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European XFEL

Accession Guidelines

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1 Purpose

In the light of the preamble and Art. 14 of the intergovernmental “*Convention concerning the construction and operation of a European X-Ray Free-Electron Laser Facility*” (hereinafter referred to as “*Convention*”) and Art. 25 para. 1 of the Articles of Association of the European XFEL GmbH (as attached to the Convention; hereinafter referred to as “*AoA*”), the European XFEL GmbH is in general open for new partners, also outside Europe. The following Accession Guidelines shall provide guidance and set the legal framework for becoming such a new partner.

2 Scope

Various types of partnerships with the European XFEL GmbH are possible. The most integrated and intensive type is Full Membership, followed by the less integrated and intensive types of Scientific Association, User Consortium, and Scientific Collaboration. An overview of these different types of partnerships is provided in Annex I to these Accession Guidelines.

While Scientific Collaborations are agreed between the European XFEL GmbH and the respective collaboration partner on a case-by-case basis, usually without involving the Council, and establishments of User Consortia are regulated in a separate Council-approved bylaw, namely the so-called “*Guidelines for User Consortia*”, the present Accession Guidelines cover only the more integrated and intensive partnership types of a Full Membership (see No. 4 below) and a Scientific Association (see No. 5 below).

3 General accession conditions

Each accession shall be of benefit to the existing Member States of the Convention, the Shareholders of the European XFEL GmbH, and the European XFEL GmbH itself. Therefore, each new partner should, as general accession conditions, among others,

- accept and respect the legal framework of the European XFEL GmbH, in particular its peaceful purpose stipulated in Art. 1 para. 1 of the Convention and its intellectual property right regime laid down in Art. 21 et seqq. of its AoA;
- have, or at least realistically develop, a significant scientific community able to use the European XFEL Facility based on the criteria of scientific excellence and benefits to society;
- be willing and able to contribute in a reliable way scientifically, administratively, and financially towards the goals and activities of the European XFEL GmbH; and,
- for new partners outside of Europe, have a sufficiently developed industry able to tender for contracts with the European XFEL GmbH with a reasonable chance of success.

Accessions of new partners should not endanger the capacity to govern the European XFEL GmbH.

4 Full Membership

Becoming a Full Member of the European XFEL GmbH requires two steps, namely the accession of a new Member State to the Convention (see No. 4.1) and the accession of (a) new Shareholder(s), to be nominated by the new Member State after its accession to the Convention, to the European XFEL GmbH (see No. 4.2).

4.1 Step One: Accession to the Convention

According to Art. 14 para. 1 of the 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.*”

4.1.1 Specific conditions for the accession to the Convention

Besides the general accession conditions stipulated in No. 3, the agreement on the accession (hereinafter referred to as “*Accession Protocol*”) of a new Member State should consider the following specific conditions:

A new Member State shall contribute (via its Shareholder) an entrance fee towards the European XFEL GmbH compensating the construction cost contributions of those Member States that acceded to the Convention during the construction phase of the European XFEL Facility. In order to ensure comparability with such construction cost contributions, the entrance fee shall refer to 2005 euro prices (see Art. 5 para. 3 of the Convention). A deflation index of 3% p.a. shall apply to transfer the entrance fee from 2005 into real values (for escalation examples, see Annex II to these Accession Guidelines). The minimum value of the entrance fee shall be determined on a case-by-case basis, considering aspects like the gross domestic product and the strength of the relevant scientific community, as well as chances and risks of knowledge gain and drain from and to the new Member State. In no case shall the entrance fee be less than 1% of the overall construction cost for the European XFEL Facility (= 1.245903053 B€ in 2005 value) plus all prior entrance fees. The entrance fee shall be contributed in cash or, if possible and subject to the “*Internal Provisions on In-kind Contributions*”, in kind within five years after the accession of the new Member State to the Convention. Entrance fees provided in kind might be subject to value-added tax. Value-added tax resulting from such in-kind contributions, if any, shall be borne additionally by the new Member State. Art. 8 para. 2 and 3 of the Convention shall not apply in such cases.

In exceptional cases, in particular for countries with a lower gross domestic product and a smaller relevant scientific community, a consortium of two new Member States (“*group of Governments*” in terms of Art. 14 para. 1 of the Convention) could be established. Such a consortium shall be treated like one Member State, in particular regarding participation rights at committee meetings of the European XFEL GmbH (e.g. Art. 8 of the AoA, according to which the “*Shareholders of one Contracting Party may be represented in the Council by up to two delegates, representing all Shareholders of that Contracting Party*”).

4.1.2 Procedure for the accession to the Convention

If a potential new partner wishes to join the Convention as a new Member State (and to later nominate Shareholder(s) for accession to the European XFEL GmbH), it shall address a formal request to the Management Board, who will forward it to the Council, and—via its Foreign Office and embassy in Germany—to the German Federal Foreign Office (representing the depositary of the Convention, see its Art. 13 para. 1), who will inform—via a note verbale—the other Member States about this request.

Supported by the Management Board and, if appropriate, advised by the Science Advisory Committee (SAC), the Council shall then assess in writing from a scientific, administrative, and financial perspective—while considering the general (No. 3) and the specific accession conditions (No. 4.1.1)—whether and under which conditions, in particular with which minimum entrance fee, negotiations about a Full Membership shall be initiated.

Each Council delegation shall inform the relevant governmental authorities of its Member State about this assessment and shall clarify with them, whether its Member State supports—particularly from a political perspective—the opening of respective accession negotiations. Subsequently, the Council shall be informed in due form about the results of the respective consultations.

Once all Member States indicate their support, the Council shall decide by unanimous vote about the opening of and conditions (in particular minimum entrance fee) for the respective accession negotiations. If the Council votes in favour of the opening of the accession negotiations, it shall establish with at least a qualified majority (Art. 11 para. 3 lit. f AoA) a corresponding Negotiation Committee. This shall be composed of the Council Chair, the Council Vice-Chair, a representative from the German Federal Ministry of Education and Research, a representative of the Russian Council delegation, at least one representative of a further Council delegation, and both Managing Directors of the European XFEL GmbH. The Council Secretary shall act as Secretary to the Negotiation Committee as well. The German Federal Foreign Office shall be informed about the opening of the accession negotiations and the composition of the Negotiation Committee and shall subsequently inform—via a note verbale—the other Member States accordingly.

The Negotiation Committee shall negotiate with representatives of the potential new partner the provisions of an Accession Protocol, while considering particularly the conditions set by the Council in its opening decision. After completion of the accession negotiations, the Negotiation Committee shall present the draft Accession Protocol to the Council. The Council shall then decide in an unanimous vote, whether the draft Accession Protocol shall be recommended for signing by the existing Member States. After being informed accordingly, the German Federal Foreign Office will invite—via a verbal note—the other Member States to formally examine the draft Accession Protocol and to approve its content.

If all Member States agree to the Accession Protocol, it shall finally be signed by duly authorized representatives of the new and the existing Member States.

4.2 Step Two: Accession to the Company

4.2.1 Nomination of new Shareholder(s)

After its accession to the Convention, the new Member State shall nominate by written notice to the other Member States and the Council (an) appropriate Shareholder(s) (Art. 1 para. 2 of the Convention). The Member State can also nominate itself as a new Shareholder.

4.2.2 Options for the accession of new Shareholder(s)

Art. 25 para. 2 of the AoA offers two options of how the nominee(s) shall become (a) Shareholder(s), namely the transfer of shares by all existing Shareholders or the increase of the share capital followed by a transfer of the increased number of shares to the new Shareholder(s). Both options require the prior approval of the Council by unanimous vote (Art. 11 para. 2 lit. a and b of the AoA). Unless otherwise agreed, an increase of share capital is the preferred option and shall be used by the Management for the preparation of the respective accession(s).

4.2.3 Calculation of shares for new Shareholder(s)

According to Art. 6 para. 1 of the AoA, the amount of shares for the Shareholder(s) nominated by a Member State shall correspond proportionally to its respective contribution to the construction costs of the European XFEL Facility. For the purpose of the calculation of shares for the new Shareholder(s), the entrance fee of the Member State nominating the new Shareholder(s) shall be treated like the construction cost contributions of the already existing Member States/Shareholders. The sum of all construction cost contributions and entrance fees of existing and new Shareholders shall be taken as a basis for the calculation of shares, while construction cost contributions and entrance fees of Scientific Associates shall be excluded. As—according to Sec. 5 para. 2 of the German Limited Liability Companies Act (“*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*”)—the nominal value of each share must be a full euro amount, fractional shares resulting from the calculation method described above shall be allocated in accordance with the largest remainder method (also known as Hare-Niemeyer method).

If the new Member State nominates more than one new Shareholder, it shall announce to the Council the intended distribution of its full one euro shares, as calculated in accordance with the method stipulated above, among its nominated Shareholders.

5 Scientific Association

Becoming a Scientific Associate of the European XFEL GmbH does not require an accession to the Convention. According to its Art. 9, “[a]rrangements for long-term use of the European XFEL 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 [see also Art. 11 para. 2 lit. g of the AoA] of its Council.”

5.1 Specific conditions for accession as Scientific Associate

Besides the general accession conditions stipulated in No. 3, such “*arrangements for long-term use of the European XFEL Facility*” (hereinafter referred to as “*Scientific Association Agreement*”) with a new Scientific Associate shall comply with the following specific conditions.

5.1.1 Personal scope

In accordance with Art. 9 of the Convention, “*Governments or [...] establishments or organisations thereof*” can become Scientific Associates.

5.1.2 Entrance fee

A new Scientific Associate shall contribute an entrance fee. The minimum value of this entrance fee shall be determined on a case-by-case basis, considering aspects like the gross domestic product and the strength of the relevant scientific community, as well as the chances of knowledge gain and the risks of knowledge drain from the new Scientific Associate. In no case shall the entrance fee be less than 4 M€ (in 2005 prices). A deflation index of 3% p.a. shall apply to transfer the entrance fee from 2005 into real values (for escalation examples, see Annex II to these Accession Guidelines). The entrance fee shall be contributed in cash or, if possible and subject to the “*Internal Provisions on In-kind Contributions*”, in kind within five years after the signature of the Scientific Association Agreement.

5.1.3 Operation cost contributions

The new Scientific Associate shall contribute to the annual operation costs of the European XFEL GmbH in cash. Its operation cost contributions shall be calculated in accordance with the “*Scheme of repartition of the operating costs among the Shareholders*”, as approved by the Council on the basis of Art. 5 para. 5 of the Convention. For the non-usage-dependant part of its operation cost contributions, the share of its entrance fee to the sum of all construction cost contributions and entrance fees of all existing and new Shareholders and Scientific Associates shall serve as a calculation basis. In the case of an over-proportional beamtime usage by scientists of the

Scientific Associate country, the usage-dependant part of the operation cost contributions of this Scientific Associate shall include an additional component (not stipulated in the “*Scheme of repartition of the operating costs among the Shareholders*”) representing delayed compensation for construction costs and some overhead costs. The rationale is to provide an incentive for new partners to pay more than the bare minimum necessary to participate in the European XFEL, in particular for countries that are potentially large consumers of beamtime. The exact value of this component shall be determined individually in the respective Scientific Association Agreement.

5.1.4 Currency and value-added tax

The amounts for entrance fees and operation cost contributions shall be in euro and are net prices. Value-added tax, if applicable, shall be borne additionally by the Scientific Associate. Art. 8 para. 2 and 3 of the Convention is not applicable for Scientific Associates who did not accede to the Convention.

5.1.5 Observer status

A new Scientific Associate has the right to nominate observer(s) for the AFC (“*Administrative and Finance Committee*”) and Council. These observers shall be given access to all AFC and Council documents and shall be allowed to attend AFC and Council meetings. They do not have the right to vote. Further details regarding the status of AFC and Council observers, their rights and obligations, as well as the general procedural rules for the AFC and Council, are regulated in the “*Rules of Procedure*” of the respective committee.

5.1.6 Beamtime

The same beamtime allocation policy (incl. provisions about beamtime free of charge and reimbursement of travel and living expenses to scientists travelling to Schenefeld for the experiment) applied to the scientific community of the Shareholder countries shall apply to the scientific community of the Scientific Associate country.

5.1.7 Duration

The status of Scientific Associate has a time limit, i.e. it is valid only up to a certain number of years (e.g. five years). After this period, the Scientific Association has to be re-negotiated on the basis of a many-year record of use of the European XFEL Facility.

5.1.8 Interest in becoming a Full Member

Demonstration of real interest in and progress toward becoming a full Contracting Party will be one of the factors that will be taken into consideration by the Council during the establishment and prolongation of a Scientific Association.

5.1.9 Scientific Associate consortia

In exceptional cases, in particular for countries with a lower gross domestic product and a smaller relevant scientific community, and in line with Art. 9 of the Convention ("*groups of Governments*"), a consortium of two new Scientific Associates could be established. Such a consortium shall be treated like one Scientific Associate, in particular regarding participation rights at committee meetings of the European XFEL GmbH.

5.2 Procedure for accession as Scientific Associate

If a potential new partner wishes to join as Scientific Associate, it shall address a formal request to the Council Chair, who will forward it to the Council and to the Management Board.

The Management Board shall then assess for the Council in writing—while considering in particular the general accession conditions (No. 3)—whether and with which minimum entrance fee (No. 5.1.2) negotiations about a Scientific Association Agreement shall be initiated. Based on this assessment, the Council shall decide in a unanimous vote about the opening of respective contract negotiations.

If the Council votes unanimously in favour of the opening of contract negotiations, the Management Board shall negotiate the provisions for a

Scientific Association Agreement, while considering particularly the specific accession conditions stipulated in No. 5.1 and those potentially set by the Council (in particular the minimum entrance fee) in its opening decision.

After completion of the contract negotiations, the Management Board shall present the written draft to the Council for approval. The Council shall decide on the signing of the Scientific Association Agreement in a unanimous vote (Art. 11 para. 2 lit. g of the AoA).

If the Council votes unanimously in favour of such a signing, the Scientific Accession Agreement shall finally be signed by the European XFEL GmbH and the new Scientific Associate.

6 Usage of contributions of new partners

Entrance fees of new partners shall be used in accordance with Art. 20 of the AoA and, therefore, first and foremost to upgrade the European XFEL Facility as described in its Technical Design Report (e.g. building SASE4 and SASE5, as well as a second fan).

Operation cost contributions of new partners should preferably be added to the operation cost contributions of the already existing partners, in particular to finance operation costs resulting from facility upgrades paid from entrance fees. Only if the operation cost contributions of new partners are not required to fund additional operation costs shall they be used to reduce the operation cost contribution of the already existing partners.

However, each annual budget, including its intended use and size, remains subject to approval by the Council with at least a qualified majority (Art. 11 para. 3 lit. c of the AoA).

7 Relationship to other regulations

In cases of conflict between provisions of the present Accession Guidelines, on the one hand, and provisions of the Convention, mandatory statutory law, or the AoA, on the other, the later provisions prevail.

8 Entry into force

With its approval by the Council (with, at least, simple majority; Art. 11 para. 4 of the AoA), the present Accession Guidelines become effective and replace the “*Provisions for the status of Scientific Associate*”.

Annex I: Overview on different types of partnerships

	Full Membership	Scientific Association	User Consortium	Scientific Collaboration
Property rights (e.g. assets) of the European XFEL GmbH	Yes (acc. to shares)	No	No	No
Access rights to intellectual property of the European XFEL GmbH	Yes (acc. to Art. 21 et seqq. of the AoA)	No	No	No (except as otherwise agreed in the context of the specific scientific project)
Co-determination rights (via Council decisions, e.g. on scientific programme, legal structure and bylaws, accessions, and annual budgets of the European XFEL GmbH)	Yes (acc. to shares)	Only observer status at Council and AFC meetings (without having full voting rights)	No (also no participation rights at Council and AFC meetings)	No (also no participation rights at Council and AFC meetings)
Access rights to beamtime	Yes	Yes (but in case of overuse, additional operation cost component according to No. 5.1.3 of these Accession Guidelines)	Priority access (acc. to Sec. 3.5 of the “ <i>Guidelines for User Consortia</i> ”)	Yes, but only in exceptional cases, if not part of the scientific community of a Full Member or Scientific Associate (according to Sec. 6.2 of the “ <i>Policy for the allocation of beamtime</i> ”)
Legal basis for the above-mentioned rights	Convention, AoA and bylaws of the European XFEL GmbH	Scientific Association Agreement and bylaws of the European XFEL GmbH	User Consortium Agreement (based on “ <i>Guidelines for User Consortia</i> ”)	Collaboration Agreement

Annex II: Escalation of 1 M€ from 2005 values onwards

Year	Escalation with 3% p.a. (in M€)	Year	Escalation with 3% p.a. (in M€)	Year	Escalation with 3% p.a. (in M€)
2005	1.0000	2015	1.3439	2025	1.8061
2006	1.0300	2016	1.3842	2026	1.8603
2007	1.0609	2017	1.4258	2027	1.9161
2008	1.0927	2018	1.4685	2028	1.9736
2008	1.1255	2019	1.5126	2029	2.0328
2010	1.1593	2020	1.5580	2030	2.0938
2011	1.1941	2021	1.6047	2031	2.1566
2012	1.2299	2022	1.6528	2032	2.2213
2013	1.2668	2023	1.7024	2033	2.2879
2014	1.3048	2024	1.7535	2034	2.3566