

PROCEDURE FOR ECMWF THIRD PARTY ACTIVITIES

Adopted by the Council at its 73rd session (June 2010)

Amended by the Council at its 83rd extraordinary session (October 2014)

Amended by the Council at its 86th session (December 2015)

1. Introduction

In accordance with Article 2(5) of the Convention, “The Centre may carry out activities requested by third parties that are in line with the purposes and objectives of the Centre and that are approved by the Council in accordance with Article 6(2) (g). The cost of such activities shall be borne by the third party concerned.”

It should be noted that the term “third party” could also refer to several “third parties” funding one activity jointly.

In order to approve a Third Party Activity, the Council will wish to satisfy itself that:

- the activity is in line with the purposes and objectives of the Centre;
- the cost of such an activity shall be borne by the third party concerned;
- such an activity will not expose the Centre and/or its Member States to unreasonable risks or liability.

2. Approval procedure

The following approval procedure of a Third Party Activity is required:

1. The Director-General (DG) informs the Member States of a request to carry out an activity on behalf of a third party. This preliminary information should include:

- a brief description of the raison d’être and legal statute of the third party;
- the objectives and purposes of the proposed activity;
- the resource and liability implications of the proposed activity, including an approximate financial envelope;
- a risk analysis and, when appropriate, risk mitigation measures;
- an estimated timeframe for approval and execution of the activity.

2. On that basis, the Council, in accordance with Article 2(5) of the Convention, is asked to agree that the activity is in line with the purposes and objectives of the Centre, and, if deemed appropriate, to authorise the DG to negotiate an agreement (or contract, or other equivalent legal instrument) with the third party concerned, and to provide any guidance, in particular as regards risk mitigation (voting majority: double 2/3).

3. The DG negotiates the agreement, which should define the activity, the respective roles, tasks and responsibilities of ECMWF and the third party in the execution of the Third Party Activity; the agreement should also define arrangements for issues such as liabilities, intellectual property rights, data policy, termination, and compensation.

4. Once the agreement has been negotiated with the third party, the Council is asked to approve the Third Party Activity and to authorise the DG to sign the agreement with the third party (voting majority: double 2/3).

5. The agreement with the third party shall enter into force on the date of the signature or at any other point in time defined in the agreement.

3. Guiding principles for implementation

1. A Third Party Activity shall be carried out in line with the purposes and objectives of the Centre, as defined in Article 2 of the Convention.

2. A Third Party Activity shall be executed under ECMWF rules and regulations, and under the terms of the agreement, contract or other equivalent legal instrument signed with the third party.

3. ECMWF's involvement in a Third Party Activity shall be covered by the privileges and immunities as foreseen in Article 16 of the Convention.

4. A Third Party Activity may be combined with specified elements of the Centre's core activities, if such elements are necessary for implementing the Third Party Activity; however, a Third Party Activity shall not compromise the Centre's core activity.

Implementing instruction: *With reference to guiding principle 6, Copernicus will be considered to meet these criteria.*

5. A Third Party Activity may be combined with an Optional Programme to create the necessary conditions for the implementation of a Third Party Activity,

6. Governance of a Third Party Activity shall be defined as part of the agreement, contract or other equivalent legal instrument with the third party. In cases addressed in paragraphs 4 and 5 above, governance shall involve the ECMWF Council or the participants in the relevant Optional Programme.

7. All costs incurred by ECMWF for the implementation of the agreed Third Party Activity should be payable by the third party.

Implementing instruction: *The costs of the operation of Copernicus services as a Third Party activity should be considered on the basis of full cost recovery, and may include some elements of the pre-contract costs incurred by the Centre for the negotiation and preparation phases. These costs must be fully recovered over the lifetime of the contract.*

8. The Third Party Activity to be undertaken by ECMWF and the third party will be carried out on a best efforts basis except where otherwise provided. Wherever possible, a cross-waiver of liability should be agreed by ECMWF and the third party.

9. The DG shall submit annually to the Council for information a report on each Third Party Activity. The report should include information on scientific, technical, administrative and financial aspects of the programme as appropriate.

Implementing instruction: For each Service, the Director General shall report on;

- the scientific and technical contribution of ECMWF to Copernicus Services.
- matters relating to the financial and administrative aspects of the operation of Copernicus Services.
- the consistency of the services with the purpose and objectives of ECMWF.

The report shall be presented at the winter session of Council, after consideration by its committees, and shall cover both the current year and plans for the forthcoming year. This report shall be presented in conjunction with the budget process described in principle no.10 below.

The Director General shall inform the President of Council of any serious disputes which have arisen in the operation of Copernicus Services, which have not been resolved at operational level and which have been escalated to Director General level in accordance with the procedure provided for in the Delegation Agreement.

10. A separate budget based on the payment schedule specified in the agreement with the third party shall be established on a yearly basis and incorporated in the annual budget documents. This budget will, however, not be voted on by Member States, but will be presented to the Council for information.

Implementing instruction: In accordance with Article 12 of the Convention, the Council will adopt the annual budget, which will include the total annual budget for Copernicus Services delegated to ECMWF as Entrusted Entity. When adopting this budget it will not vote on the elements of the Copernicus Services which are designated as 3rd Party Industrial Activities.

11. The financial reporting to delegate bodies shall follow standard ECMWF procedures.

Implementing instruction: With respect to contracts for Copernicus-related expenditures which are designated as 3rd Party Industrial Activities, the provisions of Article 31 of the Centre's Financial Regulations will not apply. An annual report will be made to Council listing contracts with a value in excess of £1,000,000 which have been issued with respect to Copernicus 3rd Party Activities. This report shall be included in the Annual Report of the DG to Council on Third Party Activities.

12. Where appropriate in the context of ECMWF's core activities and Optional Programmes, the Secretariat shall seek to obtain, where possible, that the Centre owns all intellectual property rights for all resulting products and any associated data, software, documentation, or other information.

13. The ownership of the information, data and intellectual property arising from work performed under the Third Party Activity as well as corresponding licences to be granted shall be defined in the agreement, taking due account of the combination with elements of the Centre's core activities or Optional Programmes; as a minimum, Member States and Co-operating States shall be given a non-exclusive, irrevocable licence for use of the data and products generated under the Third Party Activity, for their official duty use as well as for research and education purposes.