

ISTITUTO NAZIONALE DI FISICA NUCLEARE
CONSIGLIO DIRETTIVO

DELIBERAZIONE N. 13863

Il Consiglio Direttivo dell'Istituto Nazionale di Fisica Nucleare, riunito a Roma in data 30 ottobre 2015 alla presenza di n. 33 dei suoi componenti su un totale di n. 34;

- premesso che nel 2009 il Governo Italiano ha sottoscritto, insieme a numerosi altri Governi europei e non europei, la Convenzione per la partecipazione alla realizzazione dell'infrastruttura di ricerca europea denominata X-FEL (Amburgo) alla quale l'INFN, su designazione del MIUR, partecipa in qualità di stakeholder attraverso finanziamenti in cash o in kind al progetto;
- considerato che dal 2013 i contributi italiani al progetto vengono assegnati dal MIUR al all'INFN attraverso il decreto di ripartizione del Fondo Ordinario Enti di ricerca (FOE) e che, per effettuare il trasferimento di detti fondi a titolo di rimborso di quanto anticipato da X-FEL all'industria italiana attraverso DESY come contributo in-kind italiano, si rende di volta in volta necessario stipulare un Accordo specifico tra INFN ed X-FEL GmbH;
- vista la precedente deliberazione del Consiglio Direttivo n. 13325 del 23 luglio 2014 con la quale l'INFN ha approvato l'Accordo per il trasferimento ad X-FEL GmbH dell'importo di 6.5 MEuro a titolo di rimborso per il contributo italiano in-kind ai costi di costruzione sotto forma di cavità e criomoduli;
- preso atto dello stanziamento messo a disposizione dal MIUR tramite il Decreto Ministeriale per il riparto del Fondo Ordinario per gli Enti e le istituzioni di ricerca per gli anni 2014 e 2015;
- visto lo schema di "Annex 1 to the Agreement concerning the Italian contribution to the construction of the European X-Ray Free-Electron Laser Facility between INFN and the European X-FEL GmbH", allegato alla presente deliberazione e di essa parte integrante;
- vista le note degli amministratori di X-FEL, Dr. Claudia Burger e Avv. Meike Flammer, del 9 ottobre u.s.;
- su proposta della Giunta Esecutiva;
- con n. 33 voti favorevoli;

DELIBERA

1. E' approvato lo schema di "Annex 1 to the Agreement concerning the Italian contribution to the construction of the European X-Ray Free-Electron Laser Facility between INFN and the European X-FEL GmbH", allegato alla presente deliberazione e di essa parte integrante.

2. Il Presidente è autorizzato a sottoscriverlo.
3. Gli oneri finanziari derivanti dall'attuazione del presente Accordo, pari a Euro 8.688.692,00, trovano copertura coi fondi FOE 2014 e 2015 assegnati dal MIUR con vincolo di destinazione in forza dell'Accordo descritto in narrativa.

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ANNEX 1
to the Agreement signed on 30 July 2014
concerning the Italian contribution to the construction of the
European X-Ray Free-Electron Laser Facility
on the purchase of cryostats and cavities

between

the **European X-Ray Free-Electron Laser Facility GmbH**,
hereinafter referred to as “**European XFEL GmbH**”,

located at Albert-Einstein-Ring 19, D-22761 Hamburg (Germany),

represented by its Managing Directors

Professor Dr. Massimo Altarelli, Chairperson of the Management Board, and
Dr. Claudia Burger, Administrative Director,

and

the **Istituto Nazionale di Fisica Nucleare**,
hereinafter referred to as “**INFN**”,

a public scientific and technological research Institution, having its registered seat at
Via Enrico Fermi, 40, 00044 Frascati (Rome), Italy,

represented by its President, Prof. Fernando Ferroni,

hereinafter collectively referred to as the “**Parties**” and individually as “**Party**”,

Whereas

- The European XFEL GmbH has made a total advance payment of net 34.325.507 € (thirty-four-million three-hundred-twenty-five-thousand five-hundred-seven), equivalent to 27.638.000,00 € in 2005 prices (twenty-seven-million six-hundred-thirty-eight-thousand Euro) to DESY as reimbursement for its down payments to Italian companies for the order of cryostats and cavities, out of which 21.794.170,00 € (twenty-one-million seven-hundred-ninety-four-thousand one-hundred-seventy Euro) have been reimbursed until 2014 through payments made by Elettra (formerly ST) and INFN.
- The European XFEL GmbH awaits compensation for the remaining advance payment of net 12.531.337 € (Euro twelve-million five-hundred thirty-one thousand three-hundred thirty-seven) from the Italian Government and/or from institutions delegated by the Italian Government.
- In compliance with the Italian MIUR indications and so as to support the Italian participation in the European XFEL project, INFN will transfer an amount of **8.688.692,00 €** (eight-million six-hundred-eighty-eight-thousand six-hundred-ninety-two Euro), available based on the funds attributed to INFN through the Italian “Decreto ministeriale per il riparto del Fondo ordinario per gli enti e le istituzioni di ricerca per gli anni 2014-2015” (Ministerial Decree for budget allocation to research entities and institutions for the fiscal years 2014 and 2015) as contribution to the European XFEL GmbH to partially cover the cost of the contract awarded to Italian companies for the supply of cryostats and cavities.
- It is intended that the transfer by INFN to the European XFEL GmbH of the **remaining amount of 3.842.645,00 €** (three-million eight-hundred-forty-two-thousand six-hundred-forty-five Euro) will occur immediately when the corresponding funds for the fiscal year 2016 have been attributed and subsequently transferred from MIUR to INFN.

Premises to be considered integral part of the present Annex 1 to the Agreement, the Parties have agreed upon the following:

ARTICLE 1**Italian Contribution to the European XFEL Construction,
purchase of cryostats and cavities and reimbursement**

For INFN's payment obligation the same terms and conditions (availability of funds from the MIUR, details of bank transfer, etc.) as in the Agreement shall apply. Upon signature of this Annex 1, INFN will provide for the money transfer on the European XFEL GmbH's bank account. The **8.688.692,00 €** (eight-million six-hundred-eighty-eight-thousand six-hundred-ninety-two Euro) contribution received from INFN will be

recognized as part of the Italian contribution to the European XFEL project in accordance with the Convention mentioned in the Agreement. In such a way the Parties will acknowledge that the aforementioned sum will be recorded as part of the Italian contribution, although the corresponding crediting according to the aforementioned Convention and the common rules approved by the Council of the European XFEL GmbH will be finalized only after the accession of an Italian shareholder to the European XFEL GmbH.

ARTICLE 2

Correspondence

All correspondence shall contain a reference to the present Annex 1 and shall be sent to:

the **INFN Central Administration**

Dr. Simona Fiori

Director of Finance and Administration

Via Enrico Fermi, 40

I-00044 Frascati (Rome), Italy

or to

the **European X-Ray Free-Electron Laser Facility GmbH**

Albert-Einstein Ring 19

D-22761 Hamburg, Germany

ARTICLE 3

Duration

The present Annex 1 will come into effect on the date of the last signature.

ARTICLE 4

Applicable Law and Jurisdiction

1. The present Annex 1 is subject to Italian law (but without regard to Italian conflicts of law rules).
2. In the event of conflict, the Parties shall make every effort to reach an amicable settlement. Should the Parties fail to reach an amicable settlement within reasonable time, all disputes due to, arising from or in connection with the present

Annex 1, shall be finally submitted to the sole competence and jurisdiction of the ordinary Courts of Rome.

ARTICLE 5

Final provisions

1. Any amendment to this Annex 1, including any changes or additions, shall be subject to a supplementary written agreement. Any oral agreement shall not be binding for the Parties.
2. All documents relating to this Annex 1 shall be written in English.
3. Should any provision of this Annex 1 be, or become invalid, this shall not affect the validity of the remaining provisions. In this event, the Parties shall be obliged to replace the invalid provision, by a valid provision which most approximates the purpose of the invalid provision. The same applies in case of a gap.

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Established in Rome (Italy) on _____ (date) and in Hamburg (Germany) on _____ (date) in 2 (two) originals.

Signed for and on behalf of INFN:

Prof. Dr. Fernando Ferroni

President of INFN

Signed for and on behalf of the European XFEL GmbH:

Professor Dr. Massimo Altarelli

Chairperson of the Management Board,
Managing Director

Dr. Claudia Burger

Administrative and Managing Director