

Na podlagi druge alineje prvega odstavka 107. člena in prvega odstavka 91. člena Ustave Republike Slovenije izdajam

## **U K A Z**

### **O RAZGLASITVI ZAKONA O RATIFIKACIJI KONVENCIJE O IZGRADNJI IN DELOVANJU CENTRA ZA RAZISKAVE Z ANTIPROTONI IN IONI V EVROPI IN SKLEPNE LISTINE KONFERENCE POOBLAŠČENCEV ZA USTANOVITEV CENTRA ZA RAZISKAVE Z ANTIPROTONI IN IONI V EVROPI (MKIDCRA)**

Razglašam Zakon o ratifikaciji Konvencije o izgradnji in delovanju Centra za raziskave z antiprotoni in ioni v Evropi in Sklepne listine konference pooblaščenecv za ustanovitev Centra za raziskave z antiprotoni in ioni v Evropi (MKIDCRA), ki ga je sprejel Državni zbor Republike Slovenije na seji 24. maja 2011.

Št. 003-02-5/2011-28

Ljubljana, dne 1. junija 2011

dr. Danilo Türk l.r. Predsednik Republike slovenije

## **Z A K O N**

### **O RATIFIKACIJI KONVENCIJE O IZGRADNJI IN DELOVANJU CENTRA ZA RAZISKAVE Z ANTIPROTONI IN IONI V EVROPI IN SKLEPNE LISTINE KONFERENCE POOBLAŠČENCEV ZA USTANOVITEV CENTRA ZA RAZISKAVE Z ANTIPROTONI IN IONI V EVROPI (MKIDCRA)**

#### **1. člen**

Ratificirata se Konvencija o izgradnji in delovanju Centra za raziskave z antiprotoni in ioni v Evropi in Sklepna listina konference pooblaščenecv za ustanovitev Centra za raziskave z antiprotoni in ioni v Evropi, sestavljeni v Wiesbadnu 4. oktobra 2010.

#### **2. člen**

Konvencija in sklepna listina se v izvorniku v angleškem jeziku in v prevodu v slovenskem jeziku glasita(1):

## **CONVENTION**

### **CONCERNING THE CONSTRUCTION AND OPERATION OF A FACILITY FOR ANTIPROTON AND ION RESEARCH IN EUROPE**

#### **Contents**

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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):

text="&nbsp; 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:

text="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 Republic of India
- For the Government of the Hellenic Republic
- 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
- For the Government of the Slovak Republic
- For the Government of the Republic of Slovenia
- For the Government of the Kingdom of Spain
- For the Government of the Kingdom of Sweden
- For the Government of the United Kingdom of Great Britain and Northern Ireland
- Annex to the FAIR Convention
- Articles of Association
- of the "Facility for Antiproton and Ion Research in Europe GmbH" (FAIR GmbH)

text="The undersigned [funding agencies] .....  
....."

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 – AG). 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 Shareholder Nominal value in euro and of the SHARE 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 Arbeitnehmererfindungen – 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 1969(1)) 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.

(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 Shareholders).

(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.

### **FINAL ACT**

#### **OF THE CONFERENCE OF PLENIPOTENTIARIES FOR THE ESTABLISHMENT OF A FACILITY FOR ANTIPROTON AND ION RESEARCH IN EUROPE**

(1) Following discussions on possible future directions for the facilities of the Gesellschaft für Schwerionenforschung mbH (GSI), the GSI started developing a concept in 2000 for a facility for international antiproton and ion research located at the site of the GSI in Darmstadt.

On the basis of a Conceptual Design Report containing a multitude of scientific and technical contributions from around the world the facility concept was evaluated and endorsed by the German Council of Science and Humanities (Wissenschaftsrat) in 2002.

The decision of the Government of the Federal Republic of Germany in 2003 to establish the proposed facility was followed by the development of a staged construction and science programme.

An International Steering Committee was created. The constituent meeting of the FAIR International Steering Committee took place on 2 February 2004.

For the tracking of the development of science and research programmes, technical design, construction planning, and R&D activities, a working group for scientific and technical issues (STI-FAIR) was established. Another working group for administrative and financial issues (AFI-FAIR) was set up to manage the legal, financial and management structure, procedures and legal documents.

In 2004, a large number of institutions from various countries expressed their interest in participating in or contributing to the future FAIR facility by signing Letters of Intent.

By the end of February 2007 the Governments of Austria, China, Finland, France, Germany, Greece, India, Italy, Poland, Romania, Russia, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland had signed a Memorandum of Understanding to provide the basis for international cooperation during the preparatory phase of FAIR.

On 7 November 2007 representatives of ten of the fourteen parties to the Memorandum of Understanding signed the Communiqué on the Official Launch of the Facility for Antiproton and Ion Research in Europe (FAIR), by which they jointly announced the beginning of the realization of the FAIR project.

(2) At the invitation of the Government of the Federal Republic of Germany, a Conference of Plenipotentiaries for the establishment of a Facility for Antiproton and Ion Research in Europe met at Schloss Biebrich in Wiesbaden on 4 October 2010.

(3) Governments of the following countries were represented by delegates: 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 and the United Kingdom of Great Britain and Northern Ireland.

(4) The Chairperson of the Conference received from the Plenipotentiaries their Full Powers which he/she examined and recognised to be in correct and proper form.

(5) The Conference took note of the text of the Convention, including its Annex and the four Technical Documents attached, listed as follows:

text="Annex: Articles of Association of the &quot;Facility for Antiproton and Ion Research in Europe GmbH&quot; (FAIR GmbH), 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) (PartB), 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."

(6) Upon the recommendation of the FAIR International Steering Committee the Conference adopted the text of the Convention concerning the Construction and Operation of a Facility for Antiproton and Ion Research in Europe including its Annex, which forms an integral part of the Convention.

(7) The Conference agreed that the Convention be applied provisionally pending its entry into force, provided that the provisional application is in line with the national legislation of the Contracting Parties, and, to that end, adopted Resolution No 1 attached to this Final Act.

(8) The Conference agreed that a minimum commitment to contribute towards construction costs of the FAIR facility in cash and/or in kind of 11.87 million euro (in January 2005 prices) will entitle a Contracting Party to designate an appropriate body as a Shareholder of the Facility for Antiproton and Ion Research in Europe GmbH. The Conference also agreed that this minimum commitment may be given by several Contracting Parties acting jointly. In such case the appropriate bodies designated by these Contracting Parties will have to form a consortium which will act as their Shareholder in the Facility for Antiproton and Ion Research in Europe GmbH. To that end, the Conference adopted Resolution No 2 attached to this Final Act.

(9) The Conference took note of the Declarations of

- the Government of the French Republic,
- the Government of the Republic of Poland,
- the Government of the Republic of Slovenia,
- the Government of the Kingdom of Spain,
- the Government of the Kingdom of Sweden, attached to this Final Act.

(10) The Conference invited all the signatory Governments to complete as soon as possible their constitutional procedures, if any, with a view to the entry into force of the Convention and to inform the depositary Government (Federal Republic of Germany) accordingly.

(11) The Conference noted favourably that other Governments may sign the Convention within the next twelve months under the conditions set out in the Convention.

(12) The Conference invited further Governments to accede to the Convention.

In witness whereof, the Plenipotentiaries have signed this Final Act.

Done at Wiesbaden on 4 October 2010 in the English, French, German, Russian, and Spanish languages, 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 certified true copies to the Governments having signed this Final Act and to the Governments that become Contracting Parties to the Convention.

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

For the Government of the Slovak Republic

For the Government of the Republic of Slovenia

For the Government of the Kingdom of Spain

For the Government of the Kingdom of Sweden

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

## **RESOLUTION NO 1**

### **OF THE CONFERENCE OF PLENIPOTENTIARIES FOR THE ESTABLISHMENT OF A FACILITY FOR ANTIPROTON AND ION RESEARCH IN EUROPE**

Provisional application of the FAIR Convention

THE CONFERENCE

AGREES that from 4 October 2010 onwards the clauses of the Convention be applied provisionally, it being understood that the final entry into force of the Convention is subject to the fulfilment of appropriate constitutional procedures in each of the countries concerned;

INVITES the Shareholders designated by the Contracting Parties jointly establishing the Facility for Antiproton and Ion Research in Europe GmbH, a private 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), to sign immediately the Articles of Association (Annex to the Convention);

ASKS the Government of the Federal Republic of Germany to accomplish the procedural steps which are necessary to constitute as soon as possible the Facility for Antiproton and Ion Research in Europe GmbH as a legal entity.

## **RESOLUTION NO 2**

### **OF THE CONFERENCE OF PLENIPOTENTIARIES FOR THE ESTABLISHMENT OF A FACILITY FOR ANTIPROTON AND ION RESEARCH IN EUROPE**

Minimum commitment to contribute towards construction costs entitling a Contracting Party to designate an appropriate body as a Shareholder of the Facility for Antiproton and Ion Research in Europe GmbH

#### **THE CONFERENCE**

AGREES that a minimum commitment to contribute towards construction costs of the FAIR facility in cash and/or in kind of 11.87 million euro (in January 2005 prices) entitles a Contracting Party to designate an appropriate body as a Shareholder of the Facility for Antiproton and Ion Research in Europe GmbH. This minimum commitment may be given by several Contracting Parties acting jointly. In such case the appropriate bodies designated by these Contracting Parties will have to form a consortium which will act as their Shareholder in the Facility for Antiproton and Ion Research in Europe GmbH;

NOTES that 11.87 million euro corresponds to 1% of an earlier cost estimate for the construction costs of the FAIR facility as described in Part A of Technical Document 1, attached to the Convention.

### **DECLARATION OF THE GOVERNMENT OF THE FRENCH REPUBLIC WITH REGARD TO THE PROVISIONAL APPLICATION AND TO ITS FINANCIAL OBLIGATIONS**

#### **THE CONFERENCE**

TAKES NOTE of the declaration of the Government of the French Republic, which reads as follows:

In accordance with Resolution No 1 annexed to the Final Act, in which the Contracting Parties agree that the Convention be applied provisionally until it enters into force, provided that the provisional application is in line with the national legislation of the Contracting Parties, France hereby declares that it cannot apply the Convention provisionally from the date of its signature. Article 53 of the Constitution of the French Republic imposes that international treaties and agreements be authorized by Parliament prior to their entry into force when, as it is the case, they carry financial consequences committing the finances of the State.

With respect to the procedure described in Article 6(6) of the Convention, France declares that the French share in the annual operating costs of the FAIR facility will not exceed 2%.

## **DECLARATION OF THE GOVERNMENT OF THE REPUBLIC OF POLAND WITH REGARD TO ITS FINANCIAL OBLIGATIONS**

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Republic of Poland, which reads as follows:

The Republic of Poland will take part in the construction of the Facility for Antiproton and Ion Research in Europe (FAIR) with an amount of 23.74 million euro (in 2005 prices). This will comprise contributions both in kind and in cash. The spending priority shall be on in-kind contribution, and in-cash contribution shall not exceed 11.87 million euro (in 2005 prices).

## **DECLARATION OF THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA WITH REGARD TO THE PROVISIONAL APPLICATION OF THE CONVENTION**

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Republic of Slovenia, which reads as follows:

Regarding the Resolution No 1, annexed to the Final Act, in which Contracting Parties assume that the Convention can be applied provisionally until the fulfilment of appropriate constitutional procedures in each of the contracting countries, after which it will enter into force, Slovenia hereby declares that it cannot apply the Convention provisionally from the date of its signature.

The Slovenian Law on Foreign Affairs in Article 72 allows for provisional use of an international contract before its entry into force, but only when the ratifying body of this contract is the Government, which does not apply to this Convention, as its ratification is in jurisdiction of the National Assembly of the Republic of Slovenia.

## **DECLARATION OF THE GOVERNMENT OF THE KINGDOM OF SPAIN WITH REGARD TO ITS FINANCIAL OBLIGATIONS**

THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Kingdom of Spain, which reads as follows:

Spain is willing to contribute as a participating state to the establishment and utilisation of the Facility for Antiproton and Ion Research in Europe (FAIR). Nevertheless, Spain's obligations, on signing the Convention, shall be as follows:

1. Spain will review its participation in the operational phase two years after the beginning of such phase, and have the option of withdrawing without penalty, provided that it gives one year's notice.
2. Following a positive review, Spain may extend its participation for a further three year period, subject to the corresponding review cycle, and may continue to participate for the whole duration of the project.

3. Should Spain choose to carry on with the project following its first review, it will assume its full liability for decommissioning under the Convention. In the event that a decision to withdraw from participation is made by Spain on the basis of such first review, Spain will only bear fifty percent of its decommissioning liability under the Convention.

## **DECLARATION OF THE GOVERNMENT OF THE KINGDOM OF SWEDEN WITH REGARD TO ITS FINANCIAL OBLIGATIONS AND CONFIDENTIALITY**

### THE CONFERENCE

TAKES NOTE of the declaration of the Government of the Kingdom of Sweden, which reads as follows:

Sweden is willing to contribute as a participating state to the establishment and utilisation of the Facility for Antiproton and Ion Research in Europe (FAIR). However,

1. The Swedish authority serving as the Swedish shareholder in the FAIR Company, which will contribute to the construction costs with an amount of 10 million euro (2005 year's prices), will be designated by the Government of the Kingdom of Sweden after parliamentary approval.
2. Sweden's participation in the construction of FAIR would be on the basis that Sweden will participate in the operational phase of FAIR for a minimum period of three years but Sweden will review its continued participation in the operational phase after the first two years and have the option, should it wish to do so following that review, to withdraw without penalty, after giving one year's notice.
3. Following a successful review Sweden may offer to extend its participation for a further three (or five) year period subject to a corresponding review cycle and may continue to participate for the whole life of the project.
4. In the event that Sweden's first review recommends continued participation in the project, Sweden will accept in full its decommissioning liability under the Convention.

Should Sweden decide to withdraw from participation following its first review it will accept liability for fifty per cent of its share of the decommissioning cost under the Convention.

5. Article 19, Confidentiality, in the Articles of Association (Annex to the Convention) should be interpreted as follows in order to meet the requirements of the regulation in the Swedish constitution of the principle of public access to documents:

The Swedish authority serving as the Swedish shareholder in the FAIR Company (FAIR GmbH, based in Germany) shall always consult the conveying Shareholder before taking any decision to grant third parties access to confidential information as defined in Article 19 of the Articles of Association. Sweden is aware that if, after such mandatory consultation, the Shareholder has made it clear that it does not consent to the disclosure of information and, nevertheless, a Swedish authority would disclose the information, Sweden's action would disturb relations between Sweden and the Parties to this Convention.

In this context, Sweden recalls the Swedish Public Access to Information and Secrecy Act 2009, in particular Chapter 15, Section 1, paragraph 1 which reads: "Secrecy shall apply to any information concerning Sweden's relations with another state, or any information otherwise concerning another state, an international organization, or an authority, a citizen, or a

legal person in another state, or a stateless person, if it can be assumed that disclosure of the information would disturb Sweden's international relations or would otherwise cause damage to the country."

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

(2) Nemško besedilo: Zvezni uradni list (Bundesgesetzblatt) 1969 I str. 1273.

## KONVENCIJA

### O IZGRADNJI IN DELOVANJU CENTRA ZA RAZISKAVE Z ANTIPROTONI IN IONI V EVROPI

#### Vsebina

1. člen: Ustanovitev centra
2. člen: Firma in sedež
3. člen: Organi
4. člen: Pretok osebja in znanstvene opreme
5. člen: Finance
6. člen: Vložki
7. člen: Plačilo morebitnih stroškov DDV
8. člen: Dogovori o sodelovanju z drugimi uporabniki
9. člen: Intelektualna lastnina
10. člen: Šolanje
11. člen: Reševanje sporov
12. člen: Depozitar in začetek veljavnosti
13. člen: Pristop
14. člen: Trajanje
15. člen: Razgradnja
16. člen: Spremembe priloge in tehničnih dokumentov

Vlade

Republike Avstrije

Ljudske republike Kitajske

Republike Finske,

Francoske republike,

Zvezne republike Nemčije,

Helenske republike,  
Republike Indije,  
Italijanske republike,  
Republike Poljske,  
Romunije,  
Ruske federacije,  
Slovaške republike,  
Republike Slovenije,  
Kraljevine Španije,  
Kraljevine Švedske,  
Združenega kraljestva Velika Britanija in Severna Irska,  
v nadaljnjem besedilu »pogodbenice«,

v želji, da bi še naprej krepile položaj Evrope in držav pogodbenic na področju raziskav v svetu, in da bi poglobile znanstveno sodelovanje prek disciplinarnih in državnih meja;

ob spoznanju, da bo v prihodnje edinstven in tehnično inovativen mednarodni sistem pospeševalnikov pomemben za izvajanje najnaprednejših raziskav na več različnih področjih, ki se nanašajo na osnovno zgradbo snovi in s tem povezana področja;

v pričakovanju sodelovanja drugih držav v skupnih dejavnostih po tej konvenciji;

odločene spodbujati izgradnjo in delovanje Centra za raziskave z antiprotoni in ioni v Evropi, namenjenega mednarodni znanstveni skupnosti na podlagi meril znanstvene odličnosti;

so se sporazumele:

## **1. člen**

### **Ustanovitev centra**

(1) Izgradnja in delovanje Centra za raziskave z antiprotoni in ioni v Evropi, kakor je opisan v Tehničnem dokumentu 1, v nadaljnjem besedilu »center FAIR«, se zaupa družbi z omejeno odgovornostjo, v nadaljnjem besedilu »družba«, ki bo delovala po nemškem pravu, razen če s to konvencijo ni določeno drugače. Akt o ustanovitvi družbe je priložen k tej konvenciji kot priloga (brez določitve deležev ali imen družbenikov). Družba opravlja dejavnosti zgolj v miroljubne namene.

(2) Družbeniki družbe so ustrezni organi, ki jih za ta namen določijo pogodbenice. Pogodbenice določijo takšne družbenike s pisnim obvestilom, ki ga prejmejo druge pogodbenice.

(3) Družba in GSI Helmholtzzentrum für Schwerionenforschung GmbH bosta sodelovala pri izgradnji, zagonu obratovanja in delovanju centra FAIR na podlagi dolgoročnih sporazumov.

## **2. člen**

### **Firma in sedež**

Ime družbe je »Center za raziskave z antiprotoni in ioni v Evropi GmbH« (FAIR GmbH) in ima svoj sedež v Darmstadtu.

## **3. člen**

### **Organi**

(1) Organi družbe so skupščina delničarjev, v nadaljnjem besedilu »svet«, in izvršni direktorji, ki skupaj sestavljajo upravni odbor.

(2) Delegate sveta se imenuje in razrešuje skladno s postopki, ki jih določijo posamezne pogodbenice.

## **4. člen**

### **Pretok oseb in znanstvene opreme**

(1) Ob upoštevanju zahtev notranje zakonodaje vsaka pogodbenica v okviru svoje pristojnosti olajša gibanje in prebivanje državljanov držav pogodbenic, ki so zaposleni ali napoteni na delo v družbo, ali opravljajo raziskave s koriščenjem zmogljivosti družbe, in njihovih družinskih članov.

(2) Na svojem ozemlju in v skladu z veljavno zakonodajo vsaka pogodbenica olajša izdajo tranzitnih dokumentov za začasen uvoz in izvoz znanstvene opreme in vzorcev, ki se uporabljajo za raziskave s koriščenjem zmogljivosti družbe.

## **5. člen**

### **Finance**

(1) Vsaka pogodbenica zagotovi, da ima(jo) družbenik(i), ki jih je določila, zadostna sredstva za plačilo prispevka družbenikov v letni proračun družbe.

(2) Gradnja centra FAIR se prične na podlagi finančnih zavez iz 6. člena v skladu z dokumentom »Začetna modularna različica – postopni pristop k izgradnji Centra za raziskave z antiprotoni in ioni v Evropi (FAIR)«, ki je priložen kot sklop B k Tehničnemu dokumentu 1.

(3) Gradbeni stroški predstavljajo vsoto vseh izdatkov gradnje (stroški dela, periodični izdatki in kapitalski izdatki).

(4) Predvideni gradbeni stroški Začetne modularne različice, opisane v sklopu B Tehničnega dokumenta 1, so 1.027 milijonov evrov (tisoč sedemindvajset milijonov evrov), ob upoštevanju cen iz januarja 2005.

(5) Preglednica, ki prikazuje predvideno letno gibanje stroškov izgradnje in obratovanja, vključno z rezervacijo sredstev za razvoj centra FAIR, je priložena kot Tehnični dokument 2.

(6) Končni cilj ostaja izgradnja centra FAIR, kakor je opisano v Temeljnem tehničnem poročilu, povzetek katerega je priložen kot sklop A Tehničnega dokumenta 1.

(7) Svet najmanj enkrat letno preuči dejanske in predvidene gradbene stroške. Če svet kadar koli, ob upoštevanju predvidenih stroškov, opredeljenih zgoraj, in specifikacij navedenih v Tehničnem dokumentu 2, meni, da center FAIR ne bi mogel biti uspešno zaključen, potem lahko po nasvetu izvršnih direktorjev sprejme ukrepe za zmanjšanje stroškov.

(8) Svet lahko soglasno odobri spremembo gradbenih stroškov.

(9) Letni operativni stroški za polno delovanje centra FAIR so ocenjeni v Tehničnem dokumentu 2.

## 6. člen

### Vložki

(1) Nemška pogodbenica da družbi brezplačno na voljo za gradnjo pripravljeno lokacijo v Darmstadt, označeno na načrtu, ki je priložen kot Tehnični dokument 3.

(2) Ob podpisu te konvencije se pogodbenice za plačilo stroškov izgradnje zavežejo prispevati v denarju in/ali v obliki stvarnega vložka (vsi zneski se nanašajo na cene iz januarja 2005):

text="&nbsp; mio € prispeva Republika Avstrija, mio € prispeva Ljudska republika Kitajska, 5,00 mio € prispeva Republika Finska, 27,00 mio € prispeva Francoska republika, 705,00 mio € prispeva Zvezna republike Nemčija, mio € prispeva Helenska republika, 36,00 mio € prispeva Republika Indija, mio € prispeva Italijanska republika, 23,74 mio € prispeva Republika Poljska, 11,87 mio € prispeva Romunija, 178,05 mio € prispeva Ruska federacija, mio € prispeva Slovaška republika, 12,00 mio € prispeva Republika Slovenija, 11,87 mio € prispeva Kraljevina Španija, 10,00 mio € prispeva Kraljevina Švedska, mio € prispeva Združeno kraljestvo Velika Britanija in Severna Irska."

(3) Pogodbenice pričakujejo, da bo med gradnjo prišlo do nadaljnjih prizadevanj, ki bodo omogočila izgradnjo centra, kakor je opisan v Temeljnem tehničnem poročilu.

(4) Postopek prevzema stvarnih vložkov in s tem povezan način vrednotenja sta določena s to konvencijo v Tehničnem dokumentu 4.

(5) Predvideva se, da družbenik(i) pogodbenice, katere znanstvena skupnost koristi zmogljivosti centra FAIR, ustrezno sodeluje(jo) pri plačilu stroškov delovanja centra FAIR. O ustreznem sistemu porazdelitve stroškov se svet dogovori najpozneje tri leta po začetku obdobja gradnje.

(6) Pogodbenice zagotovijo, da njeni družbeniki prispevajo za plačilo stroškov delovanja v skladu z dogovorjenim sistemom.

(7) Spremembe vložkov za gradbene stroške in stroške delovanja, sprejem novih družbenikov, povečanje deležev v lasti obstoječega družbenika ter prenos deležev ali njihovih delov v družbi iz 1. člena ureja Akt o ustanovitvi, priložen kot priloga, ki pooblašča svet, da odloča o teh zadevah.

## **7. člen**

### **Plačilo morebitnih stroškov DDV**

(1) Družba posluje skladno s splošnimi predpisi o plačevanju davka na dodano vrednost (DDV) po nemškem pravu.

(2) Če se od vložkov družbenikov za plačilo gradbenih stroškov in stroškov delovanja obračunava DDV, znesek za dolgovani DDV krije pogodbenica, ki ga je naložila.

(3) Če se od vložkov družbenikov za plačilo gradbenih stroškov in stroškov delovanja ne obračunava DDV in to ne pomeni nepriznanja ali zmanjšanja pravice družbe, da odbije ali zahteva vračilo DDV, ki ga je družba plačala tretjim strankam, ta neodbitni DDV krije pogodbenica, ki ga je naložila.

## **8. člen**

### **Dogovori z drugimi uporabniki**

Dogovore o dolgoročnem koriščenju zmogljivosti centra FAIR z vladami ali skupinami vlad, ki ne pristopijo k tej konvenciji, ali z njihovimi ustanovami ali organizacijami, lahko družba sklene na podlagi soglasnega dovoljenja sveta.

## **9. člen**

### **Intelektualna lastnina**

(1) V skladu s predmetom te konvencije se pojem »intelektualna lastnina« razume v skladu z 2. členom Konvencije o ustanovitvi Svetovne organizacije za intelektualno lastnino, podpisane 14. julija 1967.

(2) Razmerja med pogodbenicami glede intelektualne lastnine se urejajo z notranjo zakonodajo držav pogodbenic ter na podlagi ustreznih določb iz dogovorov o sodelovanju na področju znanosti in tehnologije med Evropsko skupnostjo in pogodbenicami, ki niso članice EU.

## **10. člen**

### **Šolanje**

Nemška pogodbenica podpira prizadevanja za dostop do izobraževanja v javnih ali zasebnih mednarodnih šolah v Zvezni republiki Nemčiji za otroke zaposlenih v družbi ali drugega osebja, ki je napoteno na delo ali aktivno deluje v družbi.

## **11. člen**

### **Reševanje sporov**

(1) Pogodbenice si vsak spor v zvezi z razlago ali uporabo te konvencije prizadevajo rešiti s pogajanjem.

(2) Če pogodbenice ne dosežejo dogovora o rešitvi spora, lahko vsaka vpletena pogodbenica predloži spor v odločanje arbitražnemu razsodišču.

(3) Vsaka pogodbenica, ki je stranka v sporu, imenuje arbitra; če pa pride do spora med eno od pogodbenic in dvema ali več drugimi pogodbenicami, te izberejo enega skupnega arbitra. Tako imenovani razsodniki izberejo državljana države, ki ni država pogodbenica v sporu, da deluje kot glavni arbirer in prevzame naloge predsednika arbitražnega razsodišča, ki ima odločilni glas, če pride do enakomerne porazdelitve glasov arbitrov. Arbitri so imenovani v dveh mesecih od dneva zaprosila za rešitev spora z arbitražo, predsednik pa v treh mesecih od tega dne.

(4) Če se ne upoštevajo časovni roki, določeni v prejšnjem odstavku, in ni drugačnega dogovora, vsaka stranka v sporu lahko zaprosi predsednika Sodišča Evropske unije, ali, če je to primerno, Meddržavnega sodišča, da izvede potrebna imenovanja.

(5) Arbitražno razsodišče odloča z navadno večino.

(6) Arbitražno razsodišče odloča na podlagi prvega odstavka 38. člena Statuta Meddržavnega sodišča. Odločitve razsodišča so zavezujoče.

(7) Razsodišče določi pravila svojega poslovanja v skladu s III. poglavjem IV. dela Konvencije o miroljubnem reševanju mednarodnih sporov, podpisane v Haagu 18. oktobra 1907.

(8) Vsaka stranka v sporu krije svoje stroške in enakovredni delež stroškov arbitražnega postopka.

(9) Odločitve razsodišča temeljijo na pravu, ki velja za obravnavani spor.

## **12. člen**

### **Depozitar in začetek veljavnosti**

(1) Ta konvencija začne veljati prvi dan drugega meseca potem, ko vse vlade podpisnice obvestijo Vlado Zvezne republike Nemčije kot depozitarja konvencije, da je notranji postopek odobritve zaključen.

(2) Vlada Zvezne republike Nemčije sproti obvešča vse vlade podpisnice o dnevu vsakega obvestila iz prejšnjega odstavka in o dnevu začetka veljavnosti konvencije.

(3) Pred začetkom veljavnosti konvencije se lahko pogodbenice sporazumejo, da se nekateri ali vsi člani iz konvencije začasno uporabljajo.

## **13. člen**

### **Pristop**

(1) Po začetku veljavnosti te konvencije lahko pod dogovorjenimi pogoji vsaka vlada pristopi k tej konvenciji s soglasjem vseh pogodbenic. Pristopni pogoji se uredijo s sporazumom med pogodbenicami in vlado ali skupino vlad, ki pristopa.

(2) Vlade, ki to konvencijo podpišejo v dvanajstih mesecih po prvem podpisu te konvencije, to storijo pod enakimi pogoji kakor pogodbenice.

## **14. člen**

### **Trajanje**

(1) Ta konvencija se sklene za začetno obdobje, ki se zaključi 31. decembra 2025, in ostane v veljavi po tem dnevu za nadaljnja desetletna obdobja, ob ponovni potrditvi znanstvene in tehnične usmeritve centra FAIR za vsako novo desetletno obdobje na podlagi poročila o pregledu, ki ga odobri svet družbe.

(2) Pogodbenica lahko odstopi od te konvencije s triletnim odpovednim rokom, ki se sporoči Vladi Zvezne republike Nemčije. Odstop začne veljati šele 31. decembra 2025 ali ob koncu vsakega nadaljnjega desetletnega obdobja.

(3) Ta konvencija ostane v veljavi med preostalimi pogodbenicami. Pogoji in učinki odstopa pogodbenice od te konvencije, še posebej delež pri stroških razgradnje objekta in zgradb družbe ter nadomestilo za izgube, se določijo s sporazumom med pogodbenicami pred začetkom veljavnosti odstopa.

## **15. člen**

### **Razgradnja**

Nemška pogodbenica je odgovorna za plačilo stroškov razgradnje centra FAIR, ki presegajo vsoto dvakratnega zneska letnega proračuna delovanja, na podlagi povprečja zadnjih petih let poslovanja.

## **16. člen**

### **Spremembe priloge in tehničnih dokumentov**

(1) Pogodbenice soglašajo, da se z odločitvijo sveta družbe lahko spremenijo priloga k tej konvenciji in tehnični dokumenti brez zahteve za prilagoditev konvencije, če take spremembe niso v nasprotju s konvencijo. Za spremembe priloge se zahteva soglasna odobritev sveta družbe.

(2) Naslednja priloga je sestavni del te konvencije:

Akt o ustanovitvi Centra za raziskave z antiprotoni in ioni v Evropi GmbH (FAIR GmbH).

Sklicuje pa se tudi na naslednje tehnične dokumente:

text="Tehnični dokument 1: opis centra FAIR v izgradnji in faze gradnje (sklop A) in Začetna modularna različica – postopni pristop k izgradnji Centra za raziskave z antiprotoni in ioni v Evropi (FAIR) (sklop B), Tehnični dokument 2: podrobna razčlenitev gradbenih stroškov in preglednica s predvidenim letnim gibanjem izdatkov za gradnjo in delovanje, Tehnični dokument 3: karta lokacije, kjer bo zgrajen center FAIR, Tehnični dokument 4: postopek prevzema stvarnih vložkov in s tem povezan način vrednotenja."

V potrditev tega so spodaj podpisani predstavniki, ki so jih za to pravilno pooblastile njihove vlade, podpisali to konvencijo.

Sestavljeno v Wiesbadnu 4. oktobra 2010 v angleškem, francoskem, nemškem, ruskem in španskem jeziku, razen tehničnih dokumentov, ki so sestavljeni le v angleškem jeziku, pri čemer so vsa besedila enako verodostojna, in so v enem izvorniku deponirana v arhivu Vlade Zvezne republike Nemčije, ki pošlje overjeno kopijo vsem pogodbenicam in vladam, ki pristopijo, in jih pozneje obvešča o vseh spremembah.

Za Vlado Republike Avstrije

Za Vlado Ljudske republike Kitajske

Za Vlado Republike Finske

Za Vlado Francoske republike

Za Vlado Zvezne republike Nemčije

Za Vlado Helenske republike

Za Vlado Republike Indije

Za Vlado Italijanske republike

Za Vlado Republike Poljske

Za Vlado Romunije

Za Vlado Ruske federacije

Za Vlado Slovaške republike

Za Vlado Republike Slovenije

Za Vlado Kraljevine Španije

Za Vlado Kraljevine Švedske

Za Vlado Združenega kraljestva Velika Britanija in Severna Irska

Priloga h konvenciji FAIR

Akt o ustanovitvi

»Centra za raziskave z antiprotoni in ioni v Evropi GmbH« (FAIR GmbH)

text="Spodaj podpisani [agencije, ki dodeljujejo sredstva] .....  
.....  
....."

v nadaljnjem besedilu »družbeniki« ("Gesellschafter" v pomenu nemškega zakona o družbah z omejeno odgovornostjo);

ob upoštevanju Konvencije o izgradnji in delovanju Centra za raziskave z antiprotoni in ioni v Evropi, v nadaljnjem besedilu »konvencija«, podpisana v Wiesbadnu 4. oktobra 2010, med pogodbenimi strankami, opredeljenimi v preambuli konvencije, v nadaljnjem besedilu »pogodbenice«;

ob ugotovitvi, da sta (so) [vnesi državo] organizacija [vnesi naziv] in [vnesi državo] organizacija [vnesi naziv] ustanovili konzorcij [vnesi ime] o sodelovanju v družbi in da je [število in naziv] organizacij ustanovilo konzorcij [vnesi ime] o sodelovanju v družbi in ker kljub temu, da so vse organizacije podpisale ta akt o ustanovitvi, sta le konzorcij [vnesi ime], ki ga zastopa [vnesi ime], in konzorcij [vnesi ime], ki ga zastopa [vnesi ime], družbenika družbe;

soglašajo z ustanovitvijo družbe z omejeno odgovornostjo (Gesellschaft mit beschränkter Haftung – GmbH) po nemškem pravu, posebej nemškem zakonu o družbah z omejeno odgovornostjo (Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbH), in sicer »Center za raziskave z antiprotoni in ioni v Evropi GmbH« (FAIR GmbH), v nadaljnjem besedilu »družba«.

## Kazalo

### I. poglavje Splošne določbe

1. člen Firma, sedež družbe, finančno leto, opredelitev DELEŽA
2. člen Odnosi s GSI Helmholtzzentrum für Schwerionenforschung GmbH
3. člen Dejavnost
4. člen Značaj javnega interesa
5. člen Osnovni kapital
6. člen Družbeniki
7. člen Organi

### II. poglavje Svet

8. člen Člani Sveta
9. člen Predsednik in podpredsednik Sveta
10. člen Seje Sveta
11. člen Pristojnosti Sveta

### III. poglavje Upravljanje družbe

12. člen Postopek glasovanja, sklepi
13. člen Izvršni direktorji in upravni odbor
14. člen Zastopanje družbe
15. člen Pristojnosti in naloge izvršnih direktorjev

### IV. poglavje Sodelovanje med družbo in družbeniki

- 16. člen Opredelitve
- 17. člen Intelektualna lastnina
- 18. člen Izumi
- 19. člen Zaupnost
- V. poglavje Odbor
- 20. člen Znanstveni svet
- VI. poglavje Finančne zadeve
- 21. člen Letno finančno poročilo
- 22. člen Pravice družbenikov do revizije
- VII. poglavje Spremembe pri lastništvu deležev
- 23. člen Sprejem novih družbenikov in prenos DELEŽEV
- 24. člen Odkup in obvezna dodelitev DELEŽEV
- 25. člen Odstop družbenika
- VIII. poglavje Prenehanje družbe
- 26. člen Likvidacija družbe ali sprememba dejavnosti
- IX. poglavje Razno
- 27. člen Odgovornost
- 28. člen Veljavna zakonodaja
- 29. člen Začetek veljavnosti
- 30. člen Jeziki
- 31. člen Ločitvena klavzula
- 32. člen Objave

## I. poglavje

### Splošne določbe

#### 1. člen

#### **Firma, sedež družbe, finančno leto, opredelitev DELEŽA**

(1) Družba je družba z omejeno odgovornostjo (Gesellschaft mit beschränkter Haftung – GmbH) z imenom »Center za raziskave z antiprotoni in ioni v Evropi GmbH« (FAIR GmbH).

(2) Družba ima svoj sedež v Darmstadt, Zvezna republika Nemčija.

(3) Finančno leto je koledarsko leto. Prvo leto poslovanja je kratko finančno leto, ki se zaključi 31. decembra.

(4) V nadaljnjem besedilu pomeni izraz »DELEŽ« (z velikimi tiskanimi črkami) (»Geschäftsanteil« v pomenu GmbHG) del družbe, ki ga je družbenik ob upoštevanju svojega osnovnega vložka (»Stammeinlage« v pomenu GmbHG) vpisal v osnovni kapital družbe. Vrednost DELEŽA je sorazmerna ustreznemu delu osnovnega kapitala (glej 5. člen), ki ga je vpisal družbenik.

## **2. člen**

### **Odnosi z GSI Helmholtzzentrum für Schwerionenforschung GmbH**

Družba in GSI Helmholtzzentrum für Schwerionenforschung GmbH v Darmstadt bosta tesno sodelovala pri izgradnji, zagonu obratovanja in delovanju Centra za raziskave z antiprotoni in ioni v Evropi (v nadaljnjem besedilu »center FAIR«) na podlagi dolgoročnih sporazumov.

## **3. člen**

### **Dejavnost**

(1) Družba izrecno in neposredno izvaja dejavnost javnega interesa v pomenu poglavja z naslovom »Dejavnosti z davčno olajšavo« (»Steuerbegünstigte Zwecke«) iz nemškega davčnega zakonika (Abgabenordnung AO). Dejavnosti družbe so napredek znanosti in raziskovanja.

(2) Te dejavnosti se izvajajo predvsem prek

- a) izgradnje, delovanja in nadaljnega razvoja centra FAIR, vključno z za center značilnimi raziskavami in razvojem, in
- b) znanstveno raziskovalne dejavnosti in razvoja z antiprotoni in ioni, ki se izvaja ob koriščenju zmogljivosti centra FAIR.

(3) Družba lahko prevzame dodatne naloge, ki so povezane z znanstvenim in tehničnim razvojem, kot so prenos tehnologije, znanstveno-izobraževalni programi, razvoj pospeševalnikov in znanstvenih naprav in opreme za raziskovalne namene.

(4) Rezultati raziskovalnega dela, ki ga opravi družba in/ali se opravi v družbi, so načeloma objavljeni ali na drug način splošno dostopni.

## **4. člen**

### **Značaj javnega interesa**

(1) Družba deluje v splošno korist in njen prvotni namen ni pridobitna dejavnost.

(2) Sredstva in viri družbe se morajo uporabljati izključno za dejavnosti, navedene v 3. členu. Družbeniki niso udeleženi niti pri dobičku niti pri drugih izplačilih iz sredstev in virov sredstev družbe.



razrešujejo vsi družbeniki posamezne pogodbenice. Družbeniki posamezne pogodbenice nemudoma pisno obvestijo predsednika sveta o vsakem imenovanju ali razrešitvi svojih delegatov v svetu.

## **9. člen**

### **Predsednik in podpredsednik sveta**

Svet izvoli predsednika in podpredsednika izmed delegatov družbenikov različnih pogodbenic za največ dveletni mandat. Po izvolitvi postaneta predsednik in podpredsednik supra partes in zapustita svoji delegaciji. Zaporedna ponovna izvolitev je dovoljena samo enkrat za drugi največ dveletni mandat.

## **10. člen**

### **Seje sveta**

(1) Svet zaseda najmanj dvakrat letno.

(2) Seje sveta sklicuje predsednik sveta.

(3) Seje sveta se lahko skliče tudi na zahtevo najmanj dveh družbenikov različnih pogodbenic. Izredna zasedanja sveta se lahko skliče tudi na zahtevo izvršnih direktorjev, kadar to zahtevajo interesi družbe.

## **11. člen**

### **Pristojnosti sveta**

(1) Razen če ni s tem aktom o ustanovitvi določeno drugače, je svet odgovoren za vse zakonsko določene zadeve. Svet lahko da navodila izvršnim direktorjem.

(2) Soglasna odobritev sveta se zahteva za:

- a) sprejem novih družbenikov,
- b) prenos («Übertragung» v pomenu GmbHG) DELEŽEV ali njihovih delov med družbeniki različnih pogodbenic,
- c) povečanje osnovnega kapitala,
- d) spremembe akta o ustanovitvi,
- e) združitve ali delitve družbe,
- f) prenehanje družbe,
- g) finančni pravilnik družbe,
- h) dogovore o dolgoročnem koriščenju zmogljivosti centra FAIR z vladami ali skupinami vlad, ki niso pristopile h konvenciji, ali z njihovimi ustanovami ali organizacijami, in
- i) sistem porazdelitve stroškov delovanja v skladu s petim odstavkom 6. člena konvencije.

(3) Kvalificirana večina sveta se zahteva za:

- a) izvolitev predsednika in podpredsednika,
- b) srednjeročni znanstveni program,
- c) letni proračun, načrtovanje virov (finančnih in kadrovskih) in srednjeročne finančne napovedi,
- d) sprejetje letnega finančnega poročila (»Jahresabschluss« v pomenu GmbHG),
- e) imenovanje, zaposlitev in razrešitev izvršnih direktorjev,
- f) ustanovitev odborov,
- g) politiko glede določitve curkovnega časa na eksperimentalnih postajah,
- h) kratkoročne in srednjeročne dogovore z nacionalnimi in mednarodnimi znanstvenimi organizacijami o koriščenju znanstvene opreme in zmogljivosti družbe,
- i) pravila javnega naročanja,
- j) poslovnik sveta in
- k) odkup (»Einziehung« v pomenu GmbHG) ali dodelitev DELEŽEV ali njihovih delov.

(4) Za prvotne dolgoročne sporazume z GSI Helmholtzzentrum für Schwerionenforschung GmbH, ki so podrobno navedeni v 2. členu tega akta o ustanovitvi, se zahteva soglasna odobritev sveta. Za poznejše odločitve v zvezi z obstoječimi dolgoročnimi sporazumi z GSI Helmholtzzentrum für Schwerionenforschung GmbH in spremembe teh sporazumov, se zahteva odobritev sveta s kvalificirano večino.

(5) Za vse druge sklepe sveta se zahteva navadna večina, razen če veljavna zakonodaja ali ta akt o ustanovitvi ne določa drugače.

(6) Sklepi o zadevah v zvezi z zahtevami, ki jih Zvezna republika Nemčija predpisuje glede javnega zdravja in varstva, dovoljenj in varstva okolja ne smejo biti v nasprotju z nemško zakonodajo.

## 12. člen

### Postopek glasovanja, sklepi

(1) Za vsak 1 (en) evro osnovnega vložka imetniku pripada en glas. Vsi družbeniki imajo možnost glasovanja. V imenu posameznega družbenika lahko delegati, ki jih je ta za to določil, oddajo vse glasove samo v svežnju. Družbeniki, ki jih imenuje ena sama pogodbenica, lahko oddajo svoje glasove samo skupaj in v svežnju.

(2) »Navadna večina« pomeni 50% oddanih glasov in družbeniki ne več kakor polovice pogodbenic ne glasujejo proti.

(3) »Kvalificirana večina« pomeni večino najmanj 75% oddanih glasov in družbeniki ne več kakor polovice pogodbenic ne glasujejo proti.

(4) »Soglasni sklep« pomeni najmanj 90% oddanih glasov brez glasu proti.

(5) Na sejah sveta je dosežen kvorum, če sta zastopani dve tretjini celotnega osnovnega kapitala. Če sta zastopani manj kakor dve tretjini osnovnega kapitala, se nemudoma skliče nova seja sveta z enakim dnevnim redom. Nova seja sveta ima kvorum ne glede na delež zastopanosti osnovnega kapitala, vendar le, če je to izrecno navedeno v vabilu na to novo sejo.

### **III. poglavje**

#### **Upravljanje družbe**

##### **13. člen**

#### **Izvršni direktorji in upravni odbor**

(1) Podjetje ima najmanj dva izvršna direktorja.

(2) Med izvršnimi direktorji je eden, ki je znanstvenik in hkrati predsednik upravnega odbora, eden pa je poslovni direktor. Delitev odgovornosti med izvršnimi direktorji določi svet v poslovniku upravnega odbora.

(3) Izvršni direktorji se imenujejo za največ pet let. Imenovanje, zaposlitev in razrešitev izvršnih direktorjev ter vsako spremembo ali podaljšanje pogodb o zaposlitvi mora odobriti svet in v imenu družbe podpisati predsednik sveta.

##### **14. člen**

#### **Zastopanje družbe**

Družbo zastopata dva izvršna direktorja, ki delujeta skupaj, ali en izvršni direktor, ki deluje skupaj s pooblaščenim podpisnikom (»Prokurist« v pomenu nemškega trgovskega zakonika (Handelsgesetzbuch – HGB)).

##### **15. člen**

#### **Pristojnosti izvršnih direktorjev**

Izvršni direktorji vestno in z dolžno skrbnostjo upravljajo družbo v skladu z interesi družbe in v skladu:

- a) s konvencijo in zakoni Zvezne republike Nemčije, če ti niso v nasprotju s konvencijo,
- b) s tem aktom o ustanovitvi, kakor je občasno spremenjen,
- c) s poslovnikom upravnega odbora, ki ga sprejme svet,
- d) z usmeritvami in sklepi sveta in
- e) s sporazumi med pogodbenicami.

### **IV. poglavje**

## Sodelovanje med družbo in družbeniki

### 16. člen

#### Opredelitev pojmov

V 17. in 18. členu naslednji izrazi pomenijo:

- a) »znanje« pomeni podatke, tehnično dokumentacijo, strokovno znanje in izkušnje, programsko opremo in dokumente ne glede na obliko ali način razkritja ali hrambe in ne glede na to, ali so zaščiteni ali ne;
- b) »predhodno znanje« pomeni znanje, obstoječe pred podpisom tega akta o ustanovitvi;
- c) »novo znanje« pomeni znanje, pridobljeno z delom, ki je bilo opravljeno po podpisu tega akta o ustanovitvi, v okviru dejavnosti družbe;
- d) »izum« pomeni znanje, za katerega se lahko pridobi uporabne modele ali patente, t. j. je industrijsko uporabljiv, nov in na inventivni ravni.

### 17. člen

#### Intelektualna lastnina

(1) Družbeniki podelijo družbi brezplačno in brez omejitev neizključno in neprenosljivo licenco za uporabo svojega predhodnega znanja, zaščitenega ali ne, s katerim lahko pravno razpolagajo, in ki je potrebno za namene sodelovanja v družbi.

(2) Družbeniki prav tako podelijo družbi, brezplačno in brez omejitev neizključno in neprenosljivo licenco za uporabo novega znanja in nadaljnjih izpopolnitev, zaščitenih ali ne, s katerimi lahko pravno razpolagajo, in ki so jih dosegli v okviru svojega sodelovanja v družbi.

(3) Vsa intelektualna lastnina, ki jo ustvari osebje, zaposleno pri družbi, je last družbe, razen če ni zajeta v ločenih pogodbah.

(4) Na zahtevo družba družbenikom in javno financiranim raziskovalnim ustanovam, ki so jih ti določili, brezplačno podeli neizključno in neprenosljivo licenco za uporabo svoje intelektualne lastnine za njihove raziskovalne dejavnosti. Za namene, ki niso raziskovalni, se lahko licenca podeli družbenikom pod poštenimi in razumnimi pogoji. Če posamezni družbenik to odobri, lahko družba vsaki fizični ali pravni osebi v državi ali državah tega družbenika podeli licenco pod poštenimi in razumnimi pogoji za druge namene, ki niso raziskovalni, razen kadar svet ne odloči drugače.

(5) Če želi družba pridobiti licenco od tretje osebe za uporabo intelektualne lastnine, si po najboljših močeh prizadeva pridobiti pravico iz take licence do podeljevanja podlicenc družbenikom, kakor je določeno v četrtem odstavku zgoraj.

### 18. člen

#### Izumi

(1) V zvezi z izumi osebja družbe družba uporabi pravila nemškega zakona o izumih zaposlenih (Gesetz über Arbeitnehmer- erfindungen – ArbNErfG). Če se družba ne odloči za prijavo patenta v eni ali več državah, lahko s privolitvijo družbe zaposleni, ki je avtor izuma, zaprosi za takšno zaščito v svojem imenu, na svoje stroške in v svojo korist.

(2) V zvezi z izumi osebja, ki ga na delo v družbo napoti družbenik, med opravljanjem njihovega dela pri družbi, se uporabljajo naslednje določbe:

- a) Družbenik pošiljatelj je lastnik vseh pravic za izume, katerih avtorji so izključno napoteni zaposleni, ob upoštevanju zakonodajnih ali pogodbenih določb, ki veljajo za izume zaposlenih. Družbenik pošiljatelj ima pravico, da v vsaki državi prijavi v svojem imenu, na svoje stroške in v svojo korist patente, potrebne za zaščito takšnih izumov. Družba in drugi družbeniki imajo pravico do uporabe izuma v raziskovalne namene brez plačila in pravico do licence za namene, ki niso raziskovalni, pod poštenimi in razumnimi pogoji. Poleg tega družbenik, ki je lastnik pravic, na zahtevo drugega družbenika vsaki fizični ali pravni osebi v državi ali državah družbenikov ne zavrne podelitve licence za namene, ki niso raziskovalni, pod poštenimi in razumnimi pogoji. S pogodbami med posameznimi družbeniki in družbo ali s sklepom sveta se lahko določijo posamezni izumi, glede katerih družbenik ni zavezan podeliti licence družbi, drugim družbenikom ali na zahtevo drugega družbenika vsaki fizični ali pravni osebi v državi tega družbenika.
- b) Družba prejme delež neto donosa od vseh licenc, ki jih podeli lastnik pravic za namene, ki niso raziskovalni, pri čemer se omenjeni delež določi ob upoštevanju, koliko sta k izumom prispevala družba in napoteni posameznik.
- c) Kadar se vlagajo zahteve za pravice intelektualne lastnine in ob podeljevanju licenc, se ob dvomih družba in družbeniki posvetujejo in vzdržijo dejanj, ki bi škodovala družbi ali družbenikom.
- d) Družba je edini lastnik vseh pravic za izume, ki so jih izumili zaposleni, ki jih je družbenik napotil na delo kot del stvarnega vložka za ustanovitev družbe, skupaj z zaposlenimi družbe ali skupaj z zaposlenimi, ki so jih na delo napotili drugi družbeniki kot del stvarnih vložkov za ustanovitev družbe.
- e) Skupni izumi napotениh zaposlenih dveh različnih družbenikov pripadajo obema partnerjema, ki se za vsak primer posebej sporazumeta o delitvi in skupnem izkoriščanju izuma. Za takšne izume veljajo določbe pododstavka a).
- f) Razen kadar pogodba ne določa drugače, je družba edini lastnik vseh pravic za skupne izume zaposlenih, ki jih je napotil družbenik, in osebja družbe ali zaposlenih, ki jih je na delo napotil drugi družbenik kot del svojega stvarnega vložka za ustanovitev družbe.

(3) V zvezi s skupnimi izumi osebja družbe z osebjem družbenika, ki ni napoteno na delo v družbo, ti izumi pripadajo obema partnerjema, ki se za vsak primer posebej sporazumeta o delitvi in skupnem izkoriščanju izuma. Ta sporazum mora upoštevati določbe iz drugega odstavka.

## 19. člen

### Zaupnost

(1) Družbeniki v odnosu do tretjih strani obravnavajo kot zaupne vse podatke in stvari, ki niso bili objavljeni in ki jih drugi družbenik ali družba pošlje zaupno. Družbenik prejemnik lahko uporabi takšne podatke in stvari samo za nekomercialne namene v skladu s

pogoji tega akta o ustanovitvi. Za razkritje zaupnih podatkov ali stvari se zahteva izrecno pisno soglasje družbenika, ki jih pošlje, ali družbe.

(2) Obveznost zaupnosti iz prvega odstavka ne velja za stvari ali vrste podatkov, ki:

- a) jih je družbenik prejemnik razvil ali jih razvija neodvisno od takih podatkov,
- b) so del splošno dostopnega stanja tehnike ali ki so dosegli to stanje brez kakršne koli udeležbe družbenika prejemnika,
- c) so ob razkritju že v posesti družbenika prejemnika ali
- d) jih je družbeniku zakonito razkrila tretja stran, ki jih ima v zakoniti posesti in nima obveznosti ohranjati zaupnost.

(3) Obveznost zaupnosti iz prvega odstavku preneha veljati pet let po dnevu vpisa prenehanja družbe iz trgovskega registra. Družbeniki naložijo enako obveznost zaupnosti vsem svojim odvisnim družbam in podizvajalcem, zaposlenim in drugemu osebju, ki dela za družbenika in bi lahko imelo dostop do zaupnih podatkov.

## **V. poglavje**

### **Odbor**

#### **20. člen**

### **Znanstveni svet**

(1) Znanstveni svet, sestavljen iz zunanjih članov, ki so ugledni znanstveniki, svetuje svetu in izvršnim direktorjem v bistvenih znanstvenih in tehničnih zadevah.

(2) Znanstveni svet sestavlja od 8 do 12 članov. Na predlog znanstvenega sveta in po posvetu z izvršnimi direktorji člane imenuje svet.

(3) Znanstveni svet izvoli predsednika. Znanstveni svet sprejme poslovnik, za katerega se zahteva odobritev sveta.

## **VI. poglavje**

### **Finančne zadeve**

#### **21. člen**

### **Letno finančno poročilo**

(1) V prvih treh mesecih po zaključku finančnega leta izvršni direktorji pripravijo letno finančno in poslovno poročilo (»Lagebericht« v pomenu GmbHG). Glede priprave in revizije letnega finančnega in poslovnega poročila se smiselno uporabljajo pravila nemškega trgovskega zakonika (HGB) za velike gospodarske družbe.

(2) Letno finančno in poslovno poročilo pregleda pooblaščen neodvisni revizor (»Abschlussprüfer« v pomenu HGB). Revizor se imenuje s sklepom sveta pred zaključkom

finančnega leta, za katero bo izvedena revizija. Revizor se imenuje za eno leto. Revizor se lahko ponovno imenuje. Takoj po imenovanju se revizorju naroči, da med drugim pregleda pravilnost poslovanja (oddelek 53 (1) Zakona o proračunskih načelih za federacijo in dežele (Gesetz über die Grundsätze des Haushaltsrechts des Bundes und der Länder – HGrG) z dne 19. avgusta 1969(2)) in dopolni poročilo v skladu z oddelkom 53 (1), št. 2 zakona (HGrG).

(3) Po prejemu revizijskega poročila (»Prüfungsbericht« v pomenu HGB) morajo izvršni direktorji brez odlašanja svetu predložiti izvod letnega finančnega poročila, katerega izvirnik mora imeti pravno zavezujoče podpise izvršnih direktorjev, ter poslovno poročilo skupaj z revizijskim poročilom, ki vključuje pisno mnenje. V prvih šestih mesecih po zaključku finančnega leta svet odloči o sprejetju letnega finančnega poročila.

## **22. člen**

### **Pravice družbenikov do revizije**

Vsak družbenik ima pravico do revizije, če je to za namene javnega financiranja zahtevano v notranji zakonodaji.

## **VII. poglavje**

### **Spremembe deležev**

## **23. člen**

### **Sprejem novih družbenikov in prenos DELEŽEV**

(1) Pri vsaki spremembi finančnih vložkov pogodbenice, udeleženi družbeniki opravijo ustrezni prenos DELEŽEV.

(2) Družba je odprta za sprejem novih družbenikov, ki jih imenuje(jo) ustrezna(e) pogodbenica(e). Svet je pristojen za odločanje o pogojih pristopa novih družbenikov.

(3) Če ni v zvezi s povišanjem osnovnega kapitala s svetom dogovorjeno drugače, novi družbenik pridobi DELEŽE ali njihove dele od enega ali več obstoječih družbenikov.

(4) Za pridobitev DELEŽEV ali njihovih delov od obstoječega družbenika se zahteva soglasna odobritev sveta. Taka odobritev se domneva, če je družbenika pridobitelja imenovala ista pogodbenica kakor družbenika(e) odstopnika(e).

(5) Vsaka odločitev o prenosu DELEŽEV ali njihovih delov z vpisom sklepa sveta postane dokončna in izvršni direktorji jo razglasijo.

## **24. člen**

### **Odkup ali prisilni odstop DELEŽEV**

(1) Odkup družbenikovega DELEŽA ali njegovih delov se dovoli, če družbenik s tem soglaša.

(2) Odkup družbenikovega DELEŽA ali njegovih delov se dovoli brez soglasja družbenika, če:

- a) so sredstva družbenika postala del postopka insolventnosti ali je bil predlog za uvedbo postopka insolventnosti zavržen zaradi pomanjkanja sredstev,
- b) DELEŽ družbenika postane predmet izvršilnega postopka, če takšen postopek ni bil ustavljen v obdobju treh mesecev in/ali DELEŽ v tem obdobju še ni bil vnovčen,
- c) družbenik krši svoje temeljne obveznosti po tem aktu o ustanovitvi ali notranjih predpisih družbe, vključno s tem, da več kot tri leta zamuja s plačilom denarnih vložkov ali z zagotovitvijo stvarnih vložkov.

V teh primerih ta družbenik nima glasovalne pravice pri odločanju o odkupu in se njegovi glasovi ne upoštevajo pri določanju dosežene večine. Kljub temu ima družbenik pravico do udeležbe na ustrezni seji sveta in do utemeljitve pred sprejetjem sklepa glede odkupa ali odstopa.

(3) Ob odkupu vpleteni družbenik od družbe prejme poplačilo v višini nominalne vrednosti njegovega DELEŽA. V primerih, zajetih z drugim a) in b) odstavkom, morebitni pridobitelj ne postane družbenik, ampak prejme poplačilo v višini nominalne vrednosti DELEŽA.

(4) Namesto odkupa DELEŽA lahko svet s kvalificirano večino sklene, da se DELEŽ odstopi

- a) enemu ali več preostalim družbenikom, ki so pripravljeni pridobiti takšen delež poleg svojega lastnega DELEŽA, ali
- b) novemu družbeniku v pomenu drugega odstavka 23. člena, ob upoštevanju poplačila enakega zneska, kakor je predviden v tretjem odstavku zgoraj. To je mogoče tudi v obliki, da se del DELEŽA odkupi in drugi del odstopi. Poplačilo poravnajo družbeniki, ki jim je odstopljen DELEŽ ali njegovi deli.

(5) Veljavnost odkupa ali odstopa ni odvisna od plačila zneska za poplačilo.

(6) Vsaka odločitev o odkupu ali odstopu DELEŽA ali njegovega dela postane dokončna z vpisom sklepa sveta in izvršni direktorji jo razglasijo.

## **25. člen**

### **Izstop družbenika**

Družbenik, ki izstopi iz družbe, ne da bi bila družba likvidirana, lahko zahteva samo poplačilo, omejeno na nominalno vrednost njegovega DELEŽA.

## **VIII. poglavje**

### **Prenehanje družbe**

## **26. člen**

### **Likvidacija družbe ali sprememba dejavnosti**

(1) Ob družbenikovem izstopu iz družbe, prenehanju družbe ali če za dejavnost družbe prenehajo veljati davčne ugodnosti, družbeniki ne morejo dobiti povrnjeno več od

zneska vplačanih osnovnih deležev in poštene tržne vrednosti njihovih nedenarnih kapitalskih vložkov.

(2) Ob prenehanju družbe ali če za dejavnost družbe prenehajo veljati davčne ugodnosti, se sredstva družbe, ki presegajo znesek vplačanih osnovnih deležev delničarjev in pošteno tržno vrednost nedenarnih kapitalskih vložkov delničarjev, prenesejo na GSI Helmholtzzentrum für Schwerionenforschung GmbH, ki sredstva neposredno porabi izključno za dejavnosti v javnem interesu, ali jih po posvetovanju z nemškimi davčnimi organi nameni drugi družbi, za katero veljajo davčne ugodnosti, ali drugi pravni osebi javnega prava za znanstveni in raziskovalni namen.

## **IX. poglavje**

### **Razno**

#### **27. člen**

### **Odgovornost**

(1) Družbeniki zagotovijo, da družba pridobi zadostno zavarovanje za kritje škode osebam in na predmetih, ki jo povzroči napoteno osebje ali v družbo vabljeni znanstveniki in strokovnjaki, v obsegu, v katerem odgovornost ni zajeta že z drugim zavarovanjem. To ne velja za škodo, ki je povzročena namerno ali iz hude malomarnosti.

(2) V zadevah glede odgovornosti, ki jih ni mogoče rešiti v skladu s prvim odstavkom, se družbeniki nemudoma posvetujejo, da bi dosegli poravnavo škode.

#### **28. člen**

### **Pravo, ki se uporablja**

Za ta akt o ustanovitvi velja pravo Zvezne republike Nemčije.

#### **29. člen**

### **Začetek veljavnosti**

Ta akt o ustanovitvi začne veljati, ko ga podpišejo vsi družbeniki in je notarsko overjen.

#### **30. člen**

### **Jeziki**

Ta akt o ustanovitvi je sestavljen v angleškem, francoskem, nemškem, ruskem in španskem jeziku. Za vpis v trgovinski register se nemška različica pošlje ustreznemu nemškemu sodišču, ki vodi ta register.

#### **31. člen**

## **Neodvisnost določb**

(1) Če je ali postane določba tega akta o ustanovitvi nična ali neveljavna v celoti ali deloma, to ne učinkuje na veljavnost drugih določb tega akta.

(2) Neveljavna določba se nadomesti z veljavno določbo, tako da v največjem možnem obsegu upošteva duh in namen neveljavne določbe.

(3) Podobno velja v primeru, da ta akt o ustanovitvi ne zajema zadeve, ki naj bi bila njegov sestavni del.

## **32. člen**

### **Objave**

Z zakonom zahtevana obvestila družbe se objavijo v nemškem elektronskem zveznem uradnem listu (Elektronischer Bundesanzeiger), na spletni strani družbe in tudi v ustreznem Uradnem listu EU.

## **SKLEPNA LISTINA**

### **KONFERENCE POOBLAŠČENCEV ZA USTANOVITEV CENTRA ZA RAZISKAVE Z ANTIPROTONI IN IONI V EVROPI**

(1) Po razgovorih glede možnih prihodnjih usmeritev zmogljivosti Gesellschaft für Schwerionenforschung GmbH (GSI) je GSI leta 2000 začel pripravljati zasnovo centra za mednarodne raziskave z antiprotoni in ioni na lokaciji GSI v Darmstadtu.

Na podlagi idejnega projekta, ki vsebuje številne znanstvene in tehnične prispevke s celega sveta, je zasnovo centra leta 2002 ovrednotil in potrdil nemški znanstveni svet (Wissenschaftsrat).

Po sklepu Vlade Zvezne republike Nemčije iz leta 2003 o ustanovitvi predlaganega centra sta bila pripravljena načrt fazne izgradnje in znanstveni program.

Oblikovan je bil mednarodni usmerjevalni odbor. Ustanovitvena seja mednarodnega usmerjevalnega odbora FAIR je bila 2. februarja 2004.

Za spremljanje priprave znanstvenih in raziskovalnih programov, tehničnega načrta, gradbenih načrtov ter razvojne in raziskovalne dejavnosti je bila ustanovljena delovna skupina za znanstvene in tehnične zadeve (STI-FAIR). Dodatna delovna skupina za upravne in finančne zadeve (AFI-FAIR) je bila ustanovljena za vzpostavitev pravne, finančne in upravljalvske strukture, postopkov in sestavo pravnih dokumentov.

S podpisom pisem o nameri je leta 2004 veliko število ustanov iz različnih držav izrazilo interes za sodelovanje ali prispevek za prihodnji center FAIR.

Do konca februarja 2007 so vlade Avstrije, Kitajske, Finske, Francije, Nemčije, Grčije, Indije, Italije, Poljske, Romunije, Rusije, Španije, Švedske in Združenega kraljestva Velika Britanija in Severna Irska podpisale memorandum o soglasju, da bi zagotovile podlago za mednarodno sodelovanje med pripravljalno fazo centra FAIR.

7. novembra 2007 so predstavniki desetih od štirinajstih pogodbenic memoranduma o soglasju podpisali sporočilo o uradni ustanovitvi centra za raziskave z antiprotoni in ioni v Evropi (FAIR), s katerim so skupaj oznanili začetek uresničevanja projekta FAIR.

(2) Na povabilo Vlade Zvezne republike Nemčije se je na gradu Biebrich v Wiesbadnu 4. oktobra 2010 sestala konferenca pooblaščenecv za ustanovitev centra za raziskave z antiprotoni in ioni v Evropi.

(3) Vlade naslednjih držav so zastopali delegati: Republika Avstrija, Ljudska republika Kitajska, Republika Finska, Francoska republika, Zvezna republika Nemčija, Helenska republika, Republika Indija, Italijanska republika, Republika Poljska, Romunija, Ruska federacija, Slovaška republika, Republika Slovenija, Kraljevina Španija, Kraljevina Švedska in Združeno kraljestvo Velika Britanija in Severna Irska.

(4) Pooblaščeneci so predsedniku(ci) konference predali svoja polna pooblastila, ki jih je preučil(a) in ugotovil(a), da so pooblastila v pravilni in ustrezni obliki.

(5) Konferenca se je seznanila z besedilom konvencije, vključno z njeno prilogo in štirimi priloženimi tehničnimi dokumenti:

text="Priloga: Akt o ustanovitvi »Centra za raziskave z antiprotoni in ioni v Evropi GmbH« (FAIR GmbH), Tehnični dokument 1: opis centra FAIR v izgradnji in faze gradnje (sklop A) in Začetna modularna različica – postopni pristop k izgradnji Centra za raziskave z antiprotoni in ioni v Evropi (FAIR) (sklop B), Tehnični dokument 2: podrobna razčlenitev gradbenih stroškov in preglednica s predvidenim letnim gibanjem izdatkov za gradnjo in delovanje, Tehnični dokument 3: karta lokacije, kjer bo zgrajen center FAIR, Tehnični dokument 4: postopek prevzema stvarnih vložkov in s tem povezan način vrednotenja."

(6) Po priporočilu mednarodnega usmerjevalnega odbora FAIR je konferenca sprejela besedilo Konvencije o izgradnji in delovanju Centra za raziskave z antiprotoni in ioni v Evropi, vključno z njeno prilogo, ki je sestavni del konvencije.

(7) Konferenca se je strinjala, da se konvencija do začetka njene veljavnosti uporablja začasno, če je začasna uporaba v skladu z notranjo zakonodajo pogodbenic, in v ta namen sprejela sklep št. 1, ki je priložen tej sklepni listini.

(8) Konferenca se je strinjala, da bo z zavezo prispevati za gradbene stroške centra FAIR najmanj 11,87 milijona evrov (ob upoštevanju cen iz januarja leta 2005) v denarju in/ali s stvarnim vložkom, pogodbenica upravičena do imenovanja ustreznega telesa kot družbenika Centra za raziskave z antiprotoni in ioni v Evropi GmbH. Konferenca se je tudi strinjala, da se lahko za ta najmanjši prispevek zaveže več pogodbenic skupaj. V tem primeru morajo ustrezna telesa, ki jih imenujejo te pogodbenice, oblikovati konzorcij, ki bo deloval kot njihov družbenik v Centru za raziskave z antiprotoni in ioni v Evropi GmbH. V ta namen je konferenca sprejela sklep št. 2, ki je priložen tej sklepni listini.

(9) Konferenca se je seznanila z izjavami

– Vlade Francoske republike,

– Vlade Republike Poljske,

– Vlade Republike Slovenije,

– Vlade Kraljevine Španije,

– Vlade Kraljevine Švedske, ki so priložene k tej sklepni listini.

(10) Konferenca je povabila vse vlade podpisnice, da čim prej zaključijo svoje morebitne ustavne postopke za začetek veljavnosti konvencije in da ustrezno uradno obvestijo depozitarja (Vlado Zvezne republike Nemčije).

(11) Konferenca je z zadovoljstvom poudarila, da lahko druge vlade v naslednjih dvanajstih mesecih podpišejo konvencijo pod pogoji, določenimi v konvenciji.

(12) Konferenca je povabila tudi druge vlade, da pristopijo h konvenciji.

V potrditev tega so pooblaščenca podpisali to sklepno listino.

Sestavljeno v Wiesbadnu 4. oktobra 2010 v angleškem, francoskem, nemškem, ruskem in španskem jeziku, pri čemer so vsa besedila enako verodostojna in se v enem izvorniku deponirajo v arhivu Vlade Zvezne republike Nemčije, ki pošlje overjene kopije vladam podpisnicam te sklepne listine in vladam pogodbenicam konvencije.

Za Vlado Republike Avstrije

Za Vlado Ljudske republike Kitajske

Za Vlado Republike Finske

Za Vlado Francoske republike

Za Vlado Zvezne republike Nemčije

Za Vlado Helenske republike

Za Vlado Republike Indije

Za Vlado Italijanske republike

Za Vlado Republike Poljske

Za Vlado Romunije

Za Vlado Ruske federacije

Za Vlado Slovaške republike

Za Vlado Republike Slovenije

Za Vlado Kraljevine Španije

Za Vlado Kraljevine Švedske

Za Vlado Združenega kraljestva Velika Britanija in Severna Irska

## **SKLEP ŠT. 1 KONFERENCE POOBLAŠČENCEV ZA USTANOVITEV CENTRA ZA RAZISKAVE Z ANTIPROTONI IN IONI V EVROPI**

Začasna uporaba konvencije FAIR

KONFERENCA

SE STRINJA, da se od 4. oktobra 2010 dalje začasno uporabljajo določbe konvencije, pri tem pa se upošteva, da je dokončni začetek veljavnosti konvencije odvisen od dokončanja ustreznih ustavnih postopkov v vsaki posamezni državi,

POVABI družbenike, ki so jih imenovala pogodbenice, ki skupaj ustanavljajo Center za raziskave z antiprotoni in ioni v Evropi GmbH, zasebno družbo z omejeno odgovornostjo (Gesellschaft mit beschränkter Haftung – GmbH) po nemškem pravu, še posebej po nemškem zakonu o družbah z omejeno odgovornostjo (Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbHG), da nemudoma podpišejo akt o ustanovitvi (priloga h konvenciji),

ZAPROSI Vlado Zvezne republike Nemčije, da zaključi postopke, potrebne za čimprejšnjo oblikovanje Centra za raziskave z antiprotoni in ioni v Evropi GmbH kot pravne osebe.

## **SKLEP ŠT. 2**

### **KONFERENCE POOBLAŠČENCEV ZA USTANOVITEV CENTRA ZA RAZISKAVE Z ANTIPROTONI IN IONI V EVROPI**

Zaveza za najmanjši prispevek za gradbene stroške, s katerimi so pogodbenice upravičene, da imenujejo ustrezno telo kot družbenika v Centru za raziskave z antiprotoni in ioni v Evropi GmbH

#### **KONFERENCA**

SE STRINJA, da bo z zavezo prispevati za gradbene stroške centra FAIR najmanj 11,87 milijona evrov (ob upoštevanju cen iz januarja leta 2005) v denarju in/ali s stvarnimi vložki pogodbenica upravičena do imenovanja ustreznega telesa kot družbenika Centra za raziskave z antiprotoni in ioni v Evropi GmbH. Za ta najmanjši prispevek se lahko zaveže več pogodbenic skupaj. V tem primeru morajo ustrezna telesa, ki jih imenujejo te pogodbenice, oblikovati konzorcij, ki bo deloval kot njihov družbenik v Centru za raziskave z antiprotoni in ioni v Evropi GmbH,

UGOTAVLJA, da 11,87 milijona evrov ustreza 1% predhodno predvidenih gradbenih stroškov centra FAIR, kakor je opisan v sklopu A tehničnega dokumenta 1, ki je priložen k tej konvenciji.

### **IZJAVA VLADE FRANCOSKE REPUBLIKE V ZVEZI Z ZAČASNO UPORABO IN NJENIMI FINANČNIMI OBVEZNOSTMI**

#### **KONFERENCA**

SE JE SEZNANILA z deklaracijo Vlade Francoske republike, ki se glasi:

v skladu s sklepom št. 1, priloženem k sklepni listini, v katerem se pogodbenice strinjajo, da se konvencija začasno uporablja do začetka njene veljavnosti, če je začasna uporaba v skladu z notranjo zakonodajo pogodbenic, Francija izjavlja, da konvencije ne more začasno uporabljati od dneva podpisa. 53. člen Ustave Francoske republike določa, da mednarodne pogodbe in sporazume pred začetkom njihove veljavnosti odobri parlament kadar imajo ti finančne posledice za finance države kakor v tem primeru.

V zvezi s postopkom, opisanim v šestem odstavku 6. člena konvencije, Francija izjavlja, da francoski delež v letnih operativnih stroških centra FAIR ne bo presegel 2%.

## **IZJAVA VLADE REPUBLIKE POLJSKE V ZVEZI Z NJENIMI FINANČNIMI OBVEZNOSTMI**

### **KONFERENCA**

SE JE SEZNANILA z izjavo Vlade Republike Poljske, ki se glasi:

Republika Poljska bo sodelovala pri izgradnji Centra za raziskave z antiprotoni in ioni v Evropi (FAIR) z zneskom v višini 23,74 milijona evrov (v cenah iz leta 2005). To zajema stvarne vložke in vložke v denarju. Prednost pri zagotavljanju sredstev imajo stvarni vložki, denarni vložek pa ne sme preseči 11,87 milijona evrov (v cenah iz leta 2005).

## **IZJAVA VLADE REPUBLIKE SLOVENIJE V ZVEZI Z ZAČASNO UPORABO KONVENCIJE**

### **KONFERENCA**

SE JE SEZNANILA z izjavo Vlade Republike Slovenije, ki se glasi:

v zvezi s sklepom št. 1, priloženim k sklepni listini, v kateri je predvideno, da pogodbenice konvencijo lahko začasno uporabljajo, dokler v posameznih državah pogodbenicah niso dokončani ustrezni ustavni postopki za začetek veljavnosti konvencije, Slovenija izjavlja, da konvencije od dneva podpisa ne more začasno uporabljati.

Slovenski zakon o zunanjih zadevah v 72. členu omogoča začasno uporabo mednarodne pogodbe pred njenim začetkom veljavnosti samo v primerih, ko je za njeno ratifikacijo pristojna Vlada Republike Slovenije, kar pa ne velja za to konvencijo, saj je njena ratifikacija v pristojnosti Državnega zbora Republike Slovenije.

## **IZJAVA VLADE KRALJEVINE ŠPANIJE**

### **V ZVEZI Z NJENIMI FINANČNIMI OBVEZNOSTMI**

#### **KONFERENCA**

SE JE SEZNANILA z izjavo Vlade Kraljevine Španije, ki se glasi:

Španija je pripravljena prispevati kot sodelujoča država k vzpostavitvi in delovanju Centra za raziskave z antiprotoni in ioni v Evropi (FAIR). Ne glede na to so obveznosti Španije ob podpisu konvencije naslednje:

1. Španija bo pregledala svoje sodelovanje v operativni fazi dve leti po njenem začetku in lahko odstopi brez pogodbene kazni, če to stori z enoletnim odpovednim rokom.
2. Če je ocena pregleda pozitivna, lahko Španija podaljša sodelovanje za nadaljnje triletno obdobje ob upoštevanju ustreznega cikla pregleda in lahko še naprej sodeluje v celotnem obdobju trajanja projekta.
3. Če se Španija po prvem pregledu odloči za nadaljevanje projekta, prevzame polno odgovornost za razgradnjo po konvenciji. Če se Španija na podlagi prvega pregleda odloči za odstop od sodelovanja, krije le petdeset odstotkov svoje obveznosti za razgradnjo centra po konvenciji.

## **IZJAVA VLADE KRALJEVINE ŠVEDSKE V ZVEZI Z NJENIMI FINANČNIMI OBVEZNOSTMI IN ZAUPNOSTJO**

## KONFERENCA

SE JE SEZNANILA z izjavo Vlade Kraljevine Švedske, ki se glasi:

Švedska je pripravljena prispevati kot sodelujoča država k vzpostavitvi in delovanju Centra za raziskave z antiprotoni in ioni v Evropi (FAIR). Vendar:

1. švedski organ, ki bo deloval kot švedski družbenik v družbi FAIR in bo za gradbene stroške prispeval znesek v višini 10 milijonov evrov (v cenah iz leta 2005), bo imenovala Vlada Kraljevine Švedske po odobritvi v parlamentu;
2. podlaga za sodelovanje Švedske pri izgradnji centra FAIR je njeno najmanj triletno sodelovanje v operativni fazi centra FAIR, vendar pa bo Švedska po prvih dveh letih ponovno preučila svoje nadaljnje sodelovanje v operativni fazi in imela možnost brez pogodbene kazni odstopiti z enoletnim odpovednim rokom, če bi po opravljenem pregledu to želela;
3. po uspešnem pregledu lahko Švedska ponudi podaljšanje svojega sodelovanja za nadaljnje triletno (ali petletno) obdobje ob upoštevanju ustreznega cikla pregleda in lahko še naprej sodeluje v celotnem obdobju trajanja projekta;
4. če bo po prvem pregledu Švedske priporočeno njeno nadaljnje sodelovanje v projektu, bo Švedska v celoti sprejela svojo obveznost za razgradnjo centra po konvenciji.

Če se po prvem pregledu Švedska odloči za odstop od sodelovanja, bo sprejela odgovornost za petdeset odstotkov svojega deleža pri stroških razgradnje po konvenciji;

5. da bi zadostili zahtevam pravila v švedski ustavi glede načela javnega dostopa do dokumentov je treba 19. člen v aktu o ustanovitvi (priloga h konvenciji) o zaupnosti, razlagati tako:

Švedski organ, ki bo deloval kot švedski družbenik v družbi FAIR (FAIR GmbH, s sedežem v Nemčiji), se vedno posvetuje z družbenikom, ki je poslal zaupne podatke, kakor so opredeljeni v 19. členu akta o ustanovitvi, preden sprejme kakršno koli odločitev, s katero dovoljuje tretjim osebam dostop do teh podatkov. Švedska se zaveda, da če po takšnem obveznem posvetovanju družbenik izjavi, da ne soglaša z razkritjem podatkov, in bi jih švedski organ kljub temu razkril, bi ravnanje Švedske skalilo odnose med Švedsko in pogodbenicami te konvencije.

V tem okviru se Švedska sklicuje na švedski zakon o javnem dostopu do informacij in tajnosti iz leta 2009, še posebej prvi odstavek prvega oddelka 15. poglavja, ki se glasi: »Tajnost velja za vsak podatek, ki se nanaša na odnose Švedske z drugo državo, ali vsak podatek, ki se kako drugače nanaša na drugo državo, mednarodno organizacijo, organ, državljan ali pravno osebo v drugi državi ali osebo brez državljanstva, če se lahko domneva, da bi razkritje podatkov lahko skalilo mednarodne odnose Švedske ali kako drugače škodilo državi«.

### 3. člen

Za izvajanje sporazuma skrbi Ministrstvo za visoko šolstvo, znanost in tehnologijo.

### 4. člen

Republika Slovenija v skladu z drugim odstavkom 1. člena Konvencije o izgradnji in delovanju Centra za raziskave z antiprotoni in ioni v Evropi (FAIR) kot družbenika, ki deluje v njenem imenu, določa Ministrstvo za visoko šolstvo, znanost in tehnologijo.

## **5. člen**

Ta zakon začne veljati naslednji dan po objavi v Uradnem listu Republike Slovenije – Mednarodne pogodbe.

Št. 630-02/10-11/11

Ljubljana, dne 24. maja 2011

EPA 1155-V

Državni zbor Republike Slovenije dr. Pavel Gantar l.r. Predsednik

(1) Besedili konvencije in sklepne listine v francoskem, nemškem, ruskem in španskem izvirniku sta na vpogled na Sektorju za mednarodno pravo Ministrstva za zunanje zadeve.