

STATUTES UPDATED
of the
EUROPEAN SYNCHROTRON RADIATION FACILITY (ESRF)
(INSTALLATION EUROPEENE DE RAYONNEMENT SYNCHROTRON)

Société civile

THE UNDERSIGNED

The Centre National de la Recherche Scientifique (CNRS)
3, rue Michel Ange, F-75016 PARIS
represented by its President

The Commissariat à l'Énergie Atomique et aux Énergies Alternatives (CEA)
Bâtiment Le ponant D - 25 rue Leblanc, F-75015 PARIS
represented by its Administrator General

The Deutsches Elektronen-Synchrotron DESY
Notkestraße 85, D-22607 HAMBURG
represented by its Board of Directors

The Consiglio Nazionale delle Ricerche (CNR)
Piazzale Aldo Moro 7, I-00185 ROMA
represented by its President

The Istituto Nazionale di Fisica Nucleare (INFN)
Via Enrico Fermi 40, I-00044 FRASCATI (ROMA)
represented by its President

The United Kingdom Research and Innovation (UKRI)
Polaris House, North Star Avenue, UK-SN1 1SZ SWINDON
represented by its Chief Executive

**The Federal State Budgetary Institution National Research Centre “Kurchatov Institute”
(NRC “Kurchatov Institute”)**
Akademika Kurchatova pl.,1, Moscow, 123182
represented by its President

The **BENESYNC** consortium formed by

**The Service public fédéral de programmation (SPP) Politique scientifique /
Programmatorische federale Overheidsdienst (POD) Wetenschapsbeleid (BELSPO)**
Avenue Louise 231, B-1050 Bruxelles / Louizalaan 231, B-1050 Brussel
represented by its President

The Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO)
Laan van Nieuw Oost-Indië 300 NL-2593 CE DEN HAAG
represented by its Executive Board President

The **NORDSYNC** consortium formed by

The Danish Agency for Science and Higher Education (DAFSHE)

Bredgade 40, DK-1260 KØBENHAVN K

represented by its Director General

The Academy of Finland

Hakaniemenranta 6, POB 131, FI-00531 HELSINKI

represented by its President

The Research Council of Norway

Drammensveien 288, NO-0283 OSLO

represented by its Director General

The Vetenskapsrådet (Swedish Research Council)

Västra Järnvägsgratan 3, SE-111 64 STOCKHOLM

represented by its Director General

The Kingdom of Spain, represented by the

Secretary General for Research

Ministerio de Ciencia e Innovación (MCIN)

Paseo de la Castellana, 162, E-28071 MADRID

The Swiss Confederation,

represented by the State Secretary for Education, Research and Innovation,

State Secretariat for Education, Research and Innovation (SERI)

Einsteinstrasse 2, CH-3005 BERNE

Hereinafter referred to as ‘the Members’

Noting that the Belgian organization and the Dutch organization have formed a consortium BENESYNC for their participation in the Company and that the four Nordic organizations have formed a consortium NORDSYNC for their participation in the Company and that, although they have all signed the present Statutes, only the consortium BENESYNC represented by the Service public fédéral de Programmation Politique scientifique (BELSPO) and the consortium NORDSYNC represented by the Danish Agency for Science and Higher Education (DAFSHE), are Members of the Company;

Having regard to the Convention, hereinafter referred to as ‘the Convention’, concerning the construction and operation of a European Synchrotron Radiation Facility, signed in Paris on 16 December 1988, amended in 1991 for the accession of the Kingdom of the Netherlands, and amended in 2014 for the accession of the Government of the Russian Federation, among the Contracting Parties defined in the preamble of the Convention and hereafter referred to as the ‘Contracting Parties’;

Hereby agree to establish a *Société civile* under Articles 1832 to 1873 of the French *Code Civil*, hereinafter called ‘the Company’, to be governed by the Convention and the present Statutes.

CHAPTER I - GENERAL PROVISIONS

Article 1 NAME AND SEAT

1. The Company shall be known as the European Synchrotron Radiation Facility.
2. The Company shall have its registered office at 71 Avenue des Martyrs, Grenoble, France.

Article 2 OBJECTS

The objects of the Company shall be, within the framework of the Convention:

- (a) to design, construct, operate, and develop, for the use of the scientific communities of the Contracting Parties, a synchrotron radiation source and associated instruments;
- (b) to support the use of the Facility by the scientific communities of the Contracting Parties;
- (c) to draw up and execute programmes of scientific research using synchrotron radiation;
- (d) to carry out any necessary research and development work in techniques using synchrotron radiation;
- (e) to carry out any task associated with the achievement of the foregoing objects.

CHAPTER II - MANAGEMENT OF THE COMPANY

Article 3 ORGANS

The organs of the Company shall be the Council and the Director General.

Article 4 THE COUNCIL

1. Delegates to the Council shall be appointed and have their appointments terminated in accordance with a procedure determined by the relevant Contracting Party in accordance with Article 3 of the Convention. The Council shall act as the Meeting of the Members of the Company required by article 1853 of the French *Code Civil*.
2. Subject to the provisions of the Convention and these Statutes, the Council shall draw up its own rules of procedure.
3. Each Contracting Party shall appoint to the Council a delegation composed of up to 3 delegates.
4. Delegates may be accompanied by advisers in accordance with the Council's own rules of procedure.

Article 5 CHAIRMAN AND VICE-CHAIRMAN OF THE COUNCIL

The Council shall elect a Chairman and a Vice-Chairman for a period not exceeding two years. The Chairman and the Vice-Chairman shall be from different delegations.

Article 6
COUNCIL SECRETARIAT

The Council shall, with the agreement of the Director General, designate as its Secretary a member of the staff of the Company.

Article 7
MEETINGS OF THE COUNCIL

1. The Council shall meet at least twice a year.
2. Meetings of the Council shall not be public. Unless the Council decides otherwise, the Director General and the Chairmen of Committees appointed by the Council may attend meetings without the right to vote.

Article 8
POWERS OF THE COUNCIL

1. The Council shall decide important issues of Company policy. The Council may issue instructions to the Director General.
2. The following matters shall require the unanimous approval of the Council:
 - (a) the admission of new Members;
 - (b) arrangements in accordance with Article 8 of the Convention;
 - (c) transfer of shares among Members of different Contracting Parties, and increase in the capital;
 - (d) the Council's rules of procedure;
 - (e) the financial rules;
 - (f) amendment of these Statutes;
 - (g) increases in the construction costs as set out in Article 5 of the Convention.
3. The following matters shall require the approval of the Council by a qualified majority:
 - (a) the election of its Chairman and Vice-Chairman;
 - (b) the medium term scientific programme;
 - (c) the annual budget and medium term financial estimates;
 - (d) the closure of the annual accounts;
 - (e) the appointment and termination of the appointments of the Director General and the Directors;
 - (f) the establishment and terms of reference of advisory or other committees, notably an Administrative and Finance Committee;
 - (g) the appointment of the chairman and the vice-chairman of each advisory or other committee;
 - (h) the Audit Committee's terms of reference and rules of procedure;
 - (i) the policy for the allocation of beam time;
 - (j) short and medium term arrangements for use of the ESRF by national or international scientific organisations;
 - (k) the *Convention d'Entreprise* (Company agreement on the conditions of service of its staff).

4. The Council shall take decisions on other matters by a simple majority.

Article 9
VOTING PROCEDURE

1. Each Contracting Party shall have a single indivisible vote exercisable by the delegate designated for this purpose by the relevant Members.
2. A "simple majority" means half of the capital, the number of unfavourable votes not exceeding half of the Contracting Parties.
3. A "qualified majority" means two-thirds of the capital, the number of unfavourable votes not exceeding half of the Contracting Parties.
4. "Unanimity" means at least two-thirds of the capital and no counter-vote of any Contracting Party, all Contracting Parties having an opportunity to vote.
5. In case of urgency, or at the request of any delegation, the Chairman shall submit an urgent proposal for decision to the Council by consulting delegates individually by correspondence. The proposal shall be approved if the required majority of delegations give their written assent. However, if any delegate promptly so requests, the question shall be remitted to the next meeting of the Council.

Article 10
DIRECTOR GENERAL

1. The Director General shall be the chief executive of the Company and its legal representative. The Director General shall be assisted by the Directors. The Director General shall closely involve the Directors in all areas of his work.
2. The Director General and, after consultation with the Director General, the Directors shall be appointed by the Council for a period not exceeding five years. Their contracts of employment shall be approved by the Council and shall be signed by the Chairman of the Council on behalf of the Company.

Article 11
REPORTS AND FINANCIAL PROCEDURE

1. The Company's financial year shall be the calendar year.
2. The Director General shall regularly submit to the Council:
 - (a) an annual report on the Company's activities;
 - (b) the accounts for the preceding financial year including a report on the geographical distribution of contracts;
 - (c) an out-turn forecast for the current financial year and a statement of the Company's current cash position;
 - (d) a proposed budget and staff plan for the coming financial year in accordance with the financial rules;
 - (e) a medium term scientific programme and financial and staff plan.

Article 12
STAFF

1. Staff employed by the Company shall have salaries corresponding to those of the French *Commissariat à l'Energie Atomique et aux Energies Alternatives* together with appropriate expatriation or other allowances similar to those of the Institut Max von Laue - Paul Langevin. During the construction period, the Council may approve additional allowances in individual exceptional cases. The organisations having signed these Statutes may also second to the Company staff employed by them.
2. Scientists supporting the experimental programme may not be engaged by the Company or seconded to it for a period exceeding five years unless the Council decides otherwise.
3. Other highly qualified staff may be exceptionally engaged for a limited period.
4. Secondment of staff shall be governed by a contract between the Company and the seconding organisation. This contract shall in particular stipulate that staff seconded to the Company shall be subject to its rules concerning discipline, safety and security.
5. In addition the Company may receive guest research workers who may or may not be proposed by the Members; such research workers shall likewise be subject to the Company's rules concerning discipline, safety and security. The reception of each of these research workers shall be the subject of a written agreement with the Company.

Article 13
CONTRACTS

1. The Council shall appoint a Purchasing Committee composed of up to two experts nominated by each Contracting Party.
2. The procedure for awarding contracts having a value of more than 50 000 Euro or such other figure as may be decided by the Council shall be as follows:
 - (a) decisions on the placing of contracts shall be taken only after evaluation of competitive tenders normally including at least three from suppliers established in the territory of the Contracting Parties. The members of the Purchasing Committee shall be informed of forthcoming invitations and may propose suppliers which should be invited to tender;
 - (b) contracts shall be awarded to the supplier submitting the most favourable tender meeting the technical and delivery requirements.
3. No contract having a value of more than 0.5 million Euro or such other figure as may be decided by the Council shall be awarded without the approval of the Purchasing Committee. No contract having a value of more than 5 million Euro or such other figure as may be decided by the Council shall be awarded without the approval of the Council.
4. In exceptional cases, the Council may approve a dispensation from the foregoing procedure. The Director General shall report to the Purchasing Committee and the Council regularly on the distribution of contracts. In the case of a significant imbalance in the value of contracts among the countries of the Contracting Parties in comparison with their contributions the Council shall upon request of any Contracting Party consider appropriate measures to be implemented by the Purchasing Committee and the Director General, having regard to *juste retour*.

Article 14
INTELLECTUAL PROPERTY

1. The Company shall be the owner of all rights in the results obtained by staff employed by the Company itself in the course of their duties. If any of these results constitute inventions, the Company may apply in its own name, at its own cost and for its own benefit for intellectual property rights in any country where it considers such protection necessary.
2. If the Company decides not to apply for such protection in one or more countries the inventor or inventors may, with the consent of the Company, apply for such protection in their own name, at their own costs and for their own benefit. In such cases, any patent protection which may be granted shall not be exercisable against the Company or the Members.
3. Staff employed by the Company who are inventors of an invention may receive an *ex gratia* award the amount of which will be determined by the Director General in accordance with rules laid down by the Council.
4. Each Member shall be entitled to obtain from the Company on request a licence for research or for purposes other than research. This licence shall be free of charge for research activities conducted by that Member. For other than research purposes the licence may be granted on conditions more favourable than those of licences granted to third parties. Subject to approval of the Member concerned, the Company shall grant to any natural or legal person in the country or countries of that Member a licence on fair and reasonable terms for purposes other than research, except where the Council decides that the grant of such a licence is not warranted.
5. In the case of staff seconded to the Company by a Member the following provisions shall apply:
 - (a) Subject to legislative provisions applicable to inventions of employees the seconding Member shall be the owner of all rights in the results obtained solely by the research worker in the course of his work at the Company. If any of these results constitute inventions, the seconding Member shall have the right to apply in any country in its own name, at its own cost and for its own benefit for patents necessary for the protection of such inventions. In respect of these results the Company and the other Members shall have free of charge the right of use for research purposes only. The other Members shall also have the right to a licence for purposes other than research on conditions more favourable than those of licences granted to third parties. In addition, the Member owning the rights shall not refuse to grant a licence for purposes other than research on fair and reasonable terms to any natural or legal person in the country or countries of the Members at the request of another Member.
 - (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 of the Company and of the seconded person.
 - (c) When applying for intellectual property rights and granting licences the Company and the Members shall consult each other in cases of doubt and shall refrain from actions which may prejudice the Company or the Members.
6. The conditions governing applications for intellectual property rights and possible granting of rights to use information and inventions made by other seconded personnel during the period of secondment shall be laid down in written contracts with such personnel or the seconding institutions. These contracts shall be in accordance with principles laid down in paragraph 5 above. In the case of results obtained jointly by a guest research worker with one or more guest research workers from different organisations or with the participation of personnel referred to in paragraphs 1 and 5 above, the provisions to apply to property in and use of the said results shall be determined case by case by the Council.

7. The principles of paragraph 5 above shall apply to contracts concluded by the Company with third parties concerning the implementation of studies or research and development work.

Article 15

SCIENCE ADVISORY COMMITTEE

1. The Council shall appoint a Science Advisory Committee. The Members of each Contracting Party together holding at least 10 % of the capital defined in Article 18 below may nominate two scientists of the Committee. The Members of each Contracting Party together holding less than 10 % of the capital defined in Article 18 below may nominate one scientist of the Committee. The governments or groups of governments or the establishments or organizations thereof, with which arrangements for long-term use of synchrotron radiation in accordance with Article 8 of the Convention are in force, may together nominate one scientist of the Committee. The Council shall appoint a further ten scientists to the Committee with the aim of achieving a satisfactory coverage of the scientific themes for the Company. Delegates to the Council or other persons designated by it may attend meetings of the Science Advisory Committee as observers.
2. After consultation with the Science Advisory Committee, the appointment of the chairman and the vice-chairman of the Committee is made by the Council in accordance with the procedure set out in Article 8.
3. At the request of the Council or the Director General, or on its own initiative, the Science Advisory Committee shall give its opinion on relevant scientific work.

Article 16

MACHINE ADVISORY COMMITTEE

1. The Council shall appoint for the period of construction a Machine Advisory Committee composed of not more than 15 persons.
2. After consultation with the Machine Advisory Committee, the appointment of the chairman and the vice-chairman of the Committee is made by the Council in accordance with the procedure set out in Article 8.
3. At the request of the Council or the Director General, or on its own initiative, the Machine Advisory Committee shall give its opinion on relevant technical matters.

Article 17

AUDIT

The Company's accounts shall be audited by a firm of professional auditors approved by the Council. Its report shall be submitted to an Audit Committee appointed by the Council. The Audit Committee shall include at least one person nominated by each Contracting Party.

CHAPTER III - MEMBERSHIP OF THE COMPANY

Article 18 CAPITAL

1. The registered capital shall be a minimum of fifteen thousand two hundred and fifty (15 250) Euro divided into ten thousand (10 000) shares each of one Euro and five hundred and twenty five thousandths (1 525). The Members shall subscribe the following numbers of shares of ownership in the Company, based on their contributions to the operating costs:

Centre National de la Recherche Scientifique (CNRS)	1375
Commissariat à l'Energie Atomique et aux Energies Alternatives (CEA)	1375
Deutsches Elektronen-Synchrotron DESY	2400
Consiglio Nazionale delle Ricerche (CNR)	880
Istituto Nazionale di Fisica Nucleare (INFN)	440
United Kingdom Research and Innovation (UKRI)	1050
Federal State Budgetary Institution National Research Centre “Kurchatov Institute”	600
BENESYNC, represented by the Service public fédéral de programmation (SPP) Politique scientifique ¹ (BESLPO)	580
NORDSYNC, represented by the Danish Agency for Science and Higher Education (DAFSHE)	500
Ministerio de Ciencia e Innovación (MCIN)	400
State Secretariat for Education, Research and Innovation (SERI)	400

Article 19 TRANSFER OF SHARES AND INCREASE OF CAPITAL

1. The number of shares of the Member or Members of a Contracting Party corresponds to its financial contribution to the operating costs. Each Member shall hold at least 4 % of the shares.
2. In case of any change in the financial contributions the Member or Members involved are committed to execute the corresponding transfer of shares.
3. Transfer of shares among Members of different Contracting Parties, and any increase in the capital, shall require the unanimous approval of the Council. Approval shall be presumed in the case of a transfer of all or some of the shares between Members of the same Contracting Party or in the case of a transfer of shares from a Member to a publicly funded body of the same Contracting Party.

Article 20 ADMISSION OF NEW MEMBERS

1. The Company shall be open to the admission of new Members subject to the unanimous approval of the Council. Approval shall be presumed in the case of a new Member of one Contracting Party.
2. The admission of a new Member is subject to the accession to the Convention of the relevant Government or group of Governments. A new Member shall acquire shares from the existing Members.

¹ In Dutch, Programmatorische federale Overheidsdienst (POD) Wetenschapsbeleid.

Article 21
OBLIGATIONS OF MEMBERS

The capital and recurrent expenditure necessary to achieve the objects of the Company shall be borne by each of the Members in accordance with the budget in the proportions set out in Article 6 of the Convention. When contracts for the supply of goods or services are concluded between the Company and any of the Members, the Members concerned undertake to supply the goods or services without profit to themselves.

Article 22
WITHDRAWAL

If a Contracting Party withdraws in accordance with Article 13 of the Convention, the corresponding Members shall have to withdraw from the Company also and shall be liable at the request of the remaining Members to contribute in an appropriate way to the future cost of dismantling the Company's plant and buildings.

CHAPTER IV - DURATION, WINDING UP, DISPUTES

Article 23
DURATION

The Company shall be established for a period of 99 years. It shall, however, be dissolved upon earlier termination of the Convention.

Article 24
WINDING UP OF THE COMPANY

1. The Members undertake to arrange the dismantling of all the Company's plant and buildings and to finance the relevant costs in proportion to their share of the capital at the time of dissolution.
2. During the winding up, the Members also undertake to maintain the Company and to meet, in proportion to their share in the capital, the expenses involved in maintaining the Facility whilst not in use.
3. The Council shall decide the procedure to be followed.

Article 25
APPLICABLE LAW

French law shall govern all matters not expressly regulated by the Convention and these Statutes.

Article 26
DISPUTES

1. The Members shall as far as possible try to settle by amicable means any dispute which may arise from the interpretation or application of these Statutes.
2. Should no amicable settlement be reached, the Members undertake to submit the dispute to the Contracting Parties for resolution in accordance with Article 10 of the Convention.

Article 27
ENTRY INTO FORCE

These Statutes shall enter into force upon signature by all Members.

Done at Paris on 16 December 1988 in four originals in the French language²/ at Paris on 9 December 1991 in five originals in the French language³, and in a single original in the Dutch, English, German, Italian, and Spanish languages, and at Paris on 26 March 2018 in five originals in the French language⁴, and in a single original in the Dutch, English, German, Italian, Russian and Spanish languages. In case of conflict the French version shall prevail.

² Original ESRF Statutes

³ Statutes updated taking account of the accession of the Netherlands to the ESRF Convention

⁴ Statutes updated taking account of the accession of Russia to the ESRF Convention