



Delibera n. 64/2014, Verbale CdA n. 13/14

Oggetto: approvazione del draft Agreement tra la European Organisation for Astronomical Research in the Southern Hemisphere (ESO) e gli *Sponsoring Bodies* dell'*Astronomy and Astrophysics Journal*, recante nuovi termini e condizioni per la pubblicazione dell'A&A.

IL CONSIGLIO DI AMMINISTRAZIONE

- VISTO** il Decreto Legislativo 4 giugno 2003, n. 138 di riordino dell'Istituto Nazionale di Astrofisica, pubblicato nella G.U. del 19 giugno 2003, n. 140;
- VISTO** il Decreto Legislativo 31 dicembre 2009, n. 213 di riordino degli Enti di ricerca in attuazione dell'articolo 1 della legge 27 settembre 2007, n. 165;
- VISTO** lo Statuto dell'INAF, entrato in vigore il 1° maggio 2011, ed in particolare gli artt. 2 e 24, comma 1, lett. a);
- VISTO** il Disciplinare di Organizzazione e Funzionamento dell'Istituto Nazionale di Astrofisica, approvato con propria deliberazione n. 44/2012 del 21 giugno 2012, entrato in vigore il 23 luglio 2012 e successivamente modificato con proprie deliberazioni n. 84/2013 del 19 dicembre 2013 e n. 07/2014 del 19 febbraio 2014;
- VISTO** il Regolamento sull'amministrazione, sulla contabilità e sull'attività contrattuale dell'INAF, pubblicato sul S.O. n. 185 alla G.U. Serie Generale n. 300 del 23 dicembre 2004;
- VISTA** la propria deliberazione n. 58/2014 del 17 dicembre 2014 di approvazione del bilancio di previsione dell'INAF relativo all'esercizio finanziario 2015;
- CONSIDERATO** che l'Italia, dal 1982, è membro dell'ESO (European Southern Observatory), la principale organizzazione intergovernativa di astronomia in Europa che offre agli astronomi strutture di ricerca d'avanguardia ed è sostenuta da Austria, Belgio, Brasile, Danimarca, Finlandia, Francia, Germania, Gran Bretagna, Paesi Bassi, Portogallo, Repubblica Ceca, Spagna, Svezia e Svizzera;
- MESSO IN RILIEVO** che, nel dicembre del 1968, l'ESO ha stipulato un accordo con la società editrice Springer-Verlag per la fondazione dell'*Astronomy and Astrophysics Journal*, una pubblicazione di carattere scientifico tesa alla diffusione della conoscenza e dello studio dell'astronomia e dell'astrofisica nel mondo;
- SOTTOLINEATO** che, sin dalla sua prima pubblicazione, avvenuta nel gennaio del 1969, l'*Astronomy and Astrophysics Journal* si è contraddistinto per l'alta qualità dei contenuti scientifici apparsi sulle sue pagine, al punto da renderla, negli anni, la più autorevole e prestigiosa rivista nel campo dell'astronomia e dell'astrofisica a livello mondiale;

TENUTO CONTO	che, nel corso degli anni, altri partners hanno aderito all'accordo del 1968 e che, ad oggi, sono complessivamente 24 gli <i>sponsoring bodies</i> del giornale;
DATO ATTO	che l'INAF è subentrato al CNR nella compagine degli <i>sponsoring bodies</i> della rivista;
RAVVISATO	l'interesse comune a tutti i partners di addivenire al rinnovo dei termini e delle condizioni contrattuali sottoscritte nel 1968;
VISTA	la nota tramessa per le vie brevi dal dott. Luigi Piro in data 20 ottobre u.s., con la quale è stato trasmesso il nuovo <i>draft agreement</i> tra A&A ed ESO, nonché il <i>draft budget</i> per l'anno 2015;
CONSIDERATO	che il contributo previsto per il 2015 a carico dell'Istituto ammonta ad euro 22.590,00;
VAGLIATO	il testo dell'Agreement;
ACQUISITO	per le vie brevi, il parere favorevole del Direttore Scientifico alla sottoscrizione dell'accordo;
ACCERTATO	che la copertura finanziaria dell'importo di euro 22.590,00 sussiste sul C.R.A. 1.05.02.01 "Relazioni Internazionali", capitolo 1.06.02 "Accordi e convenzioni con istituzioni scientifiche nazionali ed internazionali", centro di costo 0.04.05 "Unità Centrale V – Relazioni Internazionali" del bilancio di previsione dell'INAF per l'esercizio finanziario 2015;

DELIBERA

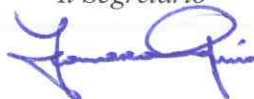
con voto unanime dei presenti, espresso nei modi di legge:

- di approvare, nel testo allegato alla presente deliberazione in modo da formarne parte integrante e sostanziale, il draft Agreement tra la European Organisation for Astronomical Research in the Southern Hemisphere (ESO) e gli *Sponsoring Bodies* dell'*Astronomy and Astrophysics Journal* (A&A);
- di conferire sin d'ora mandato al Presidente in ordine alla sottoscrizione dell'accordo in questione all'atto della redazione del testo definitivo.

La copertura finanziaria dell'importo di euro 22.590,00 sarà garantita dai fondi disponibili sul C.R.A. 1.05.02.01 "Relazioni Internazionali", capitolo 1.06.02 "Accordi e convenzioni con istituzioni scientifiche nazionali ed internazionali", centro di costo 0.04.05 "Unità Centrale V – Relazioni Internazionali" del bilancio di previsione dell'INAF per l'esercizio finanziario 2015.

Roma, 18 dicembre 2014

Il Segretario



Il Presidente



AGREEMENT BETWEEN

-European Organisation for Astronomical Research in the Southern Hemisphere

And

- Asociación Argentina de Astronomía**
- Kommission für Astronomie der Österreichischen Akademie der Wissenschaften**
- Belgian National Committee for Astronomy**
 - Sociedade Astronomica Brasileira**
 - Bulgarian Academy of Sciences**
 - Sociedad Chilena de Astronomía**
 - Czech National Committee of the IAU**
- Croatian Ministry of Science, Education and Sport**
- Instrument Center for Danish Astrophysics (IDA), Aarhus University, Institute for Physics and Astronomy,
-Tartu Observatory**
- Finnish National Committee for Astronomy**
- Centre National de la Recherche Scientifique**
 - Rat Deutscher Sternwarten**
 - Hellenic Astronomical Society**
 - Hungarian Academy of Sciences**
 - INAF, Istituto Nazionale di Astrofisica**
 - Lithuanian Astronomical Society**
- Nederlandse Onderzoekschool voor Astronomie**
 - Polish Academy of Sciences**
 - Sociedade Portuguesa de Astronomia**
 - Slovak National Committee of the IAU**
- Secretaría General de Política Científica y Tecnológica**
 - The Swedish Research Council**
 - Akademie der Naturwissenschaften SCNAT**

CONCERNING THE PUBLICATION OF THE SCIENTIFIC JOURNAL

ASTRONOMY & ASTROPHYSICS

The European Organisation for Astronomical Research in the Southern Hemisphere, having its Headquarters at Karl-Schwarzschild-Strasse 2, D-85748 Garching bei München (Germany), hereinafter referred to as “ESO”,

on the one hand,

and

Asociación Argentina de Astronomía, having its registered office at ...
Kommission für Astronomie der Österreichischen Akademie der Wissenschaften, having its registered office at Dr. Ignaz Seipel-Platz 2, 1010 Vienna, Austria
Belgian National Committee for Astronomy, having its registered office at ...
Sociedade Astronomica Brasileira, having its registered office at ...
Bulgarian Academy of Sciences, having its registered office at ...
Sociedad Chilena de Astronomía, having its registered office at ...
Czech National Committee of the IAU, having its registered office at ...
Croatian Ministry of Science, Education and Sport, having its registered office at ...
Instrument Center for Danish Astrophysics (IDA), Aarhus University, Institute for Physics and Astronomy, having its registered office at Ny Munkegade 120 DK-8000 Aarhus, Denmark, represented by the Head of IDA Prof. Hans Kjeldsen,
Tartu Observatory, having its registered office at ...
Finnish National Committee for Astronomy, having its registered office at ...
Centre National de la Recherche Scientifique, having its registered office at ...
Rat Deutscher Sternwarten, having its registered office at ...
Greek National Committee for Astronomy, having its registered office at ...
Hungarian Academy of Sciences, having its registered office at ...
INAF Istituto Nazionale di Astrofisica, having its registered office at Viale del Parco Mellini, 84 – 00136 Rome, Italy, represented by its President, Prof. Giovanni Fabrizio Bignami;
Lithuanian Astronomical Society, having its registered office at ...
Nederlandse Onderzoekschool voor Astronomie, having its registered office at Niels Bohrweg 2, 2333CA Leiden, the Netherlands, represented by its Managing Director Dr. Wilfried Boland;
Polish Academy of Sciences, having its registered office at ...
Sociedade Portuguesa de Astronomia, having its registered office at ...
Slovak National Committee of the IAU, having its registered office at ...
Secretaría General de Política Científica y Tecnológica, having its registered office at ...
Swedish Research Council, having its registered office at ...
Akademie der Naturwissenschaften SCNAT, having its registered office at ...

For the purpose of this Agreement, hereafter collectively referred to as the "Sponsoring Bodies".

on the other hand.

PREAMBLE

NOTING the Statement of astronomers from France, the Netherlands, Denmark, Norway, Sweden, Finland, Belgium and Germany concerning the creation of the European Journal of Astronomy and Astrophysics, of its Board of Directors and the relation of these to ESO dated 02 December 1968 and that on 5 December of 1968 an Agreement was concluded between ESO and the Board of Directors of Astronomy and Astrophysics with the aim to merge five of the principal existing astronomical journals into a new to be created *Astronomy and Astrophysics Journal*, hereinafter referred to as "the Journal";

CONSIDERING that since the creation of the Journal on 1 January 1969 high quality international papers on all aspects of astronomy and astrophysics (theoretical, observational, and instrumental) have been published independently of the techniques or facilities used to obtain the results;

WHEREAS several other Sponsoring Bodies have joined the 1968 Agreement, bringing the current number of Sponsoring Bodies to 24;

NOTING that since the creation of the Journal the policy-making body for the Journal has been the A&A Board of Directors, consisting of senior astronomers representing the Sponsoring Bodies;

CONSIDERING that from the beginning ESO has acted on behalf of the A&A Board of Directors in contractual matters and in making available to the A&A Board of Directors its legal and administrative services, however, with the restriction that ESO would neither commit itself with regard to any direct financial sponsorship for the Journal, nor interfere in the scientific policy of the Journal. In return, ESO has had one representative on the A&A Board of Directors;

CONSIDERING that neither the network of Sponsoring Bodies nor the A&A Board of Directors are legal entities of their own which could perform the legal or administrative acts

necessary for the publication of the Journal and noting ESO's willingness to perform such acts;

NOTING that with the accession of numerous Sponsoring Bodies to the Journal a renewal of the terms of the Agreement of 1968 has become necessary;

CONVINCED that since 1968 the Journal has substantially contributed to fostering international collaboration among the astronomical community;

DESIROUS to continue promoting co-operation in astronomical research;

ESO AND THE SPONSORING BODIES HAVE AGREED AS FOLLOWS:

ARTICLE 1: PURPOSE

The purpose of this Agreement is to establish the new terms and conditions for the continuous publication of the Journal, as agreed between ESO and the Sponsoring Bodies.

ARTICLE 2: A&A BOARD OF DIRECTORS

1. The governing body of the Journal is the A&A Board of Directors (hereinafter referred to as "A&A Board"). The A&A Board shall be composed of one member from ESO and of one member appointed from each Sponsoring Body. All the members shall be astronomers.
2. The A&A Board shall:
 - a. Define the long-term scientific policies, including the general guidelines for publishing, and the priorities for the Journal;
 - b. Define the scientific editorial policy of the Journal;
 - c. Appoint the Scientific Editors
 - d. Recommend the ESO Council to approve the budget of the Journal, which shall be prepared by ESO in consultation with the Chair of the A&A Board, including an estimate of income and expenditure on A&A operations within a financial year, by simple majority plus weighted voting as approved by the A&A Board;
 - e. Approve, by a two-thirds majority, the accession of new Sponsoring Bodies under a procedure to be defined by the A&A Board;

- f. Support ESO for administrative matters, as required;
 - g. Assess the compliance of the bids in the tendering process for publishing agreements;
 - h. Authorise the Editors of the Journal with the right to waive publication charges, under the conditions to be set up by the A&A Board.
 - i. Be vested with the authority to take the measures necessary for the publication of the Journal in accordance with this Agreement.
3. The A&A Board shall meet at least once a year. It shall decide on the venue of its meetings.
4. Each member of the A&A Board shall have one vote in the A&A Board.
5. The decisions of the A&A Board shall be binding only if at least one half of the members are present.
6. Unless otherwise provided for in this Agreement, decisions of the A&A Board shall be taken by simple majority of the members present and voting.
7. The A&A Board shall determine its own rules of procedure, subject to the provisions of this Agreement.
8. The A&A Board shall appoint a Chairperson and a Vice-Chairperson from among its members for a term of office of three years. The Chairperson and the Vice-Chairperson may not be re-elected more than once consecutively.
9. The A&A Board may set up auxiliary bodies as may be necessary.

ARTICLE 3: FINANCIAL CONTRIBUTIONS OF THE SPONSORING BODIES

1. The Sponsoring Bodies shall share the costs for the operations of the Journal and shall be met by annual contributions in accordance with an annual scale of contributions which shall be recommended by ESO and approved by the A&A Board by simple majority plus weighted voting as approved by the A&A Board. The scale of contributions shall be calculated on the basis of the average Gross Domestic Product published by the World Bank (hereafter "GDP") of each country where the Sponsoring

Bodies are located for the years n-2 to n-4 (including), whereof “n” shall be the year of budget preparation. In the absence of a regular publication by the World Bank of the GDP for the country where a Sponsoring Body is located, the figures for that Sponsoring Body shall be estimated by ESO by continued application of the last available growth rate.

- a. A minimum contribution shall apply, as approved by the A&A Board within the budget.
 - b. The A&A Board may decide, by a unanimous decision, to take into account any special circumstances of a Sponsoring Body and adjust its contribution accordingly for a limited period of time.
 - c. The A&A Board may decide, by a two-thirds majority, that new Sponsoring Bodies that have acceded in accordance with the procedure established under Article 2.2.e above can be exempted from the obligation to make a financial contribution for a maximum of two years following the accession.
2. Annual contributions shall be called up and credited in EUR. They shall be due in one instalment payable not later than 1 April, unless decided otherwise by the A&A Board.
 3. Upon approval of the budget and the annual scale of contributions ESO shall notify the Sponsoring Bodies of the amounts of their contributions and of the dates by which payments are due.
 4. Payment of contributions from the Sponsoring Bodies shall be acknowledged by ESO immediately upon receipt.
 5. If a Sponsoring Body fails to pay the contributions due within 90 days of the due date, ESO shall inform the A&A Board.

ARTICLE 4: EXEMPTION OF PUBLICATION CHARGES

1. Except for the provisions of Article 7.2 below, astronomers who are employed by an organisation with headquarters located within a country where one of the Sponsoring Bodies is located or who have a place of residence in such a country shall enjoy free publication of articles in the Journal, unless they are employed by an organisation with headquarters located outside a country in which one of the Sponsoring Bodies is located.

2. ESO personnel shall enjoy free publication of articles in the Journal.

ARTICLE 5: ROLE OF ESO

1. ESO shall perform, in accordance with ESO rules, all executive functions necessary for the publication of the Journal consistent with this Agreement, in particular, the collection and administration of the contributions from the Sponsoring Bodies, the conclusion of the publishing agreement, the conclusion of the contract with the editors, the preparation of the budget of the Journal, the accounting, and all other legal and administrative functions, considering that neither the Sponsoring Bodies collectively nor the A&A Board have the legal personality to perform such tasks.
2. All costs associated with these functions shall be compensated to ESO as part of the operational costs of the Journal according to Article 3.1.
3. ESO shall keep the funds pertaining to the Journal on separate accounts and will provide the A&A Board with all the documents referring to it, if so required by the A&A Board.
4. The budget and the Financial Statement of the Journal are consolidated in the ESO Budget and Financial Statements. For financial procedures not specified in this agreement the respective ESO rules shall apply.
5. ESO shall own the copyright of the Journal in all forms and media, for the full term of copyright.

ARTICLE 6: LIABILITY

1. The liability among the Parties arising out of or in connection with this Agreement shall be limited to the annual contributions as defined in Article 3 of this Agreement, of each and every Sponsoring Body. ESO's liability in this respect shall be limited to an amount calculated as the average of the annual contributions of all Sponsoring Bodies.
2. The liability of the Sponsoring Bodies and ESO for any damage caused to third parties shall be unlimited and joint and several.

ARTICLE 7: FAILURE TO FULFILL OBLIGATIONS

1. If the A&A Board has been notified by ESO that the amount of the arrears due from a Sponsoring Body equals or exceeds the contribution due from that Sponsoring Body for the preceding full year, the A&A Board may decide by simple majority plus weighted voting as approved by the A&A Board to suspend the right of the Sponsoring Body in arrears to vote in the A&A Board until ESO has notified the A&A Board that the amount of the arrears has been fully paid.
2. Furthermore, the astronomers employed by an organisation with headquarters located within a country where the Sponsoring Body concerned is located or with a place of residence in this country shall lose the right for free publication of articles in the Journal until ESO has notified the A&A Board that the amount of the arrears has been fully paid.
3. In case the amount of the arrears due by a Sponsoring Body is equal or exceeds five annual contributions from that Sponsoring Body, such Sponsoring Body will automatically lose its status and will no longer be a Sponsoring Body of A&A, unless otherwise decided by the A&A Board. In such eventuality, that Sponsoring Body shall have no claim on the amount of the contributions it has already made. ESO will inform the Chair of the A&A Board thereof.

ARTICLE 8: WITHDRAWAL OR REPLACEMENT OF SPONSORING BODIES

1. Any Sponsoring Body may notify the Chair of the A&A Board in writing of its withdrawal from this Agreement. Such withdrawal shall take effect at the end of the second financial year following that in which notification of withdrawal is given. The withdrawing Sponsoring Body shall continue to be fully bound by its obligations under this Agreement, in particular to pay the contributions due, as specified in Article 3 to this Agreement, until the withdrawal takes effect. Any Sponsoring Body withdrawing from this Agreement shall have no claim on the amount of the contributions it has already made.
2. A Sponsoring Body as a party to this Agreement may be replaced by a new Sponsoring Body from the same country as the original Sponsoring Body and acting on behalf of the astronomical community of this country, by giving one month notice from the original Sponsoring Body to ESO and the A&A Board. With the replacement,

the new Sponsoring Body shall be placed on the same footing as the original Sponsoring Body with regard to decisions, rulings, resolutions or any other act under this Agreement and shall assume all rights and obligations of the original Sponsoring Body. The notice shall be accompanied with a confirmation of the replacing Sponsoring Body that it accepts these conditions. The replacement shall take effect on the date as specified in the notice.

ARTICLE 9: TERMINATION OF THIS AGREEMENT

1. This Agreement may be terminated at any time by a decision adopted by two-thirds majority of the members of the A&A Board appointed by the Sponsoring Bodies. The termination of the Agreement shall take effect at the end of the second financial year following in which the decision on the termination is adopted.
2. This Agreement may also be terminated at any time by a unilateral decision of ESO. The termination of the Agreement shall take effect at the end of the second financial year following that in which notification of termination is given by ESO to the Chair of the A&A Board.
3. In case of termination as described in paragraphs 1 or 2 above, net assets or net liabilities (assets less liabilities and obligations) shall be distributed among the Sponsoring Bodies still party to this Agreement at the time of the termination in proportion of their 3 years average share of contributions prior to the year of termination. Any unpaid contribution shall be either deducted from any net assets amounts due to, or added to any net liabilities due from the Sponsoring Bodies according to the above.

ARTICLE 10: RESOLUTION OF DISPUTES

1. In case of a dispute between ESO and one or more Sponsoring Bodies, both ESO and the pertinent Sponsoring Bodie(s) shall agree and engage to enter into negotiations with the aim to reach an amicable settlement. Failing such an amicable settlement, the parties shall resort to private arbitration under the conditions described in Chapter VIII, paragraph 29 of the "General Conditions of ESO Contracts" (Annex 1).
2. The status of ESO and the applicable law are described in Chapter VIII, paragraph 30 and 31 of the "General Conditions of ESO Contracts" (Annex 1).

ARTICLE 11: ENTRY INTO FORCE

1. This Agreement shall enter into force on the date on which at least 15 Sponsoring Bodies have signed the Agreement provided that the total annual contributions committed amount to at least 50% of the total scale of contributions as calculated according to Article 3.1 for the year of signature of the last Sponsoring Body required to meet the above conditions. As for the date of its entry into force, this Agreement constitutes the entire agreement between ESO and the Sponsoring Bodies in relation to the subject matter of the Agreement and replaces and supersedes all other agreements, rules, bye-laws, communications and understandings of any kind, either written or oral, between the parties in this respect, in particular the agreement between ESO and the A&A Board of Directors dated 05 December 1968 and the Standing Rules and Bylaws of the A&A Board of Directors effective as of May 2010.
2. With respect to any Sponsoring Body joining this Agreement after the date of entry into force provided for in paragraph 1 of this Article, the Agreement shall enter into force on the date of the signature of the Accession Agreement between the acceding Sponsoring Body and ESO, who shall be acting on behalf of the Sponsoring Bodies.
3. Any modification of this Agreement requires the same level of approval as for its conclusion.

ARTICLE 12: TRANSITION

1. Contributions of a Sponsoring Body budgeted under the previous A&A agreement and the Standing Rules and Bylaws of the A&A Board of Directors which have not been paid by the time of the entry into force of this Agreement shall be paid by the Sponsoring Body of the respective country at the latest within twelve months after entry into force of this Agreement.
2. All rights and obligations of the Sponsoring Bodies created under the previous A&A agreement until the entry into force of this Agreement shall be transferred to the Sponsoring Bodies unless otherwise agreed upon in this Agreement.
3. Notwithstanding Article 11.1 above, all decisions of the A&A Board taken in accordance with the previous A&A agreement and the Standing Rules and Bylaws of

the A&A Board of Directors shall remain valid unless explicitly otherwise agreed upon in this Agreement or until and unless otherwise decided by the A&A Board in accordance with this Agreement.

4. The Chairperson and the Vice-Chairperson of the A&A Board of Directors elected before the entry into force of this Agreement shall continue their terms according to Article 2.8 of this Agreement, unless the A&A Board decides to elect a new Chairperson and Vice-Chairperson at its first meeting upon entry into force of this Agreement.
5. In case this Agreement enters into force after the approval of the A&A budget by the A&A Board for a subsequent year, but before the approval of the ESO budget by the ESO Council for the same year, the approval by the A&A Board shall be considered to constitute the recommendation of the A&A Board according to Article 2.2 d) of this Agreement.

ARTICLE 13: ANNEXES

The following Annex 1 is an integral part of this Agreement: Chapter VIII, paragraphs 29, 30 and 31 of the "General Conditions of ESO Contracts", version applicable as of June 2013.

Done at XXX on DD.MM.YYYY in twenty-five originals.

For (Sponsoring Body)

For the European Organisation for
Astronomical Research in the Southern
Hemisphere (ESO)

(Name)
(Position at the Sponsoring Body)

Tim de Zeeuw
Director General of ESO