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EUROPEAN COMMISSION

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COM(2011) 224 final

2011/0091 (NLE)

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC) No 521/2008 setting up the Fuel Cells and Hydrogen Joint Undertaking**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### **Grounds for and objectives of the proposal**

Joint Technology Initiatives (JTIs) are introduced in the Seventh Framework Programme (FP7)<sup>1</sup> on the basis of Article 187 TFEU (ex Article 171 TEC), as a way of creating public-private partnerships in research at European level. JTIs are an expression of the EU's strong commitment to coordinating research efforts, strengthening the European Research Area and reaching Europe's competitiveness goals.

The Joint Undertaking for Fuel Cells and Hydrogen (FCH JU) was established by Council Regulation (EC) 521/2008 of 30 May 2008. The three members, the Industry Grouping (IG), the Research Grouping (RG) and the European Commission share the funding of administrative and operational costs.

A requirement for the participation of industry from the outset was that industry should make a financial contribution of 50% of the running costs (shared with the Commission), and that industry's in-kind contribution to the operational costs should at least match the Commission's financial contribution.

Since its establishment the FCH JU has published three calls for proposals: the first covering 28.1 M€ the second 73.1 M€ and the third 89.1 M€. The provision for matching contributions from industry for operational costs means that industry also has to cover contributions to the other participants (including universities, research centres, public bodies, etc.) for all types of activities (including basic research).

The result in the first two FCH JU calls for proposals is that the maximum funding levels have to be systematically evaluated and reduced for all participants. For the first two calls the matching requirement resulted in a significant reduction of reimbursement of direct costs: for large industries from 50% to 33% FCH JU contribution and for SMEs and research bodies from 75% to 50%.

These funding levels are substantially lower than in FP7 (including the European Green Cars programme for battery electric vehicles) as well as in fuel cells and hydrogen R&D programmes outside Europe. The low funding rates and the financial and economic crisis, which affects the industry working with this future technology, result in the current level of participation in the actions of the FCH JU being below initial expectations. A general loss of interest by both industry and the research community can be expected if we continue along the same path.

Furthermore, contributions from public national and regional sources to the projects are encouraged and are expected in several cases. However, the current Regulation does not take it into account. The new text states that the matching of EU funds shall allow taking into account not only industry's own contribution but also that coming from the other legal entities participating in the activities.

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<sup>1</sup> OJ L 412, 30.12.2006, p.1

Given that in case of repeated insufficient matching the Commission shall first analyse the situation and then decide on appropriate measures to take, Article 12.7 second paragraph of the Annex to Regulation (EC) N° 521/2008 "the Commission shall..." has been modified to "the Commission may...".

In addition, the Industry and Research Groupings have the obligation to pay their cash contributions to the FCH JU budget for the running costs "in advance, before the start of each financial year". The Financing agreement between the Commission and the FCH JU, developed after the establishment of the FCH JU, provides for the Commission itself to pay only in instalments during the financial year. It is equitable that the two Groupings would be given the same conditions.

At present the funding level is determined after each evaluation. To increase the necessary predictability for the beneficiaries, a possibility to specify the minimum funding level for a call is introduced.

The objective of the proposal is to adapt the provisions to the above conditions.

- **General context**

Fuel cells and hydrogen (FCH) technologies are promising, long-term energy options that can be used in all the sectors of the economy and that offer a broad range of benefits for energy security, transport, environment and resource efficiency. They are expected to play a major role in the transition of the EU to a low-carbon society and to achieve the goal of cutting GHG emissions by over 85% by 2050.

FCH technologies offer to the end-user a variety of applications: (i) stationary, e.g. to generate electricity and/or heat, (ii) transport, e.g. to power vehicles, buses and trains, and (iii) portable, e.g. to power laptops and cell phones. Over the last years, the FCH industry has made considerable progress both in terms of technology development in all these application areas, particularly in performance improvement, and cost reduction.

For example, in the transportation sector, the market with highest visibility and potential for GHG reduction, a recent in-depth study using factual data from the industry concludes that fuel cell electric vehicles (FCEVs) and battery electric vehicles (BEVs) have significant potential to reduce CO<sub>2</sub> and local emissions and that both will be viable and complementary alternatives to conventional vehicles with internal combustion engines (ICEs) by 2025, or earlier with appropriate tax exemptions and/or incentives. The study also estimates that over the course of the next decades, costs for a hydrogen distribution and retail infrastructure will be 5% of the overall cost of FCEVs (€1,000-2,000 per car) which is comparable to rolling out a charging infrastructure for BEVs and plug-in hybrids (PHEVs) and justifies building a dedicated hydrogen infrastructure.

In order to enable the full contribution of FCH technologies continuous and stable public support and accompanying policy measures are still needed to overcome the remaining technological, economic and institutional barriers to their widespread commercialization. Despite the financial crisis the major EU competitors in this field (US, Japan, South Korea and China) continue to conduct comprehensive efforts to overcome these barriers via RTD programmes, policy measures and commercialisation exercises.

### **Existing provisions in the area of the proposal**

There are four other Joint Undertakings established under Article 187 TFEU (ex Article 171 TEC): CLEAN SKY, IMI, ARTEMIS and ENIAC. Each JU has its provisions adapted to the specificities of its area of activity.

### **Consistency with the other policies and objectives of the Union**

As one of the initiatives launched in January 2007 in the communication 'An Energy Policy for Europe'<sup>2</sup>, the European Commission is developing a European Strategic Energy Technology Plan (SET Plan)<sup>3</sup> to guide the course of energy technology innovation over the coming decades, deliver efficient and low-carbon technologies including fuel cells and hydrogen, and arrive at a more sustainable energy system. The European Parliament adopted a Written Declaration<sup>4</sup> in May 2007 which called upon the EU Institutions to support fuel cell and hydrogen technologies for portable, stationary, and transport applications through a partnership with committed regions and cities, SMEs and civil society organisations.

The proposed Council Regulation is consistent with EU policies in research. It is also consistent with the renewed Lisbon strategy<sup>5</sup> and the Barcelona objectives for the EU to invest 3% of its GDP in research and development by 2010. The Seventh Framework Programme (FP7) (2007-2013) plays an important role for Europe to meet these objectives. It also reflects a consensus that Europe must re-double its efforts to improve returns from its RTD&D investments in order to equip itself as a competitive and dynamic knowledge-based economy.

This initiative is part of a broad, ambitious EU strategy aimed at tackling the innovation gap which includes the proposal to establish a European Institute of Technology.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **Consultation of interested parties and use of expertise**

NOT APPLICABLE

### **Impact assessment**

NOT APPLICABLE

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **Summary of the proposed action**

The proposal consists of a Council Regulation amending the Council Regulation on the establishment of the Fuel Cells and Hydrogen Joint Undertaking.

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<sup>2</sup> "An Energy Policy for Europe; COM(2007)1 final; 10<sup>th</sup> January 2007

<sup>3</sup> Towards a European Strategic Energy Technology Plan; COM(2006)847 final; 10<sup>th</sup> January 2007

<sup>4</sup> Written Declaration pursuant to Rule 116 of the Rules of Procedure on establishing a green hydrogen economy and a third industrial revolution in Europe through a partnership with committed regions and cities, SMEs and civil society organisations, European Parliament 0016/2007, May 2007

<sup>5</sup> COM(2005) 24

## **Legal basis**

The legal basis of the proposal is Article 187 of the Treaty on the Functioning of the European Union.

## **Subsidiarity and proportionality**

NOT APPLICABLE

## **Choice of instrument**

Council regulation for amending the Council Regulation (EC) No 521/2008.

## **4. BUDGETARY IMPLICATION**

There are no financial implications compared to the budget initially adopted for this Council Regulation. The amendments suggested will improve the possibilities to eventually spend the budget foreseen.

The EU contribution, totalling 470 million EUR, will come from the following FP7 "Cooperation" Specific Programme budget lines: Energy; Nanosciences, Nanotechnologies, Materials and New Production Technologies; Transport (including Aeronautics); and Environment (including Climate Change) in DG RTD and Transport in DG MOVE and Energy in DG ENER.

## **5. OPTIONAL ELEMENTS**

[...]

Proposal for a

## **COUNCIL REGULATION**

### **amending Regulation (EC) No 521/2008 setting up the Fuel Cells and Hydrogen Joint Undertaking**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 187 and 188 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament<sup>6</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>7</sup>,

Whereas:

- (1) The Fuel Cells and Hydrogen Joint Undertaking (FCH JU) was established on 30 May 2008 by its founding members, the Industry Grouping and the Commission.
- (2) The Research Grouping became a member of the FCH JU on 14 July 2008. This Grouping contributes both financially and in kind to the objectives of the FCH JU. Account taken of the specific composition of the FCH JU as well as its rules and the nature, objectives and scope of its activities, the Research Grouping's members may benefit from the results achieved like the members of the Industry Grouping. It is therefore justified to allow the in-kind contribution from both the Industry and Research Groupings to be counted for as matching funds.
- (3) The Research Grouping became a member of the Joint Undertaking, it is appropriate to consider that the in-kind contributions of research organisations (including universities and research centres) match the Community's contribution, in the sense of Article 12(3) of the Statutes.
- (4) The FCH JU has been in operation for more than two years during which time the full operational cycle with publishing calls for proposals, evaluations of proposals, negotiations of funding and closing of grant agreements has been completed. The experience gained from that period is that the maximum funding levels in FCH JU projects had to be significantly decreased for all participants. As a result, the level of

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<sup>6</sup> OJ C [...], [...], p. [...].

<sup>7</sup> OJ C [...], [...], p. [...].

participation in the actions of the FCH JU proved to be considerably below initial expectations.

- (5) In accordance with Article 26 of the Annex to Regulation (EC) No 521/2008 setting up the Fuel Cells and Hydrogen Joint Undertaking<sup>8</sup>, the Governing Board approved the amendments of this Regulation.
- (6) Allowing in-kind contributions from all legal entities participating in the activities to be counted for as matching funding, would recognise the membership of the Research Grouping and would improve the funding levels while still respecting the basic principle of matching, as well as the need to apply fair and balanced funding reductions to the different types of participants.
- (7) The running costs of the Programme Office of the Joint Undertaking should be provided by its three members. It is appropriate to provide that all members of the Joint Undertaking have the same payment schedule.
- (8) The Commission should be given some flexibility as to the measures to take in case of insufficient matching.
- (9) At present the funding level is determined after each evaluation of received proposals. In order to allow the beneficiaries to estimate the extent of the potential funding, a possibility to specify the minimum funding level for a call should be provided for.
- (10) Regulation (EC) No 521/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The Regulation (EC) No 521/2008 is amended in accordance with the Annex to this Regulation.

#### *Article 2*

Notwithstanding Article 12(3) of the Annex to Regulation No 521/2008, the amending Regulation shall not affect the rights and obligations arising from grant agreements and other contracts concluded by the Joint Undertaking prior to the date of entry into force of this Regulation. In particular, it shall not affect the upper funding limits set therein.

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<sup>8</sup> OJ L 153, 12.6.2008, p. 1.



*Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

However, point 3(a) of the Annex shall apply from 14 July 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council  
The President*

## ANNEX

The Regulation (EC) No 521/2008 is amended as follows:

1. Article 6 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. The FCH Joint Undertaking may have its own internal audit capability."

The Annex to Regulation (EC) No 521/2008 is amended as follows:

2. Article 2 is amended as follows:

(a) The first and second indents of paragraph 2 are replaced by the following:

"— ensure that its contribution to the resources of the FCH Joint Undertaking, according to Article 12 of these Statutes is provided in advance as a cash contribution to cover 50% of the running costs of the FCH Joint Undertaking and transferred to the budget of the FCH Joint Undertaking in agreed instalments ,

— ensure that industry's contribution to the achievement of the RTD activities funded by the FCH Joint Undertaking together with the other beneficiaries' contributions at least matches the Union contribution";

(b) The fourth indent, second subparagraph of paragraph 3 is replaced by the following:

"— ensure that its contribution to the resources of the FCH Joint Undertaking, according to Article 12 of these Statutes is provided in advance as a cash contribution to cover 1/12 of the running costs of the FCH Joint Undertaking and transferred to the budget of the FCH Joint Undertaking in agreed instalments ".

3. Article 12 is amended as follows:

(a) Paragraph 3 is replaced by the following:

"3. The operational costs of the FCH Joint Undertaking shall be covered through the financial contribution of the Union, and through in-kind contributions from the legal entities participating in the activities. The contribution from the participating legal entities shall at least match the Union's financial contribution.

Receipts shall be dealt with in accordance with the Rules of Participation set out in the Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)<sup>9</sup>. This provision shall apply from the date on which the Research Grouping became member of the FCH Joint Undertaking.";

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<sup>9</sup> OJ L 412, 30.12.2006, p.1.

(b) Paragraph 7 is amended as follows:

(i) The second and third subparagraphs are replaced by the following:

"If the assessment establishes that the in-kind contribution from the participating legal entities does not reach the required level, the Commission may reduce its contribution the following year.

If it is established that the in-kind contribution from the participating legal entities does not reach the required level for two consecutive years, the Commission may propose to the Council to terminate the FCH Joint Undertaking."

4. In Article 15, the following paragraph 4 is added:

"4. The Governing Board may decide to specify a minimum funding level for each category of participant for a particular Call for proposals."

## **LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS**

This proposal for an amendment has no impact on the EU budget.

(Articles 28 of the Financial Regulation and 22 of the implementing rules)]