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REPORT

on the proposal for a Council regulation setting up the Fuel Cells and
Hydrogen Joint Undertaking
(COM(2007)0571 – C6-0446/2007 – 2007/0211(CNS))

Committee on Industry, Research and Energy

Rapporteur: Pia Elda Locatelli

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation setting up the Fuel Cells and Hydrogen Joint Undertaking (COM(2007)0571 – C6-0446/2007 – 2007/0211(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2007)0571),
 - having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ (Financial Regulation), and in particular Article 185 thereof,
 - having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management² (IIA), and in particular Point 47 thereof,
 - having regard to Articles 171 and 172 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0446/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Budgets (A6-0145/2008),
1. Approves the Commission proposal as amended;
 2. Considers that the reference amount indicated in the legislative proposal must be compatible with the ceiling of heading 1a of the current multiannual financial framework 2007-2013 and with the provisions of Point 47 of the Interinstitutional Agreement (IIA) of 17 May 2006; notes that any financing beyond 2013 shall be evaluated in the context of the negotiations for the next financial framework;
 3. Points out that the opinion delivered by the Committee on Budgets does not pre-empt the outcome of the procedure laid down in Point 47 of the IIA of 17 May 2006 which applies to the setting up of the Fuel Cells and Hydrogen Joint Undertaking;
 4. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 5. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

¹ OJ L 248, 16.9.2002, p.1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

² OJ C 139, 14.6.2006, p.1.

6. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
7. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) In March 2007, the implementation panel of the European Hydrogen and Fuel Cell Technology Platform adopted an implementation plan in which it was estimated that a budget of EUR 7,4 billion would be needed over the period 2007-2015 to meet the technological challenges, of which a third should be spent on research and development. In order for the EU to be able to develop technologies that are sustainable in the long term, a significant part of this budget for research and development should be allocated to breakthrough-oriented research.

Amendment 2

Recital 9

Text proposed by the Commission

Amendment

(9) The objective of the JTI on "Fuel Cells and Hydrogen" is to implement a programme of research, technological development and demonstration activities in Europe in the fields of fuel cells and hydrogen. These should be carried out with the cooperation and involvement of stakeholders from industry including SMEs, research centres, universities, and regions.

(9) The objective of the JTI on "Fuel Cells and Hydrogen" is to implement a programme of research, technological development and demonstration activities in Europe in the fields of fuel cells and hydrogen. These ***activities, which should build on the work carried out by the European Hydrogen and Fuel Cell Technology Platform***, should be carried out with the cooperation and involvement of stakeholders from industry including SMEs, research centres, universities, and regions.

Justification

It is important to build on work already done by the Technology Platform, such as the Strategic Research Agenda and the Deployment Strategy.

Amendment 3

Recital 10

Text proposed by the Commission

(10) Taking into account the public private partnership involving major stakeholders and its long term activity, the generated socio-economic benefits for European citizens, the pooling of financial resources and co-financing in the field of fuel cells and hydrogen RTD&D activity provided by the Commission and industry, the high scientific and technical expertise required, and the input of industrial property rights, it is vital to set up a Fuel Cells and Hydrogen Joint Undertaking (hereinafter the "FCH Joint Undertaking") under Article 171 of the Treaty. This legal entity should ensure the coordinated use and efficient management of the funds assigned to the JTI on "Fuel Cells and Hydrogen". To ensure the appropriate management of activities initiated but not concluded during the Seventh Framework Programme (2007-2013) the FCH Joint Undertaking should be set up for ***an initial period of 10 years*** ending on 31 December 2017. ***This period may be extended.***

Amendment

(10) Taking into account the public private partnership involving major stakeholders and its long term activity, the generated socio-economic benefits for European citizens, the pooling of financial resources and co-financing in the field of fuel cells and hydrogen RTD&D activity provided by the Commission and industry, the high scientific and technical expertise required, and the input of industrial property rights, it is vital to set up a Fuel Cells and Hydrogen Joint Undertaking (hereinafter the "FCH Joint Undertaking") under Article 171 of the Treaty. This legal entity should ensure the coordinated use and efficient management of the funds assigned to the JTI on "Fuel Cells and Hydrogen". To ensure the appropriate management of activities initiated but not concluded during the Seventh Framework Programme (2007-2013) the FCH Joint Undertaking should be set up for ***a period ending on 31 December 2017. It should be ensured that, after the last call for proposals in 2013, projects still in progress are implemented, monitored and funded until 2017.***

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach.

Amendment 4

Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Significant breakthroughs in a number of fields are needed in order for fuel cell and hydrogen technologies to be effectively deployed. The Commission should therefore play a key role in ensuring that proper emphasis is put on long-term research and that adequate support is given to it, taking into account advice provided by the advisory bodies of the FCH Joint Undertaking, namely the Scientific Committee and the High Level Member States Group.

Justification

Long term research should play an important role in the JTI.

Amendment 5

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The participation of SMEs, research centres and universities in the RTD activities should be promoted. In line with the Rules for Participation in the Seventh Framework Programme, the maximum level of public funding of eligible costs should, in the case of SMEs, research centres and universities, be fifty percent higher than for other entities.

Justification

The funding of projects should follow the principles of the Rules of Participation of FP7, which means that where the Community financial contribution may reach a maximum of 50% of the total eligible costs in general, for SMEs and research centres this percentage can be 75%. In case of a lower funding rate (to comply with the matching principle) the proportion should stay the same (for example 40% in "normal" cases and 60% for SMEs and research centres).

Amendment 6
Recital 12

Text proposed by the Commission

(12) The Founding Members of the FCH Joint Undertaking should be the European Community and the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping (hereinafter the 'Industry Grouping'), which represents the interests of industry and is open to private companies. A Research Grouping may become a member of the FCH Joint Undertaking.

Amendment

(12) The Founding Members of the FCH Joint Undertaking should be the European Community, **represented by the Commission**, and the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping (hereinafter the 'Industry Grouping'), which represents the interests of industry and is open to private companies **and fuel cell and hydrogen industry associations**. A Research Grouping may become a member of the FCH Joint Undertaking.

Justification

Recognition of the role of sectoral industry associations (such as Fuel Cell Europe, the European Hydrogen Association and others) is essential for the success and continuity of the JTI. These organizations are key pillars in the structuring of the dialogue between policy makers and industry, and enable greater information diffusion and consultation. They facilitate the involvement of SMEs which do not have the financial and human resources to participate in the initiative from Brussels.

Amendment 7
Recital 13

Text proposed by the Commission

(13) The running costs of the FCH Joint Undertaking should be covered equally in cash by the European Community and the Industry Grouping from the outset. If the Research Grouping is established it should contribute to **1/12 of** the running costs.

Amendment

(13) The running costs of the FCH Joint Undertaking should be covered equally in cash by the European Community and the Industry Grouping from the outset. If the Research Grouping is established it should **also** contribute to the running costs.

Justification

It is important that the research community is fully involved in the JTI, since the very early stages research should form an important element of its future work programme. In order not to create an unnecessarily high barrier for the research community to participate in the Joint Undertaking, their contribution to the running costs should be proportionate.

Amendment 8
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The running costs, and in particular the administrative costs, should be kept to an absolute minimum and full use should be made of the resources and organisational systems of existing bodies.

Justification

It is important to limit the amount of unnecessary bureaucracy and additional bodies set up.

Amendment 9
Recital 14

Text proposed by the Commission

Amendment

(14) The operational costs **for RTD&D** should be funded by the Community **and the private sector.**

(14) The operational costs should be funded by the Community, **industry and other public and private legal entities participating in the activities. Further financing may be available, inter alia, from the European Investment Bank (EIB), in particular under the Risk-Sharing Finance Facility developed jointly by the EIB and the Commission pursuant to Annex III to Decision No 971/2006/EC.**

Justification

In order to raise as much public and private investment in R&D as possible in this area, all financing options should be left open, including financing by the EIB through the Risk Sharing Finance Facility that was created in FP7.

Amendment 10
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The need to ensure stable

employment conditions and equal treatment of staff and to attract specialised scientific and technical staff of the highest calibre requires that the Commission be authorised to second as many officials as it regards necessary to the FCH Joint Undertaking. The remaining staff should be recruited by the FCH Joint Undertaking in accordance with the host country employment regulations.

Justification

The part of staff of the JTI that is not servant by the European Commission and that will be engaged by the JTI or proposed by the industry has to be recruiting in accordance with the employment rules of the host country.

Amendment 11

Recital 15

Text proposed by the Commission

(15) The FCH Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament *on the* recommendation of the Council. ***However, account should be taken of the specificities resulting from the nature of the JTI as a public-private partnership and in particular from the private-sector contribution to the budget.***

Amendment

(15) The FCH Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament, ***taking into account a*** recommendation of the Council.

Justification

By analogy with the conclusions of the trilogue of 7 March 2007 on the Joint Undertaking for ITRE, the European Parliament should be given full and unconditional responsibility for the discharge of the implementation of the budget of the FCH Joint Undertaking.

Amendment 12

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) The FCH Joint Undertaking **should adopt, subject to prior consultation with the Commission, specific financial provisions based on the principles of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities. Those provisions should take into account** its specific operating needs **arising**, in particular, **from** the need to combine Community and private funding.

Amendment

(16) **The financial rules applicable to the FCH Joint Undertaking should not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation¹, unless its specific operating needs so require**, in particular, the need to combine Community and private funding. **The prior consent of the Commission should be required for the adoption of any rules which derogate from Regulation (EC, Euratom) No 2343/2002. The budgetary authority should be informed of such derogation.**

¹ OJ L 357, 31.12.2002, p. 72. Corrigendum in OJ L 2, 7.1.2003, p. 39.

Justification

Derogations from Regulation (EC, Euratom) No 2343/2002 should be kept to an absolute minimum. The Joint Undertaking has to prove beyond any doubt that such a derogation is the only way to guarantee its proper functioning within the limits of its founding regulation.

Amendment 13 Article 1

Text proposed by the Commission

1. For the implementation of the Joint Technology Initiative (hereinafter 'JTI') on 'Fuel Cells and Hydrogen', a Joint Undertaking (hereinafter the "FCH Joint Undertaking") within the meaning of Article 171 of the Treaty is hereby set up for a period ending on 31 December 2017. **This period may be extended by a revision of this Regulation.**

Amendment

1. For the implementation of the Joint Technology Initiative (hereinafter 'JTI') on 'Fuel Cells and Hydrogen', a Joint Undertaking (hereinafter the "FCH Joint Undertaking") within the meaning of Article 171 of the Treaty is hereby set up for a period ending on 31 December 2017. **It shall be ensured that, after the last call for proposals in 2013, projects still in progress are implemented, monitored and**

2. The FCH Joint Undertaking shall have legal personality. In the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those *States*. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.

3. *The FCH Joint Undertaking shall be considered as an international body within the meaning of Article 22(c) of Directive 2004/17/EC and of Article 15(c) of Directive 2004/18/EC.*

4. The FCH Joint Undertaking shall be located in Brussels, Belgium.

5. The Statutes of the FCH Joint Undertaking are set out in Annex.

funded until 2017.

2. The FCH Joint Undertaking ***shall be a Community body as referred to in Article 185 of the Financial Regulation and Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management of 17 May 2006¹***. In ***all*** the Member States it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those *states*. It may, in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.

4. The FCH Joint Undertaking shall be located in Brussels, Belgium.

5. The Statutes of the FCH Joint Undertaking are set out in Annex.

¹ *OJ C 139, 14.6.2006, p. 1.*

Justification

It should be clear that this Joint Undertaking is a Community body and that therefore Parliamentary control over the budget is guaranteed.

Amendment 14

Article 2 – paragraph 2

Text proposed by the Commission

2. It shall, in particular:

Amendment

2. It shall, in particular:

(-a) aim at placing the European Union at the forefront of fuel cell and hydrogen technologies and at enabling the market breakthrough of fuel cell and hydrogen technologies, so that the substantial benefits expected of such technology can

(a) support research, technological development and demonstration (**RTD&D**) in the Member States and Associated countries in a coordinated manner to overcome the market failure and focus on developing market applications and thereby facilitate additional industrial efforts towards a rapid deployment of fuel cells and hydrogen technologies;

(b) support the implementation of the research priorities of the JTI on Fuel Cells and Hydrogen, notably by awarding grants following competitive calls for proposals;

(c) aim to encourage increased public and private research investment in fuel cells and hydrogen technologies in the Members States and Associated countries;

(d) conclude service and supply contracts necessary for the functioning of the FCH Joint Undertaking;

(e) ensure the efficiency and effectiveness of the JTI on Fuel Cells and Hydrogen.

be achieved by the market;

(a) support research, technological development and demonstration (**RTD**) in the Member States and ***countries associated with the Seventh Framework Programme (hereafter referred to as "Associated Countries")*** in a coordinated manner to overcome the market failure and focus on developing market applications and thereby facilitate additional industrial efforts towards a rapid deployment of fuel cells and hydrogen technologies;

(b) support the implementation of the research priorities of the JTI on Fuel Cells and Hydrogen, ***including breakthrough-oriented research***, notably by awarding grants following competitive calls for proposals;

(c) aim to encourage increased public and private research investment in fuel cells and hydrogen technologies in the Members States and Associated countries;

Justification

The legal text should reflect and focus on the main objectives. The other activities are already mentioned in the Statutes and don't need to be repeated. There is still need for breakthrough-oriented research before these technologies could be commercially and the Joint Undertaking should support it.

Amendment 15 **Article 3**

Text proposed by the Commission

Article 3

Members

1. The founding members of the FCH

Amendment

deleted

Joint Undertaking (hereinafter 'founding members') shall be:

(a) the European Community, represented by the Commission, and

(b) the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping Aisbl established under Belgian law (hereinafter the 'Industry Grouping').

2. A Research Grouping, representing non-profit research organisations, universities and research centres, may become a member (hereinafter the "member") provided that an entity to represent the research community has been established. If the Research Grouping is set up it shall have one seat in the Governing Board.

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach. It is an unnecessary duplication to stipulate these provisions both in the legal text and in the Statutes and could even create legal inconsistency.

**Amendment 16
Article 4**

Text proposed by the Commission

Amendment

Article 4

deleted

Bodies

1. Executive bodies of the FCH Joint Undertaking shall be:

(a) the Governing Board, and

(b) the Programme Office.

2. Advisory bodies of the FCH Joint Undertaking shall be:

(a) the High Level Member States Group, and

(b) the Scientific Committee.

3. The Stakeholders General Assembly

shall be a forum for consultation on the progress, state of the art, future alignment and direction of the research activities.

The Stakeholders General Assembly shall be open to all public and private stakeholders, international interests groups from Member States as well as from third countries. It shall be convened once a year.

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach. It is an unnecessary duplication to stipulate these provisions both in the legal text and in the Statutes and could even create legal inconsistency.

Amendment 17
Article 5

Text proposed by the Commission

Amendment

Sources of financing

Community contribution

1. The activities of the FCH Joint Undertaking shall be jointly funded through contributions from its founding members and member. In addition, contributions to the projects may also be accepted from Member States, Associated States, regions or other stakeholders sharing the objectives of the JTI.

2. The running costs of the FCH Joint Undertaking shall be covered equally in cash by the European Community and the Industry Grouping from the outset. If the Research Grouping is established it shall contribute to 1/12 of the running costs. In such a case, the Commission contribution will decrease correspondingly.

3. The operational costs for RTD&D shall be jointly funded through the financial contribution of the Community and through in-kind contributions from the private legal entities participating in the activities, corresponding to an amount at least equal to the Community's

contributions.

4. The maximum Community contribution to the FCH Joint Undertaking running costs and operational costs shall be 470 million EUR. The running costs are estimated not to exceed 20 million EUR. The contributions shall come from the 'Cooperation' Specific Programme implementing the Seventh Framework Programme for research, technological development and demonstration (2007-2013) implementing the Community budget according to the provisions of Article 54(2)(b) of Regulation (EC, Euratom) No 1605/2002. The arrangements for the Community financial contribution shall be established by means of a general agreement and annual financial agreements to be concluded between the Commission, on behalf of the Community, and the FCH Joint Undertaking.

5. Unless funding is provided after 2013 (when FP7 ends) only projects for which a grant agreement has been signed at the latest by 31 December 2013 shall continue in the years 2014-2017.

1. The initial Community contribution to the FCH Joint Undertaking running costs (including administrative costs) and operational costs shall be EUR 470 million. The contribution shall be paid from the appropriations in the general budget of the European Union allocated to the "Energy", "Nanosciences, Nanotechnologies, Materials and New Production Technologies", "Environment (including Climate Change)", and "Transport (including Aeronautics)" themes of the Specific Programme Cooperation implementing the Seventh Framework Programme for research, technological development and demonstration (2007-2013) implementing the Community budget according to the provisions of Article 54(2)(b) of Regulation (EC, Euratom) No 1605/2002. This contribution may be revised during a mid-term review in light of progress made and the achievements and impact of the FCH Joint Undertaking.

2. The arrangements for the Community financial contribution shall be established by means of a general agreement and annual financial agreements to be concluded between the Commission, on behalf of the Community, and the FCH Joint Undertaking.

2a. The part of the Community contribution to the FCH Joint Undertaking for the funding of RTD activities shall be granted following open, competitive calls for proposals and an evaluation, completed with the assistance of independent experts, of the proposed project.

2b. The Commission's contribution to running costs shall not exceed EUR 20 million, payable in annual instalments of up to EUR 2 million; any part of this contribution not spent during the current year shall be made available in the

following years for the RTD activities.

Justification

The amount foreseen by the Hydrogen and Fuel Cell Technology Platform (7.4 billion Euros between 2007 and 2015 to be funded through public and private funding), and necessary to achieve FCH-JTI's goals, is not being reflected in the current public budget proposal. Not only is this in stark contrast with the published declaration of intent on the part of industry to invest their share of the funds required, but clearly this under-investment jeopardises the achievability of the objectives.

Amendment 18

Article 6

Text proposed by the Commission

Amendment

Article 6

deleted

Participation in projects

1. Participation in projects shall be open to legal entities and international organisations established in a Member State, and Associated Country or any third country once the minimum conditions have been satisfied.

2. The minimum conditions to be fulfilled for projects funded by the FCH Joint Undertaking shall be the following:

(a) at least three legal entities must participate, each of which must be established in a Member State or Associated country, and no two of which may be established in the same Member State or Associated country;

(b) all three legal entities must be independent of each other as defined in Article 6 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013);

(c) at least one legal entity must be a member of the Industry Grouping or the

Research Grouping, if such Research Grouping is established.

3. The legal entities wishing to participate in a project shall form a consortium and appoint one of their members to act as its coordinator. Normally the coordinator shall be a member of the Industry Grouping, or a member of the Research Grouping, if such Research Grouping is established. Exceptions shall be approved by the Governing Board.

4. The minimum condition for service and supply contracts, support actions, studies and training activities funded by the FCH Joint Undertaking shall be the participation of one legal entity.

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach. It is an unnecessary duplication to stipulate these provisions both in the legal text and in the Statutes and could even create legal inconsistency.

Amendment 19
Article 7

Text proposed by the Commission

Amendment

Article 7

deleted

Eligibility for funding

1. The Community contribution to the FCH Joint Undertaking for the funding of the RTD&D activities shall be granted following competitive calls for proposals.

2. In exceptional cases the FCH Joint Undertaking may issue calls for tenders, if it is deemed appropriate for the effective pursuance of the research objectives.

3. Private legal entities fulfilling all the following criteria shall be eligible for such funding:

(a) they are established in a Member State or have their registered office, central or principal place of business within a state

that is a contracting party to the European Economic Area Agreement or which is an Associated or Candidate country;

(b) they have relevant activities in RTD&D, industrialization or deployment for fuel cells and/or hydrogen and/or concrete plans to do so in the near future within the European Union or the European Economic Area.

4. The following shall also be eligible for funding:

(a) non-profit public bodies established in a Member State, Associated country, Candidate Country or within the EEA, including secondary and higher education establishments;

(b) international organisations, which have legal personality under international public law, as well as any specialised agencies set up by such intergovernmental organisations;

(c) legal entities from third countries, provided that the Governing Board considers their participation to be of particular benefit to the project.

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach. It is an unnecessary duplication to stipulate these provisions both in the legal text and in the Statutes and could even create legal inconsistency.

Amendment 20

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

1. The FCH Joint Undertaking's financial provisions shall be based on the principles of Regulation (EC, Euratom) No 1605/2002. It may depart from Regulation (EC, Euratom) No 1605/2002 where the

Amendment

1. The financial rules applicable to the FCH Joint Undertaking shall not depart from Regulation (EC, Euratom) No 2343/2002, unless its specific operating needs so require and subject to prior

specific operating needs *of the FCH Joint Undertaking* so require, subject to prior consent of the Commission.

consent of the Commission. *The budgetary authority shall be informed of such derogation.*

Justification

See amendment on Recital 16.

Amendment 21
Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. *The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the FCH Joint Undertaking.*

1. *The FCH Joint Undertaking shall recruit its staff in accordance with the employment rules in force in the host country. The Commission may second to the FCH Joint Undertaking as many officials as it regards necessary.*

Justification

This amendment aims at putting the text in line with the Parliament's position on the other JTIs in order to have a consistent and horizontal approach.

Amendment 22
Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. *In respect of its staff, the FCH Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority empowered to conclude contracts by the Conditions of Employment of Other Servants of the European Communities.*

deleted

Justification

This amendment aims at putting the text in line with the Parliament's position on the other JTIs in order to have a consistent and horizontal approach.

Amendment 23

Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. The Governing Board shall, in agreement with the Commission, adopt the necessary implementing measures, ***in accordance with Article 110 of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants*** of the European Communities.

3. The Governing Board shall, in agreement with the Commission, adopt the necessary implementing measures ***concerning the secondment of officials*** of the European Communities.

Justification

This amendment aims at putting the text in line with the Parliament's position on the other JTIs in order to have a consistent and horizontal approach.

Amendment 24

Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Privileges and Immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the FCH Joint Undertaking and its staff.

Justification

This amendment aims at putting the text in line with the Parliament's position on the other JTIs in order to have a consistent and horizontal approach.

Amendment 25
Article 13

Text proposed by the Commission

Reporting, evaluation and discharge

1. The Commission shall present to the European Parliament and to the Council an annual report on the progress achieved by the FCH Joint Undertaking.

2. **Two years after the establishment of the FCH Joint Undertaking, but in any case no later than 2010**, the Commission shall **conduct an interim evaluation** of the FCH Joint Undertaking with the assistance of independent experts. This evaluation shall cover the quality and efficiency of the FCH Joint Undertaking and progress towards its objectives. The Commission shall communicate the conclusions thereof, accompanied by its observations to the European Parliament and to the Council.

3. **At the end of 2017**, the Commission shall conduct a final evaluation of the FCH Joint Undertaking with the assistance of independent experts. The results of the final evaluation shall be presented to the European Parliament and to the Council.

4. Discharge for the implementation of the budget of the FCH Joint Undertaking shall be given by the European Parliament, **upon recommendation of the Council, in accordance with a procedure laid down by the Financial Regulation of the FCH Joint Undertaking.**

Amendment

Reporting, evaluation and discharge

1. The Commission shall present to the European Parliament and to the Council an annual report on the progress achieved by the FCH Joint Undertaking. **The report shall include the number of proposals submitted, the number of proposals selected for funding, the types of participant (including SMEs) and country statistics.**

2. **By no later than 31 December 2011 and 31 December 2014**, the Commission shall **present interim evaluations** of the FCH Joint Undertaking **carried out** with the assistance of independent experts. This evaluation shall cover the quality and efficiency of the FCH Joint Undertaking and progress towards its objectives. The Commission shall communicate the conclusions thereof, accompanied by its observations **and, where appropriate, proposals for the amendment of the present Regulation** to the European Parliament and to the Council.

3. **No later than six months after the end of the FCH Joint Undertaking**, the Commission shall conduct a final evaluation of the FCH Joint Undertaking with the assistance of independent experts. The results of the final evaluation shall be presented to the European Parliament and to the Council.

4. Discharge for the implementation of the budget of the FCH Joint Undertaking shall be given by the European Parliament, **taking into account a** recommendation of the Council.

Justification

By analogy with the conclusions of the trilogue of 7 March 2007 on the Joint Undertaking for ITRE, the European Parliament should be given full and unconditional responsibility for the discharge of the implementation of the budget of the FCH Joint Undertaking.

Amendment 26 **Article 17**

Text proposed by the Commission

Intellectual property rights

The FCH Joint Undertaking shall adopt rules governing the use and dissemination of ***RTD&D results, including provisions concerning the exercise***, where appropriate, ***of intellectual property rights generated in RTD&D*** activities under this Regulation. ***These rules shall*** ensure that ***RTD&D*** results are used and disseminated.

Amendment

Intellectual property rights

The FCH Joint Undertaking shall adopt rules governing the use and dissemination of ***research results based on the principles enshrined in Regulation (EC) 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)***¹ (hereafter referred to as "***the rules for participation in the Seventh Framework Programme***"), ***that ensure that***, where appropriate, intellectual property ***arising by virtue of RTD*** activities under this Regulation ***is protected, and that research*** results are used and disseminated.

¹ OJ L 391, 30.12.2006, p.1.

Justification

This JTI makes part of FP7. Therefore, the rules on intellectual property rights should be based on the principles set out in the Rules of Participation in FP7.

Amendment 27

Proposal for a regulation Article 19

Text proposed by the Commission

A host agreement shall be concluded between the FCH Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the FCH Joint Undertaking.

Amendment

A host agreement shall be concluded between the FCH Joint Undertaking and Belgium concerning ***the host State's assistance with regard to*** office accommodation, privileges and immunities and other support to be provided by Belgium to the FCH Joint Undertaking.

Justification

It should be clearly stipulated that the host country of any agency or similar Community body is expected to provide financial and all other assistance necessary to facilitate the setting-up and running of the Community body.

Amendment 28

Proposal for a regulation Annex – Article I.1 – paragraph 3

Text proposed by the Commission

3. The FCH Joint Undertaking shall be established as from the day of publication of this Regulation in the Official Journal of the European Union for an initial period ending on 31 December 2017.

Amendment

3. The FCH Joint Undertaking shall be established as from the day of publication of this Regulation in the Official Journal of the European Union for an initial period ending on 31 December 2017. ***It is a body set up in accordance with Article 185 of the Financial Regulation and Point 47 of the IIA of 17 May 2006.***

Amendment 29 Annex – Article I.2

Text proposed by the Commission

Objectives and main tasks

1. ***The*** FCH Joint Undertaking shall ***work***

Amendment

Main tasks and activities

1. ***The main tasks and activities of the***

within the scope of FP7 towards enabling the market breakthrough of fuel cell and hydrogen technologies, thereby allowing commercial market forces to drive the substantial potential public benefits.

2. The objectives include:

– to place Europe at the forefront of fuel cell and hydrogen technologies worldwide;

– to reach the critical mass of research effort to give confidence to industry, public and private investors, decision-makers and other stakeholders to embark on a long-term programme;

– to leverage further industrial, national and regional RTD&D investment;

– to build the European Research Area through close cooperation with research carried out at national and regional levels - whilst respecting subsidiarity;

– to integrate research, technological development and demonstration, and focus on achieving long-term sustainability and industrial competitiveness targets for cost, performance and durability and overcome critical technology bottlenecks;

– to stimulate innovation and the emergence of new value chains including SMEs;

– to facilitate the interaction between industry, universities and research centres including on basic research;

– to encourage the participation of institutions from all, *including the new* Member States and *Candidate* countries;

– to perform broadly-conceived socio-techno-economic research to assess and monitor technological progress and non-

FCH Joint Undertaking shall *be the following:*

a) to ensure the establishment and efficient management of the Joint Technology Initiative on Fuel Cells and Hydrogen;

b) to reach the critical mass of research effort to give confidence to industry, public and private investors, decision-makers and other stakeholders to embark on a long-term programme;

c) to leverage further industrial, national and regional RTD&D investment;

d) to integrate research, technological development and demonstration, and focus on achieving long-term sustainability and industrial competitiveness targets for cost, performance and durability and overcome critical technology bottlenecks;

e) to stimulate innovation and the emergence of new value chains including SMEs;

f) to facilitate the interaction between industry, universities and research centres including on basic research;

g) to promote the involvement of SMEs in its activities, in accordance with the objectives of the Seventh Framework Programme;

h) to encourage the participation of institutions from all Member States and Associated countries;

i) to perform broadly-conceived socio-techno-economic research to assess and monitor technological progress and non-

technical barriers to market entry;

- to perform research to support the development of new, and review existing regulations and standards to eliminate artificial barriers to market entry and support interchangeability, inter-operability, cross-border hydrogen trading, and export markets whilst ensuring safe operation and not inhibiting innovation;
- to provide reliable information to improve the public awareness and create public acceptance concerning hydrogen safety, and the benefits from the new technologies to the environment, security of supply, energy costs, and employment.

3. The main tasks of the FCH Joint Undertaking shall be to ensure the establishment and the efficient management of the Joint Technology Initiative on Fuel Cells and Hydrogen.

4. This includes:

- to establish and implement a multi-annual research activity plan;
- to commit the Community funding and mobilise the private-sector and other public-sector resources needed to implement its **RTD&D** activities;
- to ensure the sound operation of the **RTD&D** activities and sound financial management of the resources;
- **to cooperate with and consult with the High Level Member States Group;**
- **to cooperate with and consult with the Scientific Committee;**
- **to organise annual meetings of the Stakeholders' General Assembly;**
- to communicate and disseminate information on the projects, including the names of the participants, the results from

technical barriers to market entry;

- j)** to perform research to support the development of new, and review existing regulations and standards to eliminate artificial barriers to market entry and support interchangeability, inter-operability, cross-border hydrogen trading, and export markets whilst ensuring safe operation and not inhibiting innovation;
- k) to communicate and disseminate valuable information concerning its activities, especially to SMEs and research centres and** to provide reliable information to improve the public awareness and create public acceptance concerning hydrogen safety, and the benefits from the new technologies to the environment, security of supply, energy costs, and employment.

- l)** to establish and implement a multi-annual research activity plan;
- m)** to commit the Community funding and mobilise the private-sector and other public-sector resources needed to implement its **RTD** activities;
- n)** to ensure the sound operation of the **RTD** activities and sound financial management of the resources;
- o)** to communicate and disseminate information on the projects, including the names of the participants, the results from

the **RTD&D** activities, and the amount of the financial contribution from the FCH Joint Undertaking;

– to notify the legal entities that have concluded a Grant Agreement with the FCH Joint Undertaking of the potential borrowing opportunities from the European Investment Bank, in particular the Risk Sharing Finance Facility set up under the Seventh Framework Programme;

– to ensure a high level of transparency and fair competition under equal access conditions for all applicants to the research and demonstration activities of the FCH Joint Undertaking, whether or not they are members of the Research Grouping or the Industry Grouping, (in particular small and medium-sized enterprises);

– to follow the international developments in the area and engage in international cooperation when appropriate.

the **RTD** activities, and the amount of the financial contribution from the FCH Joint Undertaking;

p) to notify the legal entities that have concluded a Grant Agreement with the FCH Joint Undertaking of the potential borrowing opportunities from the European Investment Bank, in particular the Risk Sharing Finance Facility set up under the Seventh Framework Programme;

q) to ensure a high level of transparency and fair competition under equal access conditions for all applicants to the research and demonstration activities of the FCH Joint Undertaking, whether or not they are members of the Research Grouping or the Industry Grouping, (in particular small and medium-sized enterprises);

r) to follow the international developments in the area and engage in international cooperation when appropriate.

s) to develop close cooperation and ensure coordination with the Research Framework Programme and other EU, national and trans-national activities, bodies and stakeholders;

t) to monitor progress toward achievement of the objectives of the FCH Joint Undertaking;

u) to carry out any other activity needed to achieve its objectives.

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach. It is an important task of the JTI to stimulate innovation in SMEs and the creation of new businesses and start-ups.

Amendment 30
Annex – Article I.3

Text proposed by the Commission

Members *and interest groups*

1. The founding members (hereinafter referred to as the "Founding Members") of the FCH Joint Undertaking shall be:

- the European Community, represented by the European Commission, and
- the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping Aisbl established under Belgian law (hereinafter referred to as the "Industry Grouping").

2. The Industry Grouping:

- *is a non-profit organisation whose purpose is to contribute to achieving the objectives of the FCH Joint Undertaking;*
- *is legally established under Belgian law, and operating under its registered by-laws duly adopted to pertain to the Joint Technology Initiative;*
- *shall* ensure that its contribution to the resources of the FCH Joint Undertaking, according to *Article 5 of* this Regulation 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 before the start of each financial year;
- *shall* ensure that industry's contribution to the achievement of the *RTD&D* activities funded by the FCH Joint Undertaking *is provided in kind and covers a minimum of 50% of the total project costs, calculated on a yearly basis;*
- *is* open to membership by any private

Amendment

Members

1. The founding members (hereinafter referred to as the "Founding Members") of the FCH Joint Undertaking shall be:

a) the European Community, represented by the European Commission, and

b) upon acceptance of the Statutes, the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping Aisbl, *a non-profit organisation* established under Belgian law *whose purpose is to contribute to achieving the objectives of the FCH Joint Undertaking* (hereinafter referred to as the "Industry Grouping").

2. The Industry Grouping *shall:*

- ensure that its contribution to the resources of the FCH Joint Undertaking, according to *the provisions of* this Regulation 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 before the start of each financial year;
- ensure that industry's contribution to the achievement of the *RTD* activities funded by the FCH Joint Undertaking *at least matches the Community contribution;*
- *be* open to membership, *on fair and*

legal entity (including small and medium-sized enterprises), formed in accordance with the law of a Member State, Associated country *or EEA state* and having its registered office, central administration or principal place of business within the above area, provided it is active in the field of fuel cells and hydrogen in Europe, and is committed to contribute to the objectives and resources of the FCH Joint Undertaking.

3. A Research Grouping, *representing non-profit research organisations, universities and research centres*, may become a member, after the establishment of the FCH Joint Undertaking, provided *an entity to represent the research community has been established. The application from the Research Grouping shall be addressed to and decided upon by the Governing Board.*

4. The Research Grouping shall:

- be a non-profit organisation whose purpose is to contribute to achieving the objectives of the FCH Joint Undertaking;
- be legally established under Belgian law and operate under its registered by-laws duly adopted to pertain to the Joint Technology Initiative;
- ensure that its contribution to the resources of the FCH Joint Undertaking 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 before the start of each financial year;
- *be open to membership by any non-profit research organisation, university or research centre established in a Member State, an Associated country or Candidate country.*

5. A Founding Member may terminate its membership of the FCH Joint Undertaking.

reasonable terms, by any private legal entity (including small and medium-sized enterprises *and relevant fuel cell and hydrogen industry associations*), formed in accordance with the law of a Member State *or* Associated country and having its registered office, central administration or principal place of business within the above area, provided it is active in the field of fuel cells and hydrogen in Europe, and is committed to contribute to the objectives and resources of the FCH Joint Undertaking.

3. A Research Grouping may become a member, after the establishment of the FCH Joint Undertaking, provided *that it has accepted these Statutes.*

4. The Research Grouping shall:

- be a non-profit organisation whose purpose is to contribute to achieving the objectives of the FCH Joint Undertaking;
- be legally established under Belgian law and operate under its registered by-laws duly adopted to pertain to the Joint Technology Initiative;
- ensure that its contribution to the resources of the FCH Joint Undertaking is provided in advance as a cash contribution to cover *1/20* of the running costs of the FCH Joint Undertaking and transferred to the budget of the FCH Joint Undertaking before the start of each financial year;

5. A Founding Member may terminate its membership of the FCH Joint Undertaking.

The FCH Joint Undertaking shall then be wound up as provided for in Article I.22.

6. The Research Grouping may terminate its membership of the FCH Joint Undertaking. The termination shall become effective and irrevocable six months after notification to the Founding members following which the leaving Member shall be discharged from any obligations other than those approved by the FCH Joint Undertaking prior to the membership termination.

The FCH Joint Undertaking shall then be wound up as provided for in Article I.22.

6. The Research Grouping may terminate its membership of the FCH Joint Undertaking. The termination shall become effective and irrevocable six months after notification to the Founding members following which the leaving Member shall be discharged from any obligations other than those approved by the FCH Joint Undertaking prior to the membership termination.

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach. It is important that the research community is fully involved in the JTI, since especially in the early stages research should form an important element of its future work programme. In order not to create an unnecessarily high barrier for the research community to participate in the Joint Undertaking, their contribution to the running costs should be proportionate.

Amendment 31 **Annex – Article I.4**

Text proposed by the Commission

The ***executive*** bodies of the FCH Joint Undertaking shall be the Governing Board ***and the Programme Office. The advisory bodies of the FCH Joint Undertaking shall be the High Level Member States Group, the Stakeholder's General Assembly and*** the Scientific Committee.

Amendment

1. The bodies of the FCH Joint Undertaking shall be:

- (a)** the Governing Board,
- (b)** ***the Executive Director,***
- (c)** the Scientific Committee.

2. ***Where any specific task does not fall within the normal competence of any of those bodies, the Governing Board shall be the competent body.***

3. ***The High Level Member States Group and the Stakeholders General Assembly***

shall be external advisory bodies to the FCH Joint Undertaking.

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach, with regards to provisions stated in the legal text and in the Statues.

Amendment 32

**Proposal for a regulation
Annex – Article I.5 – paragraph 2**

Text proposed by the Commission

2. The Commission shall, in case the Research Grouping is established transfer one seat to its ***representative***.

Amendment

2. The Commission shall, in case the Research Grouping is established, transfer ***at least*** one seat to its ***representative(s)***.

Justification

One seat on a 12-person governing board will not be enough to guarantee that scientific research, on which the success of hydrogen energy depends, receives the appropriate attention and funding.

**Amendment 33
Annex – Article I.5 – paragraph 4**

Text proposed by the Commission

4. The Governing Board shall ***elect*** its chairperson. The chairperson shall be ***elected for 2 years***.

Amendment

4. The Governing Board shall ***appoint*** its chairperson ***from among the representatives of the Industry Grouping***. The chairperson shall be ***appointed for one year and may be re-appointed once***. ***The representative of the SMEs and the representative of the Research Grouping shall be appointed vice-chairpersons***.

Justification

Since this is an industry-led initiative, it is good to explicit that a representative from the Industry Grouping should be the chairperson. Also, in order to ensure that no specific sectoral interest will dominate, a rotation system for the chairperson is envisaged. This

wording is also used in the Clean Sky JTI. Finally, the important role of SMEs and the research community is institutionalized by making their representatives vice-chairperson.

Amendment 34

Proposal for a regulation

Annex – Article I.5 – paragraph 8

Text proposed by the Commission

8. The Governing Board may invite observers on a case by case basis, without voting rights, to attend their meetings, in particular representatives of the regions and of regulatory bodies.

Amendment

8. The Governing Board may invite observers on a case by case basis, without voting rights, to attend their meetings, in particular representatives of the regions and of regulatory bodies ***and relevant fuel cell and hydrogen sectoral industry associations.***

Justification

Also the Fuel cells and hydrogen associations has to be able to attend the meetings of the Governing Board as observers.

Amendment 35

Annex – Article I.5 – paragraph 15 – indent 4 a (new)

Text proposed by the Commission

Amendment

– approve calls for proposals;

Justification

While it is the Executive Director that is responsible for proposing calls for proposals and it is the Programme Office that is responsible for managing the launching of these calls, the final responsibility should lie with the Governing Board.

Amendment 36

Proposal for a regulation

Annex – Article I.5 – paragraph 15 – indent 6

Text proposed by the Commission

Amendment

– justify and approve any deviation to the Financial Regulation of the FCH Joint

– approve the financial rules of the FCH Joint Undertaking in accordance with Article 8 ***after consulting the***

Undertaking in accordance with Article 8; **Commission;**

Justification

See amendment on Recital 16.

Amendment 37

Proposal for a regulation

Annex – Article I.5 – paragraph 15 – indent 6 a (new)

Text proposed by the Commission

Amendment

– justify any wish to derogate from Regulation (EC, Euratom) No 2343/2002, approve any derogation after prior consent of the Commission and inform the budgetary authority of any derogation approved;

Justification

See amendment on Recital 16.

Amendment 38

Proposal for a regulation

Annex – Article I.6 – paragraph 6

Text proposed by the Commission

Amendment

6. The Executive Director shall be the legal representative of the FCH Joint Undertaking. He/she shall perform his/her tasks with independence, and shall be accountable to the Governing Board.

6. The Executive Director shall be the legal representative of the FCH Joint Undertaking. He/she shall perform his/her tasks with independence, ***especially insofar as concerns the selection of project proposals and management of projects,*** and shall be accountable to the Governing Board.

Justification

While the Executive Director should report to the Governing Board, none of the members of the Governing Board should have a direct influence on the selection of projects, especially when the outcome of certain projects may affect a member directly or indirectly.

Amendment 39
Annex – Article I.6 – paragraph 8

Text proposed by the Commission

8. The Executive Director shall be appointed by the Governing Board, **from a list of candidates proposed by the Commission**, for a **maximum initial** period of three years. After an evaluation of the Executive Director's performance, the Governing Board may extend the term of office once for a further period of not more than four years.

Amendment

8. The Executive Director shall be appointed by the Governing Board for a period of three years, **following a call for expressions of interest published in the Official Journal of the European Union and in other publicly accessible periodicals or on internet sites**. After an evaluation of the Executive Director's performance, the Governing Board may extend the term of office once for a further period of not more than four years, **following which a call for expressions of interest shall be published in the same way**.

Amendment 40

Proposal for a regulation
Annex – Article I.7 – paragraph 4

Text proposed by the Commission

The Scientific Committee shall **perform** the following tasks:

- **give its opinion on the relevance and progress of the annual RTD&D activities and recommend any amendments;**
- give its opinion on the scientific **priorities for the multi-annual RTD&D activities plan;**
- advise **the Governing Board on the scientific achievements described in the annual activity report.**

Amendment

The Scientific Committee shall **have** the following tasks:

- a) establish the scientific priorities for the proposals for the annual and multi-annual research activities plans;**
- b) give its opinion on the scientific achievements described in the annual activity report;**
- c) advise on the composition of the peer review committees.**

Justification

The role of the scientific committee should be strengthened in establishing the research priorities, in order to prevent that short term commercial consideration will play too big a role in the research priorities, which ultimately could lead to a situation whereby the EU will be "locked in" in technologies that are less sustainable in the long run.

Amendment 41

Annex – Article I.8 – paragraph 1

Text proposed by the Commission

1. *The total contribution from the Community to the FCH Joint Undertaking covering running costs and operational costs for RTD&D activities shall not exceed 470 million EUR from the Seventh Framework Programme. The running costs are expected not to exceed 20 million EUR.*

Amendment

1. *The FCH Joint Undertaking shall be jointly funded by its Members by way of financial contributions paid in instalments and by in-kind contributions from legal entities participating in the activities. The running costs of the FCH Joint Undertaking shall be covered equally in cash by the Community and the Industry Grouping from the outset. As soon as the Research Grouping becomes a member of the FCH Joint Undertaking, it shall contribute to 1/20 of the running costs and the Commission's contribution to running costs will decrease correspondingly. The total contribution from the Community to the FCH Joint Undertaking's running costs shall not exceed EUR 20 million. If any part of the Community contribution remains unused, it shall be made available for the activities of the FCH Joint Undertaking.*

Justification

Amendment 42

Proposal for a regulation

Annex – Article I.8 – paragraph 7

Text proposed by the Commission

7. The private sector, in particular the members of the Industry Grouping, shall contribute in kind to the operational costs of the projects. The in-kind contributions shall as a minimum match the public funding. The total level of the in-kind contributions, calculated on a yearly basis,

Amendment

7. The private sector, in particular the members of the Industry Grouping, shall contribute in kind to the operational costs of the projects. The in-kind contributions shall as a minimum match the public funding. *In the event that the Joint Research Centre of the*

shall be assessed once a year. The first assessment shall be initiated at the end of the second financial year after the start of the FCH Joint Undertaking. The assessment shall thereafter be performed each financial year by an independent entity. The results of the assessment shall be presented to the Commission within 4 months of the end of each financial year.

Commission participates in projects, its in-kind contribution shall not be considered part of the Community contribution. The total level of the in-kind contributions, calculated on a yearly basis, shall be assessed once a year. The first assessment shall be initiated at the end of the second financial year after the start of the FCH Joint Undertaking. The assessment shall thereafter be performed each financial year by an independent entity. The results of the assessment shall be presented to the Commission within 4 months of the end of each financial year.

Justification

The JRC could play an important role in the development of the research in Hydrogen and in Fuel cells. JRC participation should not decrease the foreseen Community cash contribution, neither should it increase the industry's matching in kind.

Amendment 43

Proposal for a regulation Annex – Article I.9 – paragraph 3

Text proposed by the Commission

3. The legal entities wishing to participate in a project shall form a consortium and appoint one of their members to act as its coordinator. ***Normally the coordinator shall be a member of the Industry Grouping or, a member of the Research Grouping, if such Research Grouping is established. Exceptions shall be approved by the Governing Board.***

Amendment

3. The legal entities wishing to participate in a project shall form a consortium and appoint one of their members to act as its coordinator.

Justification

Companies active in the JTI should not be given an unfair competitive advantage in terms of accessing public funds and imposing project leadership.

Amendment 44
Annex – Article I.9 a (new)

Text proposed by the Commission

Amendment

Article I.9 a

Implementation of RTD activities

- 1. The FCH Joint Undertaking shall support RTD activities following open and competitive calls for proposals, independent evaluation and the conclusion for each project of a Grant Agreement and a Consortium Agreement.***
- 2. In exceptional cases the FCH Joint Undertaking may issue calls for tender, if it is deemed necessary for the effective pursuance of the research objectives.***
- 3. The FCH Joint Undertaking shall define the procedures and mechanisms for the implementation, supervision and control of Grant Agreements.***
- 4. The Grant Agreement shall:***
 - provide for the appropriate arrangements for carrying out the RTD activities;***
 - provide for the appropriate financial arrangements and rules relating to intellectual property rights as referred to in Article 17 of this Regulation;***
 - govern the relationship between the project consortium and the FCH Joint Undertaking.***
- 5. The Consortium agreement shall be concluded by the project participants prior to the conclusion of the Grant Agreement. It shall:***
 - provide for the appropriate arrangements for the implementation of the Grant Agreement;***
 - govern the relationship between the participants in a project, in particular the intellectual property rights provisions.***

Justification

One of the most important tasks of the Joint Undertaking is to implement its R&D and deployment activities. Therefore, a specific article setting out the provisions governing the implementation of these activities seems appropriate.

Amendment 45 **Annex – Article I.10**

Text proposed by the Commission

Eligibility for funding

1. The Community contribution to the FCH Joint Undertaking shall be used for funding the RTD&D activities following competitive calls for proposals.

2. In exceptional cases the FCH Joint Undertaking may issue calls for tenders, if it is deemed necessary for the effective pursuance of the research objectives.

3. Private legal entities fulfilling all the following criteria shall be eligible for such funding:

Amendment

Funding of activities

1. The following entities shall be eligible for funding:

a) Legal entities established in a Member State or an Associated country;

b) International organisations, which have legal personality under international public law, as well as any specialised agencies set up by such organisations;

c) Legal entities from third countries, provided that the Governing Board considers their participation to be of particular benefit to the project.

2. In order to be considered eligible for Community funding, costs incurred in the implementation of RTD activities shall be exclusive of value added tax.

3. The upper funding limits of the Community financial contribution towards projects shall be aligned to comply with those laid down by the rules for participation in the Seventh Framework Programme. Where lower levels of funding are necessary to comply with the matching principles referred to in Article I.8, the decrease shall be fair proportional to the abovementioned upper funding limits of the rules for participation in the Seventh Framework Programme for all categories of participant in each individual project.

(a) they are established in a Member State or have their registered office, central or principal place of business within a state that is a contracting party to the European Economic Area Agreement or which is an Associated or Candidate country;

(b) they have relevant activities in RTD&D, industrialization or deployment for fuel cells and/or hydrogen and/or concrete plans to do so in the near future within the European Union or the European Economic Area.

4. The following shall also be eligible for funding:

(a) non-profit public bodies established in a Member State, Associated country, Candidate Country or within the EEA, including secondary and higher education establishments;

(b) international organisations, which have legal personality under international public law, as well as any specialised agencies set up by such intergovernmental organisations;

(c) legal entities from third countries, provided that the Governing Board considers their participation to be of particular benefit to the project.

Justification

This amendment aims at putting the text in line with the other JTIs in order to have a consistent and horizontal approach. Linked to the amendment on Article 7.

Amendment 46

Proposal for a regulation – amending act Annex – Article I.11 – paragraph 1

Text proposed by the Commission

1. The FCH Joint Undertaking's financial provisions shall be based on the principles of Regulation (EC, Euratom) No

Amendment

1. The financial rules applicable to the FCH Joint Undertaking shall not depart from Regulation (EC, Euratom) No

1605/2002. It may depart from Regulation (EC, Euratom) No 1605/2002 where the specific operating needs of the FCH Joint Undertaking so require, subject to prior consent of the Commission.

2343/2002, unless its specific operating needs so require. The prior consent of the Commission shall be required for the adoption of any rules which derogate from Regulation (EC, Euratom) No 2343/2002. The budgetary authority shall be informed of such derogation.

Justification

See amendment on Recital 16.

Amendment 47

**Proposal for a regulation
Annex – Article I.14 – paragraph 5**

Text proposed by the Commission

5. Within two months after the end of each financial year the provisional accounts of the Joint Undertaking shall be submitted to the Commission and the Court of Auditors of the European Communities ('the Court of Auditors'). The Court of Auditors shall, by 15 June after the end of each financial year, make its observations on the provisional accounts of the Joint Undertaking. The annual accounts for the financial year shall be sent in the following year to the Commission's Accounting Officer according to the deadlines fixed by the Framework Financial Regulation so that the Commission's Accounting Officer can consolidate these into the EC annual accounts. The Joint Undertaking's annual accounts have to be prepared and audited following the EC Accounting Rules as adopted by the Commission's Accounting Officer.

Amendment

5. Within two months after the end of each financial year the provisional accounts of the Joint Undertaking shall be submitted to the Commission and the Court of Auditors of the European Communities ('the Court of Auditors'). The Court of Auditors shall, by 15 June after the end of each financial year, make its observations on the provisional accounts of the Joint Undertaking. The annual accounts for the financial year shall be sent in the following year to the Commission's Accounting Officer according to the deadlines fixed by the Framework Financial Regulation so that the Commission's Accounting Officer can consolidate these into the EC annual accounts. ***The annual accounts and the balance sheet for the previous year shall be submitted to the budgetary authority.*** The Joint Undertaking's annual accounts have to be prepared and audited following the EC Accounting Rules as adopted by the Commission's Accounting Officer.

Justification

Accounts and balance sheets need to be sent to the two arms of the budgetary authority for information.

Amendment 48

Proposal for a regulation Annex – Article I.14 – paragraph 6

Text proposed by the Commission

6. Discharge for the implementation of the budget shall be given by the European Parliament, **upon** recommendation **of** the Council, in accordance with a procedure provided for by the **Financial Regulation** of the FCH Joint Undertaking.

Amendment

6. Discharge for the implementation of the budget **of the FCH Joint Undertaking** shall be given by the European Parliament, **taking into account a** recommendation **from** the Council, in accordance with a procedure **that shall be** provided for by the **financial rules** of the FCH Joint Undertaking.

Justification

See amendment on Recital 15.

Amendment 49

Proposal for a regulation Annex – Article I.16 – paragraph 1

Text proposed by the Commission

1. The staff resources shall be determined in the establishment plan to be set out in the annual budget.

Amendment

1. The staff resources shall be determined in the establishment plan to be set out in the annual budget **and to be forwarded by the Commission to the European Parliament and the Council together with the preliminary draft budget of the European Union.**

Justification

As is the case with the Joint Undertaking already in existence, the FCH JU's establishment plan should be published by the Commission together with the PDB.

Amendment 50
Annex – Article I.16 – paragraph 2

Text proposed by the Commission

Amendment

2. The members of the staff of the FCH Joint Undertaking shall be temporary agents and contract agents and shall have fixed-term contracts, extendable once up to a maximum total period of seven years. *deleted*

Justification

This amendment aims at putting the text in line with the Parliament's position on the other JTIs in order to have a consistent and horizontal approach.

Amendment 51
Annex – Article I.19

Text proposed by the Commission

Amendment

Article I.19

deleted

1. The FCH Joint Undertaking shall support RTD&D activities following competitive calls for proposals, independent evaluation, and the conclusion for each project of a Grant Agreement and a Consortium Agreement.

2. The FCH Joint Undertaking shall define the procedures and mechanisms for the implementation, supervision and control of Grant Agreements.

3. The Grant Agreement shall:

- provide for the appropriate arrangements for the implementation of the RTD&D activities;**
- provide for the appropriate financial arrangements and the rules relating to intellectual property rights on the basis of the principles as set out in Article I.24;**
- govern the relationship between the project consortium and the FCH Joint Undertaking.**

4. The Consortium agreement shall:

- be concluded by the project participants prior to the conclusion of the Grant Agreement;*
- provide for the appropriate arrangements for the implementation of the Grant Agreement;*
- govern the relationship between the participants in a project, in particular the Intellectual Property Rights provisions.*

Justification

The text of this article is already incorporated in other articles and can therefore be deleted.

EXPLANATORY STATEMENT

Hydrogen is the most abundant and lightest element of the universe. Hydrogen powered fuel cells have already been used reliably by our astronauts for the last 50 years. With the present proposal, hydrogen comes back to earth, as one of the most important pillars of the European strategy to fight climate change and implement a Third Industrial Revolution.

Energy and climate change are top priorities for the EU. The very ambitious goals set by the European Council last year found adequate implementation in the recent Commission proposals. It is however important to note that the Hydrogen economy finds its main inspiration in the vision set out in the speech of the former President of the European Commission at a conference in 2003: *"But let us be clear about what makes the European hydrogen programme truly visionary. It is our declared goal of achieving a step-by-step shift towards a fully integrated hydrogen economy, based on renewable energy sources, by the middle of the century"*.¹

In line with this long term vision, the European Parliament adopted last May a Written Declaration² recommending to "establish a decentralised bottom up hydrogen infrastructure by 2025 in all EU Member States" as one of the pillars for a Third Industrial Revolution.

The Hydrogen and Fuel Cells Technology Platform has been instrumental to coordinate the European efforts toward a fully integrated hydrogen economy by developing a Strategic Research Agenda (which should be kept in due account when establishing the Strategic Energy Technology Plan³). The Technology Platform also developed an Implementation Plan aiming at establishing a significant role in Europe's new energy model for Hydrogen and fuel cells technologies. It outlines four innovation and development actions: hydrogen transport, sustainable hydrogen production, fuels cells, and early markets.⁴

The concept of the Joint Technology Initiatives (JTIs) was introduced in the 7th Framework Programme as a new mechanism to implement long-term public-private partnerships in research at European level in those areas where the scale and scope of the objectives is such that loose coordination and support through the regular instruments are not deemed sufficient. Until now, 4 JTIs have been set up in the field of innovative medicines, embedded systems, aeronautics and nano-electronics.

With this proposal, the 5th JTI will be set up in the field of fuel cells and hydrogen. This choice of field is a logical one. Faced with challenges such as energy security, the mitigation of climate change and sustainable development, the EU needs to boost the development and deployment of cleaner and more efficient energy technologies, in terms of conversion, transport and use of it. Fuel cells and hydrogen technologies have the potential to contribute

¹ "Hydrogen, the energy vector of the Future", speech by Romano Prodi, President of the European Commission, 16 June 2003.

² Written declaration 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 16/2007.

³ A European Strategic Energy Technology Plan (SET Plan) - Towards a Low Carbon Future - COM(2007)723.

⁴ https://www.hfpeurope.org/uploads/2097/HFP_IP06_FINAL_20APR2007.pdf

significantly towards these goals. Fuel cells are very quiet, highly efficient energy converters, converting fuel and oxygen directly to electricity, heat and water in an electrochemical process. Since they can operate on different fuels, fuel cells offer diversity to the energy mix used in transport (which is currently for 98% dependent on oil), facilitate the integration of renewable electricity into the energy market, and offer an intrinsically clean energy converter when combined with the use of hydrogen.

In addition to the environmental advantages, there is also an economic potential. Fuel cells can have a major impact on economic competitiveness, since they can be used in a wide range of energy-consuming applications, from portable electronic equipment (such as mobile phones or mp3s) to hydrogen cars. In addition, since they are so-called "breakthrough technologies", early market entrants can on a global scale generate important commercial gains.

However, technologies in this field are unlikely to be commercially available as quickly as desirable. This is caused by common market failures linked to the development and adoption of new technologies, such as knowledge and adoption spillovers, network externalities and incomplete information. These deficiencies are even further exacerbated by the long time to market and the high degree of coordination needed in this sector. The current absence of a long-term, integrated public R&D strategy tends to discourage the European industry to commit more of its resources, leading to a level of private R&D investment in the US in this field that is about 8 times as high as in Europe. The consequence is that the EU is lagging 5 years behind Japan and North America in the demonstration of fuel cell vehicles.

Therefore, the setting up of a JTI in this field can be highly welcomed. By uniting the forces of all stakeholders and offering a long-term commitment, the JTI will ensure that research and deployment activities are carried out in a streamlined, unfragmented manner, that business-driven efforts are boosted and that the focus is on the most promising applications of this innovative market. This will accelerate the transition towards a sustainable energy economy, ensure that Europe takes a leading role in the global technology deployment, significantly enhance Europe's competitiveness (including many SMEs) and in the longer term address Europe's energy policy drivers.

The rapporteur recognises the capital importance of this JTI as a first step towards the adoption of a more ambitious European-wide strategy to position fuel cells and hydrogen as core enabling technologies which can make a determinant contribution to energy, transport, environment and sustainable growth policies across Europe. The creation of the Industry Grouping is a serious demonstration of the engagement of the European industry in this direction. However the magnitude of the efforts that are necessary to achieve the JTI's goals (estimated by the Technology Platform to amount to € 7.4 billion over the next eight years)¹ is not being reflected in the current public budget proposal which only amounts to € 470 million. If we want to live up to the level of our ambitions we should be prepared to consider the possibility to take advantage of the FP7 Mid-Term Review to seriously re-evaluate the European financial commitment in light of achievements of the Hydrogen JTI and overall impact and prospects for fuel cells and hydrogen technologies in Europe.

¹ https://www.hfpeurope.org/uploads/2097/HFP_IP06_FINAL_20APR2007.pdf

It is necessary, furthermore to consider that, in order to ensure the transition towards the new ambitious energy model that Europe is proposing to the world as an instrument to effectively fight climate change, the hydrogen sector has to obtain breakthrough results that can only be achieved if better coordination is in place with all other national fuel cell and hydrogen programs and leading edge innovative Technology Platforms, as well as with the efforts made by the Joint Research Centre in this sector.

Furthermore the existing regulatory barriers should be dealt with as a matter of priority and a clear regulatory framework should be established to create the right conditions for private sector investments. In this sense it is welcomed that along with this proposal, the Commission is also proposing to set security and technical standards for both hydrogen vehicles and hydrogen refueling infrastructure, which is instrumental for early adoption.

Last but not least it is important to underline the importance of financial leverage in the early adoption markets in order to facilitate market introduction of hydrogen based energy systems and vehicles. This can be done by granting incentives comparable to those already in use for renewable energies and by optimizing the use of existing resources of the European Investment Bank and funds available at regional and national level.

Finally, certain amendments are proposed in order to strengthen the proposal:

1. Even more focus and emphasis should be put on the innovative potential of SMEs, and the specific barriers that they encounter, for example in reduced access to research infrastructure. Therefore, the role of SMEs and their particular situation is specifically mentioned in the objectives and tasks of the Joint Undertaking.
2. Attention should be paid to the importance of breakthrough-oriented research. As was mentioned in the Implementation Plan, especially in the early stages research should form an important element of the activities of the JTI, since important breakthroughs in the research area are still necessary. Around 1/3 of the planned resources was deemed necessary for R&D activities. In this respect it is also very important to fully involve the research community in the activities of the JTI (including the Joint Research Centre) and not to create an unnecessarily high barrier for them to form a Research Grouping and to join the Joint Undertaking. Therefore, their contribution to the running costs should be proportionate.
3. The joint character of this Joint Undertaking needs to be stressed. The idea of a public-private partnership is that the Community and industry will participate and contribute on an equal footing. Therefore, the in-kind contributions by the industry need to be independently scrutinized to ensure that they indeed at least match the Community financial contribution. The proposed "veto right" for the Community on all decisions taken by the Governing Board regarding the assessment of the in-kind contributions should therefore be maintained.
4. In order to minimize unnecessary bureaucracy and administrative costs, existing work performed by the Technology Platform and existing committees and structures should be fully utilized. For example, Member States could trust the work of the envisaged High Level Member States Group to the same people that are already sitting in the programme

committees overseeing the implementation of FP7. Furthermore, the percentage estimated for the running costs (around 5% of the total costs) seems to be rather high. Where possible, unused funding for this running costs should go to the operational costs.

5. The precise legal status of this Joint Undertaking should be clarified, especially with a view to its accountability to the European Parliament as one arm of the budgetary authority.
6. The text has been put in line with the text of the other JTIs in order to have a consistent and horizontal approach. To this aim, amendments have been proposed to move parts of the legal text into the Annex, which would also reduce unnecessary duplication of the text and legal incoherence.

29.2.2008

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Industry, Research and Energy

on the proposal for a Council regulation setting up the Fuel Cells and Hydrogen Joint Undertaking
(COM(2007)0571 – C6-0446/2007 – 2007/0211(CNS))

Draftswoman: Jutta Haug

SHORT JUSTIFICATION

Commission proposal

Joint Technology Initiatives (JTIs) are introduced in the Seventh Framework Programme (FP7) as a new way of realising public-private partnerships in research at European level. JTIs arise primarily from the work of European Technology Platforms (ETPs). In a small number of cases, ETPs have reached such an ambitious scale and scope that they will require the mobilisation of considerable public and private investments as well as substantial research resources to implement important elements of their Strategic Research Agendas. JTIs are proposed as an effective means of meeting the needs of this small number of ETPs.

In the Cooperation Specific Programme¹ six areas are identified where a JTI could have particular relevance: hydrogen and fuel cells, aeronautics and air transport, innovative medicines, embedded computing systems, nanoelectronics and GMES (global monitoring for environment and security).

The Fuel Cells and Hydrogen Joint Undertaking (FCH JU) resulting from the Technology Platform on Hydrogen and Fuel Cells contributes to the implementation of the Environmental Technologies Action Plan as, according to Commission communication COM(2004)38, it is one of its priority actions.

Fuel cells are very quiet, highly efficient, energy converters capable of delivering substantial cumulative greenhouse gases and pollutant reductions. They offer flexibility to the energy mix as they can be operated on hydrogen and other fuels such as natural gas, ethanol and methanol.

The introduction of hydrogen as a flexible energy carrier can contribute positively to energy

¹ OJ L 400, 30.12.2006, p. 66-241.

security and stabilise energy prices as it can be produced from any primary energy source, and as such can introduce diversity into the transport mix, which is currently 98% dependent on oil. It can be used in fuel cells or it can be burned either to provide heat or to drive turbines or internal combustion engines for motive and electrical power. Hydrogen can also be used as a means of storing energy. For instance, when renewable electricity production is higher than demand, the excess energy could be used to produce hydrogen by electrolysis, thereby facilitating the integration of renewable electricity into the energy market.

The present Commission proposal relates to the setting-up of the FCH JU under Article 171 of the Treaty. It should be considered as a Community body and be established for a period ending on 31 December 2017. It will have its seat in Brussels, Belgium.

Financial implications

The budgetary assessment indicates maximum Community expenditure of EUR 470 million over the initial period of the FCH Joint Undertaking (up to 2017), which would need to be committed before 31 December 2013, when the FP7 budget comes to an end. An initial total of EUR 30m is to be committed in 2008, of which EUR 28,1m in operational expenditure and EUR 1,9m in administrative expenditure.

The research activities shall be jointly funded by the Community, the Industry Grouping and the participating universities, public research centres etc with the Community contribution paid in cash and the participants contribution paid in kind within the projects.

The running costs of the FCH Joint Undertaking will be covered in equal parts (50/50) by the Community and the Industry Grouping from the outset. If a Research Grouping is established and applies to join the FCH Joint Undertaking, the Research Grouping shall have one seat in the Governing Board and shall then contribute 1/12 of the running costs.

The Community contribution 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 TREN. Obviously, the operational allocations of the FCH JU are to be kept split as individual items under these FP7 budget articles because, other than in previous COM proposals for setting up Joint Undertakings, the FCH JU proposal does not include the intention to create a separate budget line for the "operational" expenditure of the Joint Undertaking. Only a separate line for the administrative expenditure (08 01 04 20) is mentioned.

The COM proposal contains the following expenditure profile:

			<i>EUR million (to 3 decimal places)</i>						
	Section		2008	2009	2010	2011	2012	2013	Total
Operational expenditure									
Commitment	8.1	a	28.100	70.300	90.100	106.800	73.800	80.900	450.000
Appropriations (CA)									
Payment		b	28.100	70.300	90.100	106.800	73.800	80.900	450.000
Appropriations (PA)									

Administrative expenditure within reference amount

Technical & administrative assistance (NDA) Personnel costs + 50%	8.2.4	c	1.900	2.700	3.400	4.190	3.705	4.105	20.000
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TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c	30.000	73.000	93.500	110.990	77.505	85.005	470.000
Payment appropriations		b+c	30.000	73.000	93.500	110.990	77.505	85.005	470.000

Assessment

The draftswoman's amendments are mainly based on two concerns:

1) The JU is established for an initial period ending on 31 December 2017 (which may even be extended to a later date), whereas the MFF only covers the period up to 2013. Therefore, any request for Community funding for the FCH JU after 2013 has to be newly evaluated in the context of the negotiations for a new financial framework.

As for the current period, the proposal - although falling under Heading 1a with its dwindling margins - is compatible with the MFF, for the simple reason that the EU contribution required is taken from the 7th FP and has as such already been included in the Commission's financial programming.

Nevertheless, your draftswoman would like to point out that no financial commitments can be made for the time after the current MFF (Amendments 1, 2, 6 and 10).

2) By analogy with the negotiations on the ITER Joint Undertaking at the beginning of 2007, which led to the Conclusions agreed at the Trilogue of 7 March 2007, the FCH JU has to be considered as an agency within the meaning of Article 185 FR and is therefore subject to an agreement by the budgetary authority on its financing (Amendments 3-5, 7-9 and 11-16).

AMENDMENTS

The Committee on Budgets calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Draft legislative resolution Paragraph 1 a (new)

Draft legislative resolution

Amendment

1a. Considers that the reference amount indicated in the legislative proposal must be compatible with the ceiling of heading 1a of the current multiannual financial framework (MFF) 2007 - 2013 and with the provisions of Point 47 of the Interinstitutional Agreement (IIA) of 17 May 2006; notes that any financing beyond 2013 shall be evaluated in the context of the negotiations for the next financial framework;

Amendment 2

**Draft legislative resolution
Paragraph 1 b (new)**

Draft legislative resolution

Amendment

1b. Points out that the opinion delivered by the Committee on Budgets does not pre-empt the outcome of the procedure laid down in Point 47 of the IIA of 17 May 2006 which applies to the setting up of the Fuel Cells and Hydrogen Joint Undertaking;

Amendment 3

**Proposal for a regulation
Citations 1 a and 1 b (new)**

Text proposed by the Commission

Amendment

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ (Financial Regulation), and in particular Article 185 thereof,

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management² (IIA), and in particular Point 47 thereof,

¹ OJ L 248, 16.9.2002, p.1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

² OJ C 139, 14.6.2006, p.1.

Justification

By analogy with the conclusions of the trilogue of 7 March 2007 on the Joint Undertaking for ITER, the FCH JU is also to be considered a Community agency for the purpose of the application of point 47 of the IIA. This has to be reflected in the legal bases referred to in the Regulation.

Amendment 4

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) The FCH Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament *on the recommendation of* the Council. ***However, account should be taken of the specificities resulting from the nature of the JTI as a public-private partnership and in particular from the private-sector contribution to the budget.***

Amendment

(15) The FCH Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament ***taking into account a recommendation from*** the Council.

Justification

By analogy with the conclusions of the trilogue of 7 March 2007 on the Joint Undertaking for ITER, the European Parliament should be given full and unconditional responsibility for the discharge of the implementation of the budget of the FCH JU.

Amendment 5

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) *The FCH Joint Undertaking should adopt, subject to prior consultation with the Commission, specific financial provisions based on the principles of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities. Those provisions should take into account its specific operating needs arising, in particular, from the need to combine Community and private funding.*

Amendment

(16) *The financial rules applicable to the FCH Joint Undertaking should not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation¹, unless specifically required for its operating needs, in particular, the need to combine Community and private funding. The prior consent of the Commission should be required for the adoption of any rules which derogate from Regulation (EC, Euratom) No 2343/2002. The budgetary authority should be informed of such derogations.*

¹ OJ L 357, 31.12.2002, p. 72; corrigendum in OJ L 2, 7.1.2003, p. 39

Justification

Derogations from Regulation (EC, Euratom) No 2343/2002 should be kept to an absolute minimum. The Joint Undertaking has to prove beyond any doubt that such a derogation is the only way to guarantee its proper functioning within the limits of its founding regulation.

Amendment 6

Proposal for a regulation

Article 1 – Paragraph 1

Text proposed by the Commission

1. For the implementation of the Joint Technology Initiative (hereinafter 'JTI') on 'Fuel Cells and Hydrogen', a Joint Undertaking (hereinafter the "FCH Joint Undertaking") within the meaning of Article 171 of the Treaty is hereby set up for a period ending on 31 December 2017. This period may be extended by a revision

Amendment

1. For the implementation of the Joint Technology Initiative (hereinafter 'JTI') on 'Fuel Cells and Hydrogen', a Joint Undertaking (hereinafter the "FCH Joint Undertaking") within the meaning of Article 171 of the Treaty is hereby set up for a period ending on 31 December 2017. This period may be extended by a revision

of this Regulation.

of this Regulation. *The FCH Joint Undertaking is a body set up in accordance with Article 185 of the Financial Regulation and Point 47 of the IIA of 17 May 2006.*

Justification

See amendment on Citations.

Amendment 7

**Proposal for a regulation
Article 8 – paragraph 1**

Text proposed by the Commission

1. The FCH Joint *Undertaking's financial provisions shall be based on the principles of Regulation (EC, Euratom) No 1605/2002. It may depart from Regulation (EC, Euratom) No 1605/2002 where the specific operating needs of the FCH Joint Undertaking so require*, subject to prior consent of the Commission.

Amendment

1. *The financial rules applicable to the FCH Joint Undertaking may not depart from Regulation (EC, Euratom) No 2343/2002, unless specifically required for its operating needs* and subject to prior consent of the Commission. *The budgetary authority shall be informed of such derogations.*

Justification

See amendment on Recital 16.

Amendment 8

**Proposal for a regulation
Article 13 – paragraph 4**

Text proposed by the Commission

4. Discharge for the implementation of the budget of the FCH Joint Undertaking shall be given by the European Parliament, *upon recommendation of the Council, in accordance with a procedure laid down by the Financial Regulation of the FCH Joint Undertaking.*

Amendment

4. Discharge for the implementation of the budget of the FCH Joint Undertaking shall be given by the European Parliament, *taking into account a recommendation from the Council.*

Justification

See amendment on Recital 15.

Amendment 9

**Proposal for a regulation
Article 19**

Text proposed by the Commission

A host agreement shall be concluded between the FCH Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the FCH Joint Undertaking.

Amendment

A host agreement shall be concluded between the FCH Joint Undertaking and Belgium concerning ***the host State's assistance with regard to*** office accommodation, privileges and immunities and other support to be provided by Belgium to the FCH Joint Undertaking.

Justification

It should be clearly stipulated that the host country of any agency or similar Community body is expected to provide financial and all other assistance necessary to facilitate the setting-up and running of the Community body.

Amendment 10

**Proposal for a regulation
Annex – Article I.1 – paragraph 3**

Text proposed by the Commission

3. The FCH Joint Undertaking shall be established as from the day of publication of this Regulation in the Official Journal of the European Union for an initial period ending on 31 December 2017.

Amendment

3. The FCH Joint Undertaking shall be established as from the day of publication of this Regulation in the Official Journal of the European Union for an initial period ending on 31 December 2017. ***It is a body set up in accordance with Article 185 of the Financial Regulation and Point 47 of the IIA of 17 May 2006.***

Justification

See amendment on Citations.

Amendment 11

Proposal for a regulation

Annex – Article I.5 – paragraph 15 – indent 6

Text proposed by the Commission

– **justify and** approve **any deviation to the Financial Regulation** of the FCH Joint Undertaking in accordance with Article 8;

Amendment

– approve **the financial rules** of the FCH Joint Undertaking in accordance with Article 8 **after consulting the Commission;**

Justification

See amendment on Recital 16.

Amendment 12

Proposal for a regulation

Annex – Article I.5 – paragraph 15 – indent 6 a (new)

Text proposed by the Commission

Amendment

– **justify any wish to derogate from Regulation (EC, Euratom) No 2343/2002, approve any derogation after prior consent of the Commission and inform the budgetary authority of any derogation approved;**

Justification

See amendment on Recital 16.

Amendment 13

Proposal for a regulation – amending act

Annex – Article I.11 – paragraph 1

Text proposed by the Commission

1. The FCH Joint **Undertaking's financial provisions shall be based on the principles of Regulation (EC, Euratom) No 1605/2002. It may depart from Regulation (EC, Euratom) No 1605/2002 where the specific operating needs of the FCH Joint**

Amendment

1. **The financial rules applicable to the FCH Joint Undertaking may not depart from Regulation (EC, Euratom) No 2343/2002, unless necessary for its specific operating needs. The prior consent of the Commission shall be**

Undertaking so require, subject to prior consent of the Commission.

required for the adoption of any rules which derogate from Regulation (EC, Euratom) No 2343/2002. The budgetary authority shall be informed of such derogations.

Justification

See amendment on Recital 16.

Amendment 14

Proposal for a regulation Annex – Article I.14 – paragraph 5

Text proposed by the Commission

5. Within two months after the end of each financial year the provisional accounts of the Joint Undertaking shall be submitted to the Commission and the Court of Auditors of the European Communities ('the Court of Auditors'). The Court of Auditors shall, by 15 June after the end of each financial year, make its observations on the provisional accounts of the Joint Undertaking. The annual accounts for the financial year shall be sent in the following year to the Commission's Accounting Officer according to the deadlines fixed by the Framework Financial Regulation so that the Commission's Accounting Officer can consolidate these into the EC annual accounts. The Joint Undertaking's annual accounts have to be prepared and audited following the EC Accounting Rules as adopted by the Commission's Accounting Officer.

Amendment

5. Within two months after the end of each financial year the provisional accounts of the Joint Undertaking shall be submitted to the Commission and the Court of Auditors of the European Communities ('the Court of Auditors'). The Court of Auditors shall, by 15 June after the end of each financial year, make its observations on the provisional accounts of the Joint Undertaking. The annual accounts for the financial year shall be sent in the following year to the Commission's Accounting Officer according to the deadlines fixed by the Framework Financial Regulation so that the Commission's Accounting Officer can consolidate these into the EC annual accounts. ***The annual accounts and the balance sheet for the previous year shall be submitted to the budgetary authority.*** The Joint Undertaking's annual accounts have to be prepared and audited following the EC Accounting Rules as adopted by the Commission's Accounting Officer.

Justification

Accounts and balance sheets need to be sent to the two arms of the budgetary authority for information.

Amendment 15

Proposal for a regulation

Annex – Article I.14 – paragraph 6

Text proposed by the Commission

6. Discharge for the implementation of the budget shall be given by the European Parliament, **upon** recommendation **of** the Council, in accordance with a procedure provided for by the **Financial Regulation** of the FCH Joint Undertaking.

Amendment

6. Discharge for the implementation of the budget **of the FCH Joint Undertaking** shall be given by the European Parliament, **taking into account a** recommendation **from** the Council, in accordance with a procedure **that shall be** provided for by the **financial rules** of the FCH Joint Undertaking.

Justification

See amendment on Recital 15.

Amendment 16

Proposal for a regulation

Annex – Article I.16 – paragraph 1

Text proposed by the Commission

1. The staff resources shall be determined in the establishment plan to be set out in the annual budget.

Amendment

1. The staff resources shall be determined in the establishment plan to be set out in the annual budget **and to be forwarded by the Commission to the European Parliament and the Council together with the preliminary draft budget of the European Union.**

Justification

As is the case with the Joint Undertaking already in existence, the FCH JU's establishment plan should be published by the Commission together with the PDB.

PROCEDURE

Title	Regulation setting up the Fuel Cells and Hydrogen Joint Undertaking
References	COM(2007)0571 – C6-0446/2007 – 2007/0211(CNS)
Committee responsible	ITRE
Opinion by Date announced in plenary	BUDG 10.12.2007
Drafts(wo)man Date appointed	Jutta Haug 20.9.2004
Date adopted	28.2.2008
Result of final vote	+: 15 -: 0 0: 0
Members present for the final vote	Richard James Ashworth, Reimer Böge, Valdis Dombrovskis, Ingeborg Gräßle, Catherine Guy-Quint, Jutta Haug, Monica Maria Iacob-Ridzi, Anne E. Jensen, Vladimír Maňka, Jan Mulder, Cătălin-Ioan Nechifor, Theodor Dumitru Stolojan, László Surján, Helga Trüpel, Ralf Walter

PROCEDURE

Title	Regulation setting up the Fuel Cells and Hydrogen Joint Undertaking		
References	COM(2007)0571 – C6-0446/2007 – 2007/0211(CNS)		
Date of consulting Parliament	30.11.2007		
Committee responsible Date announced in plenary	ITRE 10.12.2007		
Committee(s) asked for opinion(s) Date announced in plenary	BUDG 10.12.2007	CONT 10.12.2007	ENVI 10.12.2007
Not delivering opinions Date of decision	CONT 12.11.2007	ENVI 27.11.2007	
Rapporteur(s) Date appointed	Pia Elda Locatelli 18.12.2007		
Discussed in committee	29.1.2008	6.3.2008	
Date adopted	8.4.2008		
Result of final vote	+: -: 0:	50 0 0	
Members present for the final vote	Šarūnas Birutis, Jan Březina, Jerzy Buzek, Jorgo Chatzimarkakis, Giles Chichester, Dragoș Florin David, Pilar del Castillo Vera, Den Dover, Nicole Fontaine, Adam Gierek, András Gyürk, Fiona Hall, David Hammerstein, Rebecca Harms, Erna Hennicot-Schoepges, Mary Honeyball, Ján Hudacký, Romana Jordan Cizelj, Anne Laperrouze, Pia Elda Locatelli, Eugenijus Maldeikis, Angelika Niebler, Reino Paasilinna, Atanas Paparizov, Francisca Pleguezuelos Aguilar, Anni Podimata, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Teresa Riera Madurell, Mechtild Rothe, Paul Rübig, Andres Tarand, Britta Thomsen, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis, Adina-Ioana Vălean, Alejo Vidal-Quadras		
Substitute(s) present for the final vote	Etelka Barsi-Pataky, Ivo Belet, Zdzisław Kazimierz Chmielewski, Robert Goebbels, Satu Hassi, Gunnar Hökmark, Pierre Pribetich, Vittorio Prodi, Esko Seppänen, Peter Skinner, Silvia-Adriana Țicău		