f) dissolution of the Company;
- g) the Financial Rules of the Company;
- h) arrangements for long-term use of the FAIR facility by Governments or groups of Governments not acceding to the Convention, or by establishments or organisations thereof; and
- i) the repartition scheme for operating costs in accordance with Article 6(5) of the Convention.

(3) The following matters shall require approval of the Council by a qualified majority:

- a) election of its Chairperson and Vice-Chairperson;
- b) medium-term scientific programme;

- c) annual budget, resource planning (finance and staff) and medium-term financial estimates;
- d) adoption of the annual financial statement ("*Jahresabschluss*" within the meaning of the *GmbHG*);
- e) appointment, employment and termination of the appointments of the Managing Directors;
- f) establishment of committees;
- g) policy for the allocation of beam time at the experimental set-ups;
- h) short and medium-term arrangements for use of the Company's scientific equipment and facilities by national or international scientific organisations;
- i) procurement rules;
- j) Rules of Procedure of the Council; and
- k) redemption ("*Einziehung*" within the meaning of the *GmbHG*) or assignation of SHARES or parts thereof.

(4) The initial long-term agreements with the GSI Helmholtzzentrum für Schwerionenforschung GmbH specified in Article 2 of these Articles of Association shall require the approval of the Council by unanimous vote. Later decisions regarding existing long-term agreements with the GSI Helmholtzzentrum für Schwerionenforschung GmbH and amendments to those agreements shall require the approval of the Council by a qualified majority.

(5) All other resolutions of the Council shall require a simple majority unless mandatory law or these Articles of Association provide otherwise.

(6) Resolutions on matters related to the regulatory requirements of the Federal Republic of Germany on public health and safety, permits and on the protection of the environment may not contravene German law.

Article 12

Voting procedure, resolutions

(1) For every 1 (one) euro of share capital held, the holder shall be entitled to one vote. All Shareholders shall have the opportunity to vote. Each Shareholder may cast all of its votes only in a single block, exercisable by the delegates designated for this purpose by the relevant Shareholder. Shareholders nominated by a single Contracting Party may cast their votes only jointly and in a single block.

(2) A “simple majority” means 50% of the votes cast and the Shareholders of no more than half of the Contracting Parties voting against.

(3) A “qualified majority” means a majority of at least 75% of the votes cast and the Shareholders of no more than half of the Contracting Parties voting against.

(4) A “unanimous vote” means at least 90% of the votes cast and no unfavourable vote.

(5) Council meetings shall only be quorate if two thirds of the entire share capital is represented. If less than two thirds of the share capital is represented, a new meeting of the Council with the same agenda shall be called immediately. This new meeting of the Council shall be quorate regardless of the proportion of share capital represented, but only if this is expressly stated in the invitation to such new meeting of the Council.

Chapter III

Management of the Company

Article 13

Managing Directors and Management Board

(1) The Company shall have at least two Managing Directors.

(2) The Managing Directors shall include one person who is a scientist and at the same time this person shall be the Chairperson of the Management Board; another shall be the Administrative Director. The division of responsibilities between the Managing Directors shall be established by the Council in Rules of Procedure for the Management Board.

(3) Managing Directors shall be appointed for a period not exceeding five years. Appointment, employment and termination of the appointment of Managing Directors as well as any amendment or extension to their contracts of employment shall be subject to approval by the Council and shall be signed by the Chairperson of the Council on behalf of the Company.

Article 14
Representation of the Company

The Company shall be represented by two Managing Directors acting jointly or by one Managing Director acting jointly with an authorised signatory ("*Prokurist*" within the meaning of the German Commercial Code (*Handelsgesetzbuch – HGB*)).

Article 15
Remit of the Managing Directors

The Managing Directors shall manage the Company conscientiously and with due diligence in the interests of the Company, and in accordance with

- a) the Convention and the statutory law of the Federal Republic of Germany, insofar as it does not contradict the Convention;
- b) these Articles of Association as from time to time amended;
- c) the Rules of Procedure for the Management Board adopted by the Council;
- d) the directions and resolutions of the Council; and
- e) the agreements between the Contracting Parties.

Chapter IV
Cooperation between the Company and the Shareholders

Article 16
Definitions

The following definitions shall apply in the context of Articles 17 and 18:

- a) "Knowledge" means information, technical documentation, know-how, software and materials, regardless of the form or medium in which they are disclosed or stored and whether or not they are protected.
- b) "Background" means the knowledge generated prior to the signature of these Articles of Association.
- c) "Foreground" means the knowledge generated by the work carried out following signature of these Articles of Association in the framework of the Company's activities.
- d) "Invention" means the knowledge for which utility models or patents can be obtained, i.e. is industrially applicable, displays an element of novelty and exhibits an inventive step.

Article 17
Intellectual Property

- (1) Shareholders shall grant to the Company, free of charge and without any restriction, a non-exclusive and non-transferable licence for the use of their Background, whether protected or not, of which they can legally dispose, and which is needed for the purposes of their cooperation in the Company.
- (2) Shareholders shall also grant to the Company, free of charge and without any restriction, a non-exclusive and non-transferable licence for the use of their Foreground and further improvements, whether protected or not, of which they can legally dispose, and which they have generated in the framework of their cooperation in the Company.

(3) Save where covered by separate contractual agreement, all Intellectual Property produced by staff employed by the Company shall be owned by the Company.

(4) On request, the Company shall grant to Shareholders and publicly-funded research institutions designated by them, free of charge, a non-exclusive and non-transferable licence for the use of its Intellectual Property in their research activities. For purposes other than research, a licence may be granted to Shareholders on fair and reasonable terms. Subject to approval by the Shareholder concerned, the Company may grant to any natural or legal person in the country or countries of that Shareholder a licence on fair and reasonable terms for purposes other than research, except where the Council resolves otherwise.

(5) If the Company seeks to obtain a licence from a third party for the use of Intellectual Property, the Company shall use its best endeavours to obtain a right under such licence to grant sub-licences to any of the Shareholders as set out in paragraph 4 above.

Article 18 Inventions

(1) In relation to Inventions made by the Company's staff, the Company shall apply the rules of the German Law on Inventions by Employees (*Gesetz über Arbeitnehmer-erfindungen – ArbNErfG*). If the Company decides not to apply for a patent in one or more countries, with the consent of the Company, the employee who made the Invention may apply for such protection in his or her own name, at his or her own expense and for his or her own benefit.

(2) In relation to Inventions made in the course of their work at the Company by staff seconded to the Company by a Shareholder, the following provisions shall apply:

- a) Subject to legislative or contractual provisions applicable to Inventions of employees, the seconding Shareholder shall be the owner of all rights in the Inventions made solely by the seconded employee. The seconding Shareholder shall have the right to apply in any country in its own name, at its own expense and for its own benefit for patents necessary for the protection of such Inventions. The Company and the other Shareholders shall have free of charge the right of use of the Inventions for research purposes and the right to a licence for purposes other than research on fair and reasonable terms. In addition, the

Shareholder owning the rights shall not refuse to grant, at the request of another Shareholder, to any natural or legal person in the country or countries of the Shareholders a licence for purposes other than research on fair and reasonable terms. By contractual agreement between the Shareholders concerned and the Company, or by resolution of the Council, certain Inventions may be identified, in respect of which a Shareholder is not obliged to grant a licence to the Company, to other Shareholders or, at the request of another Shareholder, to any natural or legal person in that Shareholder's country.

- b) The Company shall receive a share of the net returns from all licences granted by the owner of the rights for purposes other than research, the said share to be determined having regard to the respective contributions to the Inventions made by the Company and the individual seconded.
- c) When applying for Intellectual Property rights and granting licences, the Company and the Shareholders shall consult each other in cases of doubt and shall refrain from actions which may prejudice the Company or Shareholders.
- d) The Company shall be the sole owner of all rights in those Inventions made by employees seconded by a Shareholder as part of its in-kind contribution to the establishment of the Company together with employees of the Company or together with employees seconded by other Shareholders as part of their in-kind contributions to the establishment of the Company.
- e) If Inventions are made by a seconded employee of one Shareholder jointly with seconded employees of another Shareholder, these joint Inventions shall belong to both partners, who shall reach an agreement in each individual case on the sharing and joint exploitation of the Invention. The provisions of subparagraph a) above shall apply to such Inventions.
- f) Save where contractual agreement provides otherwise, the Company shall be the sole owner of all rights in those Inventions made by employees seconded by a Shareholder together with Company staff or with employees seconded by another Shareholder as part of its in-kind contribution to the establishment of the Company.

(3) In relation to Inventions made by staff of the Company jointly with staff of a Shareholder not seconded to the Company, these Inventions shall belong to both partners,

who shall reach an agreement in each individual case on the sharing and joint exploitation of the Invention. This agreement should follow the provisions laid out in paragraph 2 above.

Article 19 Confidentiality

(1) In relation to third parties, Shareholders shall treat as confidential all information and objects that have not been published and are conveyed in confidence by another Shareholder or the Company. The receiving Shareholder may use such information and objects only for purposes consistent with the terms of these Articles of Association and of a non-commercial kind. Disclosure of confidential information or objects shall require the express written consent of the conveying Shareholder or the Company.

(2) The confidentiality obligation established in paragraph 1 above shall not apply to objects or types of information that

- a) have been developed or are being developed by the receiving Shareholder independently of the information;
- b) are part of the generally accessible state of the art or acquire that status without any action on the part of the receiving Shareholder;
- c) were already in the possession of the receiving Shareholder at the time of the disclosure; or
- d) were lawfully disclosed to a Shareholder by a third party in lawful possession thereof free of any obligation to maintain confidentiality.

(3) The confidentiality obligation established in paragraph 1 above shall end five years following the day on which the dissolution of the Company is recorded in the Commercial Register. Shareholders shall impose the same obligation of confidentiality on all of their affiliates and subcontractors, their employees and all other personnel working for a Shareholder who may have access to confidential information.

Chapter V
Committee

Article 20
Scientific Council

- (1) The Scientific Council consisting of external members who are outstanding scientists shall advise the Council and the Managing Directors in scientific and technical matters of fundamental importance.
- (2) The Scientific Council shall comprise 8 to 12 members. These shall be appointed by the Council on the proposal of the Scientific Council and after consultation with the Managing Directors.
- (3) The Scientific Council shall elect a chairperson. The Scientific Council shall adopt its own rules of procedure which shall require the approval of the Council.

Chapter VI
Financial matters

Article 21
Annual financial statement

- (1) Within three months following the end of the financial year, the Managing Directors shall prepare the annual financial statement and management report ("*Lagebericht*" within the meaning of the *GmbHG*). The rules of the *HGB* regarding the preparation and audit of the annual financial statement and management report for large-scale corporations shall apply *mutatis mutandis*.
- (2) The annual financial statement and management report shall be verified by a certified independent auditor ("*Abschlussprüfer*" within the meaning of the *HGB*). The auditor shall be appointed by resolution of the Council before the end of the financial year to be audited. The appointment of the auditor shall be made on an annual basis. An auditor may be re-appointed. Immediately following appointment, the auditor is to be instructed, *inter alia*, to audit the proper conduct of business (section 53(1) No 1 of the Law on Budgetary Principles for Federation and Länder (*Gesetz über die Grundsätze des Haushaltsrechts des*

Bundes und der Länder – HGrG) of 19 August 1969¹) and to supplement the report in accordance with section 53(1) No 2 of the *HGrG*.

(3) Without delay following receipt of the audit report ("*Prüfungsbericht*" within the meaning of the *HGB*), the Managing Directors must present to the Council a copy of the annual financial statement, the original of which must bear the legally binding signatures of the Managing Directors, as well as the management report together with the audit report including a written statement. Within the first six months following the end of the financial year, the Council shall take a decision on the adoption of the annual financial statement.

Article 22

Audit rights of Shareholders

Each Shareholder has the right to audit if this is required by national law for the purposes of public funding.

Chapter VII

Changes in shareholdings

Article 23

Admission of new Shareholders and transfer of SHARES

- (1) In the event of any change in the financial contributions of a Contracting Party, the Shareholders involved shall execute the corresponding transfer of SHARES.
- (2) The Company shall be open to the admission of new Shareholders designated by the relevant Contracting Party or Parties. The Council shall have authority to decide upon conditions of accession for new Shareholders.
- (3) Unless otherwise agreed by the Council in the context of a share capital increase, a new Shareholder shall acquire SHARES or parts thereof from one or more of the existing Shareholders.

¹ German text: Federal Law Gazette (*Bundesgesetzblatt*) 1969 I p. 1273.

(4) The acquisition of SHARES or parts thereof from an existing Shareholder requires the approval of the Council by unanimous vote. Such approval shall be presumed, if the acquiring Shareholder has been designated by the same Contracting Party as the ceding Shareholder(s).

(5) Any decision on the transfer of SHARES or parts thereof shall become conclusive upon recording the Council's resolution and be declared by the Managing Directors.

Article 24

Redemption or compulsory assignation of SHARES

(1) Redemption of SHARES or parts thereof of a Shareholder shall be permitted provided that the Shareholder consents thereto.

(2) Redemption of SHARES or parts thereof of a Shareholder without the consent of the Shareholder shall be permitted, if

- a) the assets of the Shareholder become part of insolvency proceedings or the petition to open insolvency proceedings has been dismissed due to the lack of assets;
- b) the SHARES of the Shareholder become the target of execution proceedings, provided that such proceedings have not been discontinued within a period of three months and/or the SHARES have not already been realized in that period;
- c) the Shareholder violates its fundamental obligations under these Articles of Association or under the Company's internal bylaws, including the case where it is in arrears for a period in excess of three years in the making of its cash or in-kind contributions.

In these cases, the Shareholder concerned shall have no voting right in the decision on redemption, and its votes may not be taken into consideration in determining the majority achieved. Nevertheless, the Shareholder shall have the right to attend the relevant Council meeting and to justification before the resolution concerning the redemption or assignation is taken.

(3) Upon redemption the Shareholder concerned shall receive a settlement payment from the Company amounting to the nominal value of its SHARES. In the cases covered by paragraph 2 a) and b) above, a potential acquirer shall not become Shareholder but shall receive a settlement payment amounting to the nominal value of the SHARES concerned.

(4) Instead of the redemption of SHARES, the Council may resolve by qualified majority that the SHARES be assigned

- a) to one or more of the remaining Shareholders that are willing to acquire such in addition to their own SHARES, or
- b) to a new Shareholder within the meaning of Article 23(2),

in consideration of a settlement payment in the same amount as foreseen in paragraph 3 above. This is also possible in the form that a part of the SHARES is redeemed and the other part is assigned. The settlement payment shall be made by the Shareholders to which the SHARES or parts thereof are assigned.

(5) The validity of a redemption or assignation shall not depend on payment of the settlement amount.

(6) Any decision upon the redemption or assignation of SHARES or parts thereof shall become conclusive upon recording the Council's resolution and be declared by the Managing Directors.

Article 25

Withdrawal of a Shareholder

A Shareholder withdrawing from the Company without the Company being liquidated may claim only a settlement payment limited to the nominal value of its SHARES.

Chapter VIII
Termination of the Company

Article 26
Liquidation of the Company or change of its objects

(1) In the event of a Shareholder's exit from the Company, dissolution of the Company or the Company's objects ceasing to be tax-privileged, Shareholders may not recover more than their paid-up capital shares and the fair market value of their non-cash capital contributions.

(2) In the event of the Company's dissolution or its objects ceasing to be tax-privileged, its assets, to the extent that their value exceeds the paid-up capital shares of the Shareholders and the fair market value of the non-cash capital contributions of the Shareholders, shall be transferred to the GSI Helmholtzzentrum für Schwerionenforschung GmbH, which shall use the assets directly and exclusively for public-benefit objects, or, following consultation with the German tax authorities, to another tax-privileged corporation or public-law entity, for the use of science and research.

Chapter IX
Miscellaneous

Article 27
Liability

(1) The Shareholders shall ensure that the Company procures sufficient insurance to cover loss and damage to persons or goods caused by personnel seconded or scientists and experts invited to the Company, to the extent that such liability is not already covered by other insurance. Loss and damage caused by wilful misconduct or gross negligence shall be excluded.

(2) In matters of liability which cannot be resolved in accordance with paragraph 1 above, the Shareholders shall consult each other immediately for the purposes of claim settlement.

Article 28
Applicable law

These Articles of Association shall be subject to the laws of the Federal Republic of Germany.

Article 29
Entry into force

These Articles of Association shall enter into force upon signature by the Shareholders and notarisation.

Article 30
Languages

These Articles of Association are drawn up in the English, French, German, Russian and Spanish languages. The German version shall be submitted to the relevant German court supervising the Commercial Register for entry in that register.

Article 31
Severability

- (1) Should any provision of these Articles of Association be or become void or invalid in whole or in part, the validity of the other provisions thereof shall not be affected.
- (2) The invalid provision shall be replaced by a valid provision that to the extent possible fully implements the spirit and purpose of the invalid provision.
- (3) The same shall apply in the event that these Articles of Association fail to cover an issue that was meant to be part hereof.

Article 32
Announcements

Announcements of the Company required by law shall be published in the German Electronic Federal Gazette (*Elektronischer Bundesanzeiger*), on the website of the Company and, in addition, in an appropriate Gazette of the European Union.