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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Brussels, 22.2.2017
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2017/0024 (NLE)

Proposal for a

COUNCIL REGULATION

**amending the COUNCIL REGULATION (EU) No 560/2014 of 6 May 2014 establishing
the Bio-based Industries Joint Undertaking**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Bio-Based Industries Joint Undertaking ('BBI JU') is a body entrusted with the implementation of a public-private partnership¹ whose members are, on the one hand, the Union represented by the Commission and, on the other hand, the Bio-based Industries Consortium ('BIC')² BBI JU has been established by Council Regulation (EU) No 560/2014 ('the Council Regulation'), for the implementation of the Joint Technology Initiative on Bio-based Industries ('BBI JU Initiative'), until 31 December 2024. The Statutes of the BBI JU are annexed to the Council Regulation 560/2014 ('the Statutes').

According to Article 3 of the Council Regulation, the contribution of the Union to the administrative and operational costs of the BBI JU should be up to EUR 975 million. This contribution would be divided as follows:

- not more than EUR 29.25 million, consisting of financial³ contributions to the administrative costs of the BBI JU⁴ and

- at least EUR 945.75 million, consisting of financial contributions to the operational costs of the BBI JU⁴ (hereinafter referred to as 'the EU contribution').

According to Article 4 of the Council Regulation, the contribution of BIC or of its constituent entities to the administrative and operational costs of the BBI JU Initiative should be at least EUR 2 730 million. This contribution would be divided as follows:

- not more than EUR 29.25 million, consisting of financial contributions to the administrative costs of the BBI JU⁵;

- at least EUR 182.5 million consisting of financial contributions to the operational costs of the BBI JU⁶;

- an unspecified amount⁷ consisting of in kind⁸ contributions in implementing indirect actions⁹ (also referred to as in kind contributions to operational costs, hereinafter referred to as 'IKOP'); and

¹ Article 1 of the Council Regulation 560/2014.

² Article 2 of the Statutes annexed to the Council Regulation 560/2014.

³ The term '*financial*' refers to a contribution paid cash.

⁴ Article 3(1) of the Council Regulation 560/2014 corroborated with Article 12.2 of the Statutes annexed to the Council Regulation 560/2014.

⁵ Article 4(2)(a) of the Council Regulation 560/2014 corroborated with Article 12(2) of the Statutes annexed to the Council Regulation 560/2014.

⁶ Article 4(2)(a) of the Council Regulation 560/2014 corroborated with Articles 12(3)(b) and 12(4) of the Statutes annexed to the Council Regulation 560/2014.

⁷ Although the amount is not explicitly specified, its minimum required threshold will be identified at the end of the BBI JU by deducting from the minimum threshold of EUR 2 730 million, all other contributions delivered.

⁸ The term '*in-kind*' refers to a contribution which is paid in goods and/or services rather than cash.

⁹ Article 4(2)(a) of the Council Regulation 560/2014 corroborated with Article 12(3)(c) of the Statutes annexed to the Council Regulation 560/2014.

-at least EUR 1 755 million consisting of in kind contributions in implementing additional activities (hereinafter referred to as 'IKAA')¹⁰.

The current proposal for amendment regards the legal specificities of the financial contribution referred to in Articles 12(3)(b) and 12(4) of the Statutes annexed to the Council Regulation 560/2014.

In accordance with Article 12(3)(b) and Article 12(4) of the Statutes, the financial contribution to the operational costs of at least EUR 182.5 million should be delivered by BIC¹¹ by 31 December 2024¹². Furthermore, it stems from Article 12(3)(b) and Article 12(5) of the Statutes, read together, that this financial contribution from BIC should be entered to BBI JU's budget (at programme level). Indeed, in accordance with Article 12(5) of the Statutes, members' financial contributions to the operational costs constitute resources of the BBI JU to be entered to its budget. And, in accordance with Article 12(3)(b) of the Statutes, a part of the operational costs of the BBI JU is to be covered by the financial contribution by the members other than the Union. The latter provision does not refer to constituent entities of the members other than the Union, which are the ones who participate in implementation of indirect actions funded by the BBI JU and who could provide financial contributions directly to such indirect actions (at project level).

Subsection 3.2.5 of the Legislative Financial Statement accompanying the Proposal for a Council Regulation on the BBI Joint Undertaking of 10 July 2013¹³ entails that the legislator expects EUR 17.5 million as financial contributions from Industry to operational costs to be entered annually into the budget of the BBI Joint Undertaking.

BIC has acknowledged its obligation to deliver a financial contribution of at least EUR 182.5 million by 31 December 2024, but it has found difficulties with the delivery mode¹⁴. For many of the BIC members, making a financial contribution at programme level is commercially unviable, because it does not offer any guaranteed benefit in exchange (e.g. results of the projects and related intellectual property rights) and it could benefit competitors participating in projects funded by the BBI JU¹⁵. Thus, BIC has proposed an alternative mode for delivering the financial contribution: the possibility for its members to deliver the financial contribution directly, at project level¹⁶. This delivery mode would encourage BIC members' financial participation, because they could have access to the results of the projects that are reserved to project participants only.

The European Commission assessed the proposal made by BIC, checking whether (and to which extent) the interest of the Union is affected by the alleged difficulty for BIC to fulfil its obligation to contribute financially to BBI JU. At first, the European Commission could have simply dismissed the arguments of BIC, justifying that it is not under the competences of the Commission to pursue the interest of the private member of the JU, that compliance with the

¹⁰ In-kind contributions in additional activities are defined by Article 4(2)(b) of the Council Regulation 560/2014.

¹¹ BIC is the sole '*member other than the Union*'.

¹² The period provided for in Article 1 is '*until 31 December 2024*'.

¹³ Proposal for a Council Regulation on the Bio-Based Industries Joint Undertaking (COM(2013) 496)

¹⁴ During the financial years 2014, 2015 and 2016 an amount of EUR 0.75 million has been delivered by BIC at programme level.

¹⁵ Competitors of a BIC member cannot be restricted from participating in a project financed by the BBI JU because it would be in contradiction with the opened and transparent nature of the BBI JU calls for proposals.

¹⁶ Letter of 31 March 2015 addressed by the Board of BIC to DG RTD F.2.

existent legal framework is compulsory and that in the absence of it, the sanctions provided for in the Council Regulation¹⁷ would be applied. However, this would have had a negative impact on the objective of the BBI JU, which is to carry out activities through collaboration of stakeholders along the entire bio-based value chains, including SMEs, research and technology centres and universities¹⁸. Consequently, the Commission services decided to adopt a pro-active attitude and proceeded to an in-depth assessment of this issue, identifying the best available follow-up action that it could take. This consisted of an analysis of potential legislative and non-legislative measures, which pointed to the conclusion that a formal modification of the legal framework was needed.

In order to ensure that this modification occurs without any impact on the initial objectives of the Council Regulation, the services of the European Commission identified the objectives which lay behind the obligation to deliver a financial contribution: (1) to secure delivery of a minimum private financial contribution to the operational costs of the BBI JU Initiative by means of a commitment taken by its private member; (2) to secure a minimum leverage effect of contributions made by the Union; and, very importantly, (3) to support the take-off of the bio-economy sector by making funding available for Research and Innovation Actions ('RIA') in this area. With regard to the first objective, the commitment to participate financially was made particularly by members of BIC belonging to the forestry industry, which due to their business model¹⁹ cannot generate any IKOP and can only participate financially in the BBI JU. With regard to the third objective, EUR 150 million (out of the EUR 182.5 million expected financial contribution from BIC) were earmarked to be invested in RIAs²⁰ (where the main beneficiaries are academia and SMEs).

Taking into account the rationale behind the obligation to deliver the financial contribution, the services of the European Commission have been working to identify the possible modes in which this financial contribution could be delivered. A comparative analysis of the Council Regulation with the legal frameworks established for other Joint Undertakings²¹ proved to be constructive in this regard. The financial contribution by the Members other than the Union was identified only in the regulation establishing the Innovative Medicines Initiative 2 Joint Undertaking ('IMI2')²². Unlike the BBI JU regulation, IMI2 JU Regulation does not include an obligation to contribute financially. It is only a possibility for the Members other than the Union. This financial contribution at IMI2 JU may be delivered both at programme and project level. Furthermore, it is worth noting that in practice delivery at IMI2 programme level is done by trusts and charities which, by their very nature, operate like public funders (e.g. the Bill & Melinda Gates Foundation, Wellcome Trust) while the EFPIA constituent and affiliated entities (the equivalent of BIC members in IMI2) deliver financial contributions at project level. Consequently, the conclusions of this comparative analysis are that: (1) the

¹⁷ See Article 4(5) of the Council Regulation 560/2014.

¹⁸ See recital 14 of the Council Regulation 560/2014.

¹⁹ In general, members of the forestry industry do not have any in-house research capacity and they usually rely on outsourcing their research activities to academia and SMEs.

²⁰ See page 46 of the Strategic Innovation and Research Agenda of March 2013 ([SIRA](#)), where the total amount prioritised for R&D (i.e. RIA) is EUR 600 million (out of which EUR 150 million represent the financial contribution of BIC members, EUR 150 million represent their in kind contribution, and EUR 300 million represent the EU contribution).

²¹ Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the [Fuel Cells and Hydrogen 2 Joint Undertaking](#); Council Regulation (EU) No 558/2014 of 6 May 2014 establishing the [Clean Sky 2 Joint Undertaking](#); Council Regulation (EU) No 561/2014 of 6 May 2014 establishing the [ECSEL Joint Undertaking](#); Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the [Shift2Rail Joint Undertaking](#).

²² Established by the Council Regulation (EU) No 557/2014 of 6 May 2014.

requirement to deliver a financial contribution exclusively at programme level is unique to the BBI JU; (2) BBI JU's current model is adequate for enhancing collaboration with trusts and charities; and, most relevantly, (3) BBI JU's framework should be adjusted as it is to collaborate with commercial companies as well.

Being the entity responsible for promoting the general interest of the Union and for taking appropriate initiatives to that end²³ and taking note of BIC's difficulty to deliver its financial contribution in the mode foreseen by the Council Regulation, the European Commission proposes to adjust the initial text of the Council Regulation by introducing the possibility of delivering financial contributions at project level, in addition to the existent mode of delivery at programme level. This solution addresses the situation effectively and works towards achieving the initial objectives of the Council Regulation by allowing BIC members to comply with their initial commitment. This solution is similar to the one of IMI 2 JU, where members other than the Union can make financial contributions either at programme level, which is commonly done by trusts and charities, or at project level, which is the mode used by commercial entities.

The proposed amendment is not part of the REFIT programme.

- **Consistency with existing policy provisions in the policy area**

This proposal seeks to improve the provisions of the Council Regulation and to streamline them furthermore towards its objectives. Therefore this proposal for amendment is totally consistent with the original objectives of the BBI JU and with existing policy provisions.

- **Consistency with other Union policies**

The BBI JU develops 'close synergies with other Union programmes in areas such as education, environment, competitiveness and SMEs, and with the Cohesion Policy funds and Rural Development Policy, which can specifically help to strengthen national and regional research and innovation capabilities in the context of smart specialisation strategies'²⁴.

The importance of (setting up) a Bio-based Industries PPP in the form of a Joint Technology Initiative was highlighted in several Commission Communications, such as '*Innovating for Sustainable Growth: A Bioeconomy for Europe*'²⁵, '*For a European Industrial Renaissance*'²⁶, '*Public-private partnerships in Horizon 2020: a powerful tool to deliver on innovation and growth in Europe*'²⁷, and *European Innovation Partnership 'Agricultural Productivity and Sustainability'*²⁸.

²³ See Article 17 of the Treaty on European Union.

²⁴ See Recital no. 17 of Council Regulation 560/2014.

²⁵ Communication from the Commission to the European Parliament and the Council [COM\(2012\) 60 final](#).

²⁶ Communication from the Commission to the European Parliament and the Council [COM\(2014\) 14 final](#).

²⁷ Communication from the Commission to the European Parliament and the Council [COM\(2013\) 494 final](#).

²⁸ Communication from the Commission to the European Parliament and the Council [COM\(2012\) 79 final](#).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of this proposal for amendment lies in Articles 187 and 188 of the Treaty on the Functioning of the European Union ('TFEU').

- **Subsidiarity (for non-exclusive competence)**

The initiative does not fall under any of the exclusive competences explicitly transferred to the EU. However, only the EU is able to modify the legal framework of a Joint Undertaking set up in accordance with Articles 187 and 188 TFEU. Member States are unable to act alone on changing the legal framework of an EU body.

- **Proportionality**

The objective envisaged by this proposal for amendment is to adjust the provisions of the Council Regulation so as to provide BIC members with the practical possibility to fulfil their obligation to deliver the financial contribution. This proposal does not produce any additional impact other than the one initially intended by the Council Regulation. Therefore, the action proposed does not go beyond what is necessary to achieve its objective satisfactorily, both with regard to its content and its form, thus complying with the principle of proportionality.

- **Choice of the instrument**

An analysis of regulatory and non-regulatory measures was carried out, and pointed to the need for a formal modification of the Council Regulation. Thus, in the absence of any possibility of interpretation of the Council Regulation that would make possible the delivery of the financial contribution at project level, the only available option that remains is to amend the Council Regulation itself.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Council Regulation came into force in June 2014 and an interim evaluation of the BBI JU is due by 30 June 2017. Therefore, no ex-post evaluations or fitness checks have been carried out yet with regard to the Council Regulation.

- **Stakeholder consultations**

The European Commission has constant operational exchanges with BIC, its members and the BBI JU Programme Office in the framework of the implementation of the BBI JU. The mode of delivery of the financial contribution by BIC members has been subject of multiple rounds of consultations and discussions.

- **Collection and use of expertise**

The European Commission did not rely on any external expertise when dealing with the issue of the financial contribution of BIC members.

- **Impact assessment**

The objective envisaged by this proposal for amendment is to adjust the Council Regulation so that it can fully achieve the impact initially expected from it. Consequently, this proposal for amendment has no additional impact other than the one expected to be achieved by the original Council Regulation itself.

Furthermore, according to the Better Regulation Toolbox²⁹, an Impact Assessment is not required when there is little or no choice available for the Commission. As explained above, the options of the European Commission in this particular case are limited, as it is only 'technically' amending a previous policy decision already subject to an Impact Assessment by specifying technical details with limited discretion available. Therefore, no impact assessment is required for this initiative.

- **Regulatory fitness and simplification**

The proposed amendment is not part of the REFIT programme.

In order to evaluate its impact on regulatory and administrative burden, it is necessary to describe, on the one hand the framework created by the original Council Regulation, and on the other hand the one envisaged by this proposal.

In order to comply with the requirements established by the Council Regulation, BIC members need to deliver individual financial contributions to BIC, in accordance with the rules agreed upon by the consortium. BIC collects the individual financial contributions of its members, enters them into its accounts and delivers the financial contributions³⁰ to the BBI JU. The BBI JU enters them into its accounts as operational budget³¹, together with the contribution it receives from the Union (constituting the BBI JU contribution to indirect actions).

As part of its daily operational activities, the BBI JU makes an assessment of the costs incurred and reported by beneficiaries in BBU JU funded projects. After approving the eligible costs (in accordance with the applicable legal framework, in particular the Rules for Participation in Horizon 2020³² and the grant agreements concluded between the BBI JU and the project beneficiaries), the BBI JU distributes the BBI JU contribution to the projects. The beneficiaries enter the received BBI JU contribution in their accounts, in accordance with their national legislation and their usual accounting practices.

In line with this proposal, BIC members will have the possibility to continue delivering financial contributions at programme level, as described above. In addition to this, BIC members participating in a BBI JU project will have the possibility to transfer the financial contribution directly to another participant in the same project, as presented in the description of action, in accordance with the rules mutually agreed upon by both parties (the consortium agreement) and in compliance with the applicable legal framework. The participants enter the

²⁹ See p. 33 of the Better Regulation [‘Toolbox’](#).

³⁰ In accordance with Article 12(3)(b) corroborated with Article 12(4) of the Statutes annexed to the Council Regulation.

³¹ In accordance with Article 12(5)(b) corroborated with Article 12(3)(a) and 12(3)(b) of the Statutes annexed to the Council Regulation.

³² Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013, laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)

financial contributions into their accounts in accordance with their national legislation and their usual accounting practices.

A comparative summary of the two frameworks is presented in the table below:

Current framework	Proposed alternative
financial transfer from BIC members to BIC	financial transfers from BIC members to project beneficiaries
accounting by BIC	
financial transfer from BIC to BBI JU	
accounting by BBI JU	
(following assessment of eligible costs) financial transfers from BBI JU to project beneficiaries	
accounting by beneficiaries in accordance with their national legislation and their usual accounting practices.	accounting by beneficiaries in accordance with their national legislation and their usual accounting practices.

This proposal reduces administrative burden for BIC and for the BBI JU as far as their intermediary role between BIC members who are obliged to make financial contributions, and project participants is concerned. However, BIC will remain ultimately responsible for reporting of the aggregate number of financial contributions by its members, as set out in Article 4(3) of the BBI JU Regulation.

Appropriate changes will be introduced in the BBI JU Model grant agreement based on similar solution applied in the IMI 2 JU Model grant agreement.

The envisaged system has already been pioneered by the IMI JU³³ and is also currently used in the context of IMI 2 JU.

- **Fundamental rights**

This proposal for amendment has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

This proposal for amendment has no budgetary implications.

As explained above, the current legal framework makes it very difficult for BIC members to comply with it, and therefore not proposing an amendment would have budgetary implications. More concretely, the non-compliance by members other than the Union with the legal framework would trigger financial sanctions as provided under Article 4(5) of the Council Regulation, which refers, among others, to reducing the financial contribution of the Union to the BBI JU Initiative. A budget cut would affect mainly academia and the relevant

³³ IMI JU was initially established by the Council Regulation (EC) No 73/2008 of 20 December 2007 setting up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines.

SMEs, as this financial contribution was reserved particularly for RIAs (in which academia and SMEs are the main beneficiaries receiving funding³⁴).

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

A specific implementation plan for this amendment is not needed as the amended Council Regulation would be implemented – just as the original one – through projects selected by BBI JU after carrying out open, competitive calls for proposals. An implementation plan had not been established at the initial adoption of the Council Regulation either.

- **Explanatory documents (for directives)**

This proposal for amendment concerns a Council Regulation that is binding in all its elements and is directly applicable in each Member State. Consequently, no explanatory document is required.

- **Detailed explanation of the specific provisions of the proposal**

This proposal for amendment contains one substantial article that will produce the following effects:

-Introduce a new mode of delivering the financial contribution referred to in Article 12(3)(b) of the Statutes annexed to the Council Regulation, in addition to the existing mode of delivery.

-Delivering financial contributions will be possible in two modes: by transferring them from BIC to the BBI JU (as before) and/or by transferring them directly from a BIC member to another project beneficiary.

-Extend the parties that can deliver the financial contribution referred to in Article 12(3)(b) of the Statutes annexed to the Council Regulation. In addition to the ‘Member other than the Union’ (i.e. BIC standing alone), its ‘constituent entities’ (i.e. BIC members) will also be allowed to deliver the financial contribution.

-Maintain the commitment to the overall financial target set out in Art 12(4) of the Statutes annexed to the Council Regulation.

-Allow BIC members to report through BIC the financial contributions delivered by them at project level to the BBI JU.

³⁴ Commission Delegated Regulation (EU) No 623/2014 of 14 February 2014 establishing a derogation from Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for participation and dissemination in ‘Horizon 2020’ with regard to the Bio-Based Industries Joint Undertaking.

Proposal for a

COUNCIL REGULATION

amending the COUNCIL REGULATION (EU) No 560/2014 of 6 May 2014 establishing the Bio-based Industries Joint Undertaking

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament³⁵,

Having regard to the opinion of the European Economic and Social Committee³⁶

Whereas:

- (1) Council Regulation (EU) 560/2014⁽³⁷⁾ established the Bio-based Industries Joint Undertaking ('BBI Joint Undertaking').
- (2) Article 12(4) of the Statutes of the BBI Joint Undertaking, set out in the Annex to Regulation (EU) No 560/2014 ('the Statutes'), states that the financial contribution by the members of the BBI Joint Undertaking other than the Union to operational costs is to be at least EUR 182 500 000 over the period set out in Article 1 of Regulation (EU) No 560/2014, that is to say from the establishment of the BBI Joint Undertaking until 31 December 2024.
- (3) The Bio-based Industries Consortium Aisbl ('BIC'), which is a member of the BBI Joint Undertaking other than the Union, continues to be ready to support the operational costs of the BBI Joint Undertaking for the amount set out in Article 12(4) of the Statutes. It has however proposed an alternative mode of financing through financial contributions made by its constituent entities at the indirect actions' level.
- (4) The objective of the BBI Initiative to carry out activities through collaboration of stakeholders along the entire bio-based value chains, including SMEs, research and technology centres and universities can be achieved only by enabling BIC and its

³⁵ OJ C , , p. .

³⁶ OJ C , , p. .

³⁷ Council Regulation (EU) No 560/2014 of 6 May 2014 establishing the Bio-based Industries Joint Undertaking (OJ L 169, 7.6.2014, p. 130).

constituent entities to deliver the financial contribution not only as payments to the BBI Joint Undertaking but also as financial contributions to indirect actions funded by the BBI Joint Undertaking.

- (5) It is therefore necessary to amend the Statutes in order to enable BIC and its constituent entities to deliver the financial contribution for the full amount set out in Article 12(4) of the Statutes, allowing those contributions to be made not only as payments to the BBI Joint Undertaking but also as financial contributions to indirect actions funded by the BBI Joint Undertaking and to be reported to the BBI Joint Undertaking,

HAS ADOPTED THIS REGULATION:

Article 1

Article 12 of the Statutes of the Bio-based Industries Joint Undertaking, as set out in the Annex to Council Regulation (EU) No 560/2014, is amended as follows:

paragraph 3, point (b) is replaced by the following:

‘(b) financial contributions by the members other than the Union or their constituent entities;’

paragraph 4 is replaced by the following:

‘4. The financial contributions by the members other than the Union or their constituent entities to the operational costs referred to in paragraph 3(b) shall be at least EUR 182 500 000 over the period provided for in Article 1 of this Regulation.

These financial contributions shall be made as payments to the BBI Joint Undertaking or as financial contributions to indirect actions funded by the BBI Joint Undertaking.’

Article 2

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

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

Done at Brussels,

*For the Council
The President*