



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 26 November 2013
(OR. en)**

16544/13

**Interinstitutional File:
2013/0245 (NLE)**

**RECH 558
ENER 542
COMPET 850
ENV 1093**

NOTE

| | |
|-------|--|
| From: | Permanent Representatives Committee (Part I) |
| To: | Council |

| | |
|-----------------|---|
| No. prev. doc.: | 16000/13 RECH 526 ENER 510 COMPET 804 ENV 1047 |
| No. Cion doc.: | 12378/13 RECH 360 ENER 364 COMPET 578 ENV 709 - COM(2013) 506 final |

| | |
|----------|--|
| Subject: | Proposals by the Commission for Joint Technology Initiatives established under Article 187 TFEU Proposal for a Council Regulation on the Fuel Cells and Hydrogen 2 Joint Undertaking - <i>General Approach</i> |
|----------|--|

I. INTRODUCTION

1. On 10 July 2013, the Commission submitted to the European Parliament and to the Council its proposal for a Council Regulation on the Fuel Cells and Hydrogen 2 Joint Undertaking to replace and succeed the Fuel Cells and Hydrogen Joint Undertaking as established by Council Regulation (EC) n° 521/2008.

2. The general objective of the proposed continuation of the Fuel Cells and Hydrogen Joint Undertaking in Horizon 2020 is to contribute to implementing an optimal research and innovation programme at EU level and to develop a strong, sustainable and globally competitive fuel cells and hydrogen sector in the Union.
3. The European Parliament's Committee on Industry, Research and Energy (ITRE) appointed Mr PANAYOTOV Vladko Todorov (ALDE) as the rapporteur on this proposal. The ITRE Committee is expected to vote on its opinion on 9 January 2014.
4. The opinion of the European Economic and Social Committee is still pending.

II. WORK WITHIN THE COUNCIL

1. Following the work since September 2013 within the Research Working Party, resulting to some amendments to the initial proposal, the Permanent Representatives Committee on 22 November 2013 reached an agreement in principle on the Presidency compromise text included in annex to this note. In comparison with the previous document (16000/13), the new text is indicated in **bold** and deletions in ~~strike through~~.
2. It should be noted that the Commission has entered a general reservation on the whole text, pending the opinion of the European Parliament. Furthermore, DK has a parliamentary scrutiny reservation on the whole text.

III. CONCLUSION

In the light of the above, the Council is invited to consider the compromise proposal presented by the Presidency (in Annex) with a view to reaching a General Approach at the Council (Competitiveness) meeting on 2-3 December 2013.

Proposal for a

COUNCIL REGULATION

on the Fuel Cells and Hydrogen 2 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 Parliament¹

Having regard to the opinion of the Economic and Social Committee²,

Whereas:

- (1) Public-private partnerships in the form of Joint Technology Initiatives were initially provided for in Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework programme of the European Community for research, technological development and demonstration activities (2007-2013)³.

¹ OJ ... [EP opinion]

² OJ ... [ESC opinion]

³ OJ L 412, 30.12.2006, p.1

- (2) Council Decision 2006/971/EC of 19 December 2006 concerning the Specific Programme ‘Cooperation’ implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)⁴ identified specific public-private partnerships to be supported, including a public-private partnership in the specific area of the Fuel Cells and Hydrogen Joint Technology Initiative.
- (3) Europe 2020 Strategy⁵ underscores the need to develop favourable conditions for investment in knowledge and innovation so as to achieve smart, sustainable and inclusive growth in the Union. Both European Parliament and Council have endorsed this strategy.
- (4) Regulation (EU) No .../2013 of the European Parliament and of the Council of ... 2013 establishing Horizon 2020 - The Framework Programme for Research and Innovation (2014-2020)⁶ aims to achieve a greater impact on research and innovation by combining Horizon 2020 Framework Programme and private sector funds in public-private partnerships in key areas where research and innovation can contribute to Union's wider competitiveness goals and help tackle societal challenges. The involvement of the Union in those partnerships may take the form of financial contributions to joint undertakings established on the basis of Article 187 of the Treaty under Decision No 1982/2006/EC.
- (5) In accordance with Decision (EU) No [...] /2013 of the Council of [...] 2013 establishing the Specific Programme implementing Horizon 2020 (2014-2020)⁷ further support should be provided to joint undertakings established under Decision (EU) No 1982/2006/EC under the conditions specified in Decision (EU) No [...] /2013.

⁴ OJ L 400, 30.12.2006, p.86

⁵ COM(2010) 2020 final.

⁶ OJ ... [H2020 FP]

⁷ OJ ... [H2020 SP].

- (6) The Fuel Cells and Hydrogen Joint Undertaking, set up by Regulation (EC) No. 521(2008) of the Council of 30 May 2008 setting up the Fuel Cells and Hydrogen Joint Undertaking⁸ has demonstrated the potential of hydrogen as an energy carrier, and of fuel cells as energy converters, to offer a pathway for clean systems that reduce emissions, enhance energy security, and stimulate the economy. The interim evaluation of the Fuel Cells and Hydrogen Joint Undertaking⁹ has shown that the Joint Undertaking has served as a platform for creating of a strong partnership, for leveraging public and private funding and for the strong involvement of industry, in particular SMEs. The also recommended increase in the activities on hydrogen production, storage and distribution has been taken up in the new objectives. Its research area should therefore continue to be supported with the aim of developing, to the point of market introduction, a portfolio of clean, efficient and affordable solutions.
- (7) Continued support for the Fuel Cells and Hydrogen research programme should also take into account the experience acquired from the operations of the Fuel Cells and Hydrogen Joint Undertaking including the results of its first interim evaluation, the results of stakeholders' recommendations¹⁰, and be implemented using a more fit-for-purpose structure and rules in order to enhance efficiency and to ensure simplification. To this effect, the Fuel Cells and Hydrogen 2 Joint Undertaking should adopt financial rules specific to its needs in accordance with Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union¹¹.

⁸ OJ L153/1, 12.6.2008, p. 1-20, as amended by Council Regulation 1183/2011 of 14.11.2011, OJ L302, 19.11.2011, p. 3-4.

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Partnering in Research and Innovation', COM(2011) 572 final, 21.09.2011

¹⁰ 'Trends in investments, jobs and turnover in the Fuel cells and Hydrogen sector' – results of stakeholders' consultation: <http://www.fch-ju.eu/page/publications>

¹¹ OJ L 298, 26.10.2012, p. 84.

- (8) The Members other than the Union of the Fuel Cells and Hydrogen Joint Undertaking have expressed in writing their agreement for the research activities in the area of the Fuel Cells and Hydrogen Joint Undertaking to be pursued within a structure better adapted to the nature of a public-private partnership. It is appropriate that the Members other than the Union to the Fuel Cells and Hydrogen 2 Joint Undertaking accept the Statutes set out in Annex to this Regulation by means of a letter of endorsement.
- (9) In order to achieve its objectives, the Fuel Cells and Hydrogen 2 Joint Undertaking should provide financial support mainly in the form of grants to participants following open and competitive calls for proposals.
- (10) Contributions from Members other than the Union and their constituent entities or their affiliated entities should not only be limited to the administrative costs of the Fuel Cells and Hydrogen 2 Joint Undertaking and to the co-financing required to carry out research and innovation actions supported by the Fuel Cells and Hydrogen 2 Joint Undertaking.
- (11) Their contributions should also relate to additional activities to be undertaken by the Members other than the Union or their constituent entities or their affiliated entities, as specified in an additional activities plan. In order to get a proper overview of the leverage effect those additional activities should represent contributions to the broader Fuel Cells and Hydrogen Joint Technology Initiative.
- (11a) Any eligible institution may become a participant or a coordinator in selected projects. According to specific policy requirements or to the nature and objective of the action set out in the work plan, it can be required that the coordinator is a constituent entity of a Member other than the Union, in accordance to the Horizon 2020 Rules for Participation.

- (12) The specificities of the Fuel Cells and Hydrogen sector, in particular that it is still a pre-mature sector, without clear returns of investments and its main benefits being societal ones, justify that the Union contribution is higher than the contribution from the Members other than the Union. In order to encourage broader representativeness of the groupings that are members of the Fuel Cells and Hydrogen 2 Joint Undertaking and support participation of new constituent entities in the Joint Technology Initiative, the Union contribution should be divided in two instalments, the second of which should be made conditional upon additional commitments, in particular from new constituent entities.
- (13) In assessing the overall impact of the Fuel Cells and Hydrogen Joint Technology Initiative, the investments from all legal entities other than the Union contributing to the objectives of the Fuel Cells and Hydrogen Joint Technology Initiative will be taken into account. Costs incurred by all legal entities on additional activities outside the work plan of the Fuel Cells and Hydrogen 2 Joint Undertaking contributing to the objectives of the Fuel Cells and Hydrogen Joint Undertaking should be declared upon signature of grant agreements. These overall investments to the Fuel Cells and Hydrogen Joint Technology Initiative are expected to amount to at least {EUR 700 665 million}.
- (14) Participation in indirect actions funded by the Fuel Cells and Hydrogen 2 Joint Undertaking should comply with Regulation (EU) No ... /2013 of the European Parliament and of the Council of ... 2013 laying down the rules for the participation and dissemination in ‘Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)’¹².
- (15) The Union financial contribution should be managed in accordance with the principle of sound financial management and with the relevant rules on indirect management set out in Regulation (EU, Euratom) No 966/2012 and Commission delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012¹³.

¹² OJ ... [H2020 RfP]

¹³ OJ L 362, 31.12.2012, p.1

- (16) Audits of recipients of Union funds under this Regulation should be carried out in such a manner that administrative burden is reduced, in compliance with Regulation (EU) No .../2013 [the Horizon 2020 Framework Programme].
- (17) The financial interests of the Union and of the other members of the Fuel Cells and Hydrogen 2 Joint Undertaking should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.
- (18) The Commission's internal auditor should exercise the same powers over the Fuel Cells and Hydrogen 2 Joint Undertaking as those exercised in respect of the Commission.
- (19) In accordance with Article 287(1) of the Treaty, the constituent instrument of bodies, offices or agencies set up by the Union may preclude the examination of the accounts of all revenue and expenditure of those bodies, offices or agencies by the Court of Auditors. In accordance with Article 60(5) of Regulation (EU, Euratom) No 966/2012, the accounts of the bodies under Article 209 Regulation (EU, Euratom) No 966/2012 are to be examined by an independent audit body which is to give an opinion *inter alia* on the reliability of the accounts and the legality and regularity of the underlying transactions. Avoidance of duplication of the examination of the accounts justifies that the accounts of the Fuel Cells and Hydrogen 2 Joint Undertaking should not be subject to the examination by the Court of Auditors.
- (19a) Fuel Cells and Hydrogen Joint Undertaking should operate in a transparent way providing all available information in a timely manner to its appropriate bodies as well as promoting its activities accordingly.

- (20) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty on the European Union, the objectives of the Fuel Cells and Hydrogen 2 Joint Undertaking in strengthening industrial research and innovation across the Union cannot be sufficiently achieved by the Member States and can therefore, by reason of avoiding duplication, retaining critical mass and ensuring that public financing is used in an optimal way, be better achieved by the Union; this Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (21) The Fuel Cells and Hydrogen Joint Undertaking was set up for a period up to 31 December 2017. The Fuel Cells and Hydrogen 2 Joint Undertaking should provide continued support to the Fuel Cells and Hydrogen research programme by enlarging the scope of the activities under a modified set of rules. The transition from the Fuel Cells and Hydrogen Joint Undertaking to the Fuel Cells and Hydrogen 2 Joint Undertaking should be aligned and synchronized with the transition from the Seventh Framework Programme to the Horizon 2020 Framework Programme to ensure optimal use of the funding available for research. In the interest of legal certainty and clarity, Council Regulation (EC) No. 521/2008 should therefore be repealed and transitional provisions should be set out.
- (22) It is appropriate to ensure a smooth transition without interruption to align the duration of this Joint Undertaking with the Council Regulation laying down the multiannual financial framework for the years 2014-2020¹⁴. Therefore, this Joint Undertaking should apply as from 1 January 2014.

¹⁴ OJ ... [MFF]

HAS ADOPTED THIS REGULATION:

Article 1

Establishment

1. For the implementation of the Joint Technology Initiative on Fuel Cells and Hydrogen, a joint undertaking within the meaning of Article 187 of the Treaty (hereinafter ‘FCH 2 Joint Undertaking’), is established for a period from 1 January 2014 until 31 December 2024.
2. The FCH 2 Joint Undertaking shall replace and succeed the FCH Joint Undertaking as established by Council Regulation (EC) No 521/2008.
3. The FCH 2 Joint Undertaking shall constitute a body entrusted with the implementation of a public-private partnership referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council¹⁵.
4. The FCH 2 Joint Undertaking shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those Member States. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

¹⁵ OJ L 298, 26.10.2012, p. 1.

5. The seat of the FCH 2 Joint Undertaking shall be located in Brussels, Belgium.
6. The Statutes of the FCH 2 Joint Undertaking are set out in the Annex.

Article 2

Objectives

1. The FCH 2 Joint Undertaking shall have the following objectives:
 - (a) to contribute to the implementation of Regulation (EU) No .../2013 of the European Parliament and of the Council of ... 2013 establishing the Horizon 2020 Framework Programme, and in particular part ... of Decision No .../2013/EU of the Council of ... 2013 establishing the Horizon 2020 Specific Programme;
 - (b) to contribute to the objectives of the Joint Technology Initiative on Fuel Cells and Hydrogen, through the development of a strong, sustainable and globally competitive fuel cells and hydrogen sector in the Union.
2. It shall, in particular:
 - reduce the production cost of fuel cell systems to be used in transport applications, while increasing their lifetime to levels competitive with conventional technologies,
 - increase the electrical efficiency and the durability of the different fuel cells used for power production, while reducing costs, to levels competitive with conventional technologies,
 - increase the energy efficiency of production of hydrogen mainly from water electrolysis and renewable sources while reducing operating and capital costs, so that the combined system of the hydrogen production and the conversion using the fuel cell system is competitive with the alternatives available in the marketplace;

- demonstrate on a large scale the feasibility of using hydrogen to support integration of renewable energy sources into the energy systems, including through its use as a competitive energy storage medium for electricity produced from renewable energy sources;
- reduce the use of the EU defined "Critical raw materials", for instance via low or platinum free resources and through recycling or reducing or avoiding the use of rare earth elements.

Article 3

Union financial contribution

1. The maximum Union contribution, including EFTA appropriations, to the FCH 2 Joint Undertaking to cover administrative costs and operational costs shall be EUR 665 million¹⁶, which shall consist of:
 - a) up to EUR ~~{xxx 570 million}~~ **570** million} corresponding to the contribution committed in accordance with Article 4(1),
 - b) up to EUR ~~{xxx 95 million}~~ **95** million} to match any additional contribution committed above the minimum amount specified in Article 4(1).

The contribution shall be paid from the appropriations in the general budget of the Union allocated to the Horizon 2020 Specific Programme implementing the Horizon 2020 Framework Programme in accordance with the relevant provisions of Article 58(1)(c)(iv) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 for bodies referred to in Article 209 of that Regulation.

¹⁶ ~~Once the overall figure is agreed, figures under Article 3.1(a) and 3.1(b) will be adjusted accordingly~~

2. The arrangements for the Union financial contribution shall be set out in a delegation agreement and annual transfer of funds agreements to be concluded between the Commission, on behalf of the Union, and the FCH 2 Joint Undertaking.
3. The delegation agreement referred to in paragraph 2 shall address the elements set out in Article 58(3) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 and in Article 40 of Commission delegated Regulation (EU) No 1268/2012 as well as inter alia the following:
 - (a) the requirements for the FCH 2 Joint Undertaking's contribution regarding the relevant performance indicators referred to in Annex II to Decision No .../EU [the Specific Programme implementing the Horizon 2020 Framework Programme];
 - (b) the requirements for the FCH 2 Joint Undertaking's contribution in view of the monitoring referred to in Annex III to Decision No .../EU [the Specific Programme implementing the Horizon 2020 Framework Programme];
 - (c) the specific performance indicators related to the functioning of the FCH 2 Joint Undertaking;
 - (d) the arrangements regarding the provision of data necessary to ensure that the Commission is able to meet its dissemination and reporting obligations;
 - (e) the use of and changes to human resources, in particular recruitment by function group, grade and category, the reclassification exercise and any changes to the number of staff members.

Article 4

Contributions of Members other than the Union

1. The Members of the FCH 2 Joint Undertaking other than the Union shall make or arrange for their constituent entities or their affiliated entities to make a total contribution of at least ~~{EUR 400~~ **380** million} over the period defined in Article 1.
2. The contribution referred to in paragraph 1 shall consist of the following:
 - (a) contributions to the FCH 2 Joint Undertaking as laid down in clause 13(2) and clause 13(3)(b) of the Statutes contained in the Annex.
 - (b) in-kind contributions of at least ~~{EUR 300~~ **285** million} over the period defined in Article 1 by the Members other than the Union or their constituent entities or their affiliated entities, consisting of the costs incurred by them in implementing additional activities outside the work plan of the FCH 2 Joint Undertaking contributing to the objectives of the FCH Joint Technology Initiative. Other Union funding programmes may support those costs in compliance with the applicable rules and procedures. In such cases, Union financing shall not substitute for the in kind contributions from the Members other than the Union or their constituent entities or their affiliated entities.

Those costs referred to in point (b) shall not be eligible for financial support by the FCH 2 Joint Undertaking. The corresponding activities shall be set out in an annual additional activities plan that shall indicate the estimated value of those contributions.

3. The Members of the FCH 2 Joint Undertaking other than the Union shall report each year by 31 January to the Governing Board of the FCH 2 Joint Undertaking on the value of the contributions referred to in paragraph 2 made in each of the previous financial years.

4. For the purpose of valuing the contributions referred to in point (b) of paragraph 2 and clause 13(3)(b) of the Statutes contained in the Annex, the costs shall be determined according to the usual cost accounting practices of the entities concerned, to the applicable accounting standards of the country where each entity is established, and to the applicable International Accounting Standards / International Financial Reporting Standards. The costs shall be certified by an independent external auditor appointed by the entity concerned. The valuation of the contributions shall be verified by the FCH 2 Joint Undertaking. In case of remaining uncertainties, it may be audited by the FCH 2 Joint Undertaking.
5. The Commission may terminate, proportionally reduce or suspend the Union financial contribution to the FCH 2 Joint Undertaking or trigger the winding up procedure referred to in clause 21(2) of the Statutes contained in the Annex if those Members or their constituent entities or their affiliated entities do not contribute, contribute only partially or contribute late with regard to the contributions referred to in paragraph 2.

Article 5

Financial rules

The FCH 2 Joint Undertaking shall adopt its specific financial rules in accordance with Article 209 of Regulation (EU, Euratom) No 966/2012 and Regulation (EU) No ... [Delegated Regulation on the model Financial Regulation for PPPs.]

Article 6

Staff

1. The Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹⁷ and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and those Conditions of Employment of Other Servants shall apply to the staff employed by the FCH 2 Joint Undertaking.
2. The Governing Board shall exercise, with respect to the staff of the FCH 2 Joint Undertaking, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude Contract of Employment (hereinafter ‘the appointing authority powers’).

The Governing Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director is authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Governing Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member of the Joint Undertaking other than the Executive Director.

¹⁷ OJ 56, 4.3.1968, p. 1

3. The Governing Board shall adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.
4. The staff resources shall be determined by the staff establishment plan of the FCH 2 Joint Undertaking indicating the number of temporary posts by function group and by grade and the number of contract staff expressed in full-time equivalents, in line with its annual budget.
5. The staff of the FCH 2 Joint Undertaking shall consist of temporary staff and contract staff.
6. All costs related to the staff shall be borne by the FCH 2 Joint Undertaking.

Article 7

Seconded national experts and trainees

1. The FCH 2 Joint Undertaking may make use of seconded national experts and trainees not employed by the Joint Undertaking. The number of seconded national experts expressed in full-time equivalents shall be added to information on staff as referred to in Article 6(4) of this Regulation in line with the annual budget.
2. The Governing Board shall adopt a decision laying down rules on the secondment of national experts to the FCH 2 Joint Undertaking and on the use of trainees.

Article 8

Privileges and Immunities

The Protocol on the Privileges and Immunities of the Union shall apply to the FCH 2 Joint Undertaking and its staff.

Article 9

Liability of the FCH 2 Joint Undertaking

1. The contractual liability of the FCH 2 Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement, decision or contract in question.
2. In the case of non-contractual liability, the FCH 2 Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.
3. Any payment by the FCH 2 Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the FCH 2 Joint Undertaking and shall be covered by the resources of the FCH 2 Joint Undertaking.
4. The FCH 2 Joint Undertaking shall be solely responsible for meeting its obligations.

Article 10

Jurisdiction of the Court of Justice and applicable law

1. The Court of Justice shall have jurisdiction:
 - (a) pursuant to any arbitration clause contained in agreements, decisions or contracts concluded by the FCH 2 Joint Undertaking;
 - (b) in disputes relating to compensation for damage caused by the staff of the FCH 2 Joint Undertaking in the performance of their duties;
 - (c) in any dispute between the FCH 2 Joint Undertaking and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union.
2. Regarding any matter not covered by this Regulation or by other acts of Union law, the law of the State where the seat of the FCH 2 Joint Undertaking is located shall apply.

Article 11

Evaluation

1. By 31 December 2017 the Commission shall conduct an interim evaluation of the FCH 2 Joint Undertaking, which shall assess, notably, the level of participation in, and contribution to, the indirect actions both by the constituent entities of the Members other than the Union or their affiliated entities, and also by other legal entities. The Commission shall communicate the conclusions thereof, accompanied by its observations, to the European Parliament and to the Council by 30 June 2018.

2. On the basis of the conclusions of the interim evaluation referred to in paragraph 1, the Commission may act in accordance with Article 4(5), or take any other appropriate action.
3. Within six months after the winding up of the FCH 2 Joint Undertaking, but no later than two years after the triggering of the winding up procedure referred to in clause 21 of the Statutes contained in the Annex, the Commission shall conduct a final evaluation of the FCH 2 Joint Undertaking. The results of that final evaluation shall be presented to the European Parliament and to the Council.

Article 12

Discharge

1. The discharge of the budget implementation with regard to the Union contribution to the FCH 2 Joint Undertaking shall be part of the discharge given by the European Parliament, upon recommendation of the Council, to the Commission in accordance with the procedure provided for in Article 319 of the Treaty.
2. The FCH 2 Joint Undertaking shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any necessary additional information. In this context, it may be requested to be represented in meetings with the relevant institutions or bodies and assist the Commission authorising officer by delegation.

Article 13

Ex-post audits

1. Ex-post audits of expenditure on indirect actions shall be carried out by the FCH 2 Joint Undertaking in accordance with Article 23 of Regulation (EU) No ... [the Horizon 2020 Framework Programme] as part of the Horizon 2020 Framework Programme indirect actions.
2. To ensure coherence, the Commission may decide to carry out the audits referred to in paragraph 1. The Commission shall only do so in duly justified cases.

Article 14

Protection of the financial interests of the Members

1. Without prejudice to clause 17(4) of the Statutes contained in the Annex, the FCH 2 Joint Undertaking shall grant Commission staff and other persons authorised by the Commission or the Joint Undertaking, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.
2. The European Anti-fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC, Euratom) No 883/2013 of the European Parliament and of the Council¹⁸ and Council Regulation (Euratom, EC) No 2185/96¹⁹ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with an agreement or decision or a contract funded under this Regulation.

¹⁸ OJ L 248, 18.9.2013, p.1.

¹⁹ OJ L 292, 15.11.1996, p.2-5

3. Without prejudice to paragraphs 1 and 2, contracts, agreements and decisions, resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the FCH 2 Joint Undertaking, the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.
4. The FCH 2 Joint Undertaking shall ensure that the financial interests of its Members are adequately protected by carrying out or commissioning appropriate internal and external controls.
5. The FCH 2 Joint Undertaking shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF²⁰. The FCH 2 Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

Article 15

Confidentiality

Without prejudice to Article 16, the FCH 2 Joint Undertaking shall ensure the protection of sensitive information whose disclosure could damage the interests of its Members or of participants in the activities of the FCH 2 Joint Undertaking.

²⁰ OJ L 136, 31.5.1999, p. 15

Article 16

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents²¹, shall apply to documents held by the FCH 2 Joint Undertaking.
2. The FCH 2 Joint Undertaking Governing Board may adopt practical arrangements for implementing Regulation (EC) No 1049/2001.
3. Without prejudice to Article 10, decisions taken by the FCH 2 Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman under the conditions laid down in Article 228 of the Treaty.

Article 17

Rules for participation and dissemination

Regulation (EU) No ... [Rules for the participation and dissemination in Horizon 2020] shall apply to the actions funded by the FCH 2 Joint Undertaking. In accordance with that Regulation, the FCH 2 Joint Undertaking shall be considered as a funding body and shall provide financial support to indirect actions as set out in clause 1 of the Statutes contained in the Annex.

Pursuant to Article 8(5) of the Horizon 2020 Rules for Participation, work plans may provide for justified additional conditions according to specific policy requirements or to the nature and objective of the action, inter alia, that coordinators shall be constituent entities of a Member other than the Union.

²¹ OJ L 145, 31.5.2001, p. 43

Article 18

Support from the host State

An administrative agreement may be concluded between the FCH 2 Joint Undertaking and the State where its seat is located concerning privileges and immunities and other support to be provided by that State to the FCH 2 Joint Undertaking.

Article 19

Repeal and transitional provisions

1. Regulation (EC) No 521/2008 setting up the FCH Joint Undertaking is repealed with effect from 1 January 2014.
2. Without prejudice to paragraph 1, actions initiated under Regulation (EC) No 521/2008 and financial obligations related to those actions shall continue to be governed by that Regulation until their completion.

The interim evaluation referred to in Article 11(1) shall include a final evaluation of the FCH Joint Undertaking operations under Regulation (EC) No 521/2008.

3. This Regulation shall not affect the rights and obligations of staff engaged under Regulation (EC) No 521/2008.

The employment contracts of staff referred to in the first subparagraph may be renewed under this Regulation in accordance with the Staff Regulations.

In particular, the Executive Director appointed under Regulation No 521/2008 shall, for the remaining period of term of office, be assigned to the functions of the Executive Director as provided for in this Regulation with effect from 1 January 2014. The other conditions of contract shall remain unchanged.

4. Unless otherwise agreed between Members pursuant to Regulation (EC) No 521/2008, all rights and obligations including assets, debts or liabilities of the Members pursuant to that Regulation are transferred to the Members pursuant to this Regulation.
5. Any unused appropriations under Regulation (EC) No 521/2008 shall be transferred to the FCH 2 Joint Undertaking.

Article 20

Entry into force

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

It shall apply from 1 January 2014.

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

Done at Brussels,

For the Council

The President

STATUTES OF THE FCH 2 JOINT UNDERTAKING**1 - Tasks**

The FCH 2 Joint Undertaking shall carry out the following tasks:

- (a) supporting financially research and innovation indirect actions mainly in the form of grants;
- (b) reaching 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) integrating research and technology development and focus on achieving long-term sustainability and industrial competitiveness targets for cost, performance and durability and overcome critical technology bottlenecks;
- (d) stimulating innovation and the emergence of new value chains;
- (e) facilitating interaction between industry, universities and research centres;
- (f) promoting the involvement of SMEs in its activities, in line with the objectives of the Horizon 2020 Framework Programme;
- (g) performing broadly-conceived socio-techno-economic research to assess and monitor technological progress and nontechnical barriers to market entry;
- (h) encouraging the development of new regulations and standards and review existing ones to eliminate artificial barriers to market entry and to support inter-changeability, interoperability, cross-border trading, and export markets;
- (i) ensuring the efficient management of the Joint Undertaking on Fuel Cells and Hydrogen;

- (j) committing Union funding and mobilise the private sector and other public sector resources needed to implement fuel cells and hydrogen research and innovation activities;
- (k) fostering and facilitating the involvement of industry in additional activities implemented outside indirect actions;
- (l) information, communication, exploitation and dissemination activities by applying *mutatis mutandis* the provisions of Article 22 of Regulation (EU) No .../2013 [the Horizon 2020 Framework Programme], including making the detailed information on results from calls for proposals available and accessible in a common H2020 e-database;
- (m) any other task needed to achieve the objectives set out in Article 2 of this Regulation.

2 – Members

The Members of the FCH 2 Joint Undertaking shall be the following:

- (a) the Union, represented by the Commission,
- (b) upon acceptance of these Statutes by means of a letter of endorsement, the New Energy World Industry Grouping AISBL, a non-profit organisation established under Belgian Law (registration number: 890025478, with its permanent office in Brussels, Belgium) (hereinafter referred to as the ‘Industry Grouping’), and
- (c) upon acceptance of these Statutes by means of a letter of endorsement, the New European Research Grouping on Fuel Cells and Hydrogen AISBL, a non-profit organisation established under Belgian Law (registration number: 0897.679.372, with its permanent office in Brussels, Belgium) (hereinafter referred to as the ‘Research Grouping’).

Constituent entities are the entities that constitute each Member of the Joint Undertaking other than the Union, according to that Member's Statutes.

3 – Changes to membership

1. Any Member may terminate its membership to the FCH 2 Joint Undertaking. The termination shall become effective and irrevocable six months after notification to the other Members. As of then, the former Member shall be discharged from any obligations other than those approved or incurred by the FCH 2 Joint Undertaking prior to terminating the membership.
2. Membership of the FCH 2 Joint Undertaking may not be transferred to a third party without prior agreement of the Governing Board.
3. The FCH 2 Joint Undertaking shall publish on its website immediately upon any change to membership pursuant to this clause an updated list of Members of the FCH 2 Joint Undertaking together with the date when such change takes effect.

4 – Organisation of the FCH 2 Joint Undertaking

1. The bodies of the FCH 2 Joint Undertaking shall be:
 - (a) the Governing Board;
 - (b) the Executive Director;
 - (c) the Scientific Committee;
 - (d) the States Representatives Group;
 - (e) the Stakeholder Forum.
2. The Scientific Committee, the States Representatives Group and the Stakeholder Forum shall be advisory bodies to the FCH 2 Joint Undertaking.

5 – Composition of the Governing Board

The Governing Board shall be composed of the following:

- (a) three representatives of the Commission;
- (b) six representatives of the Industry Grouping, at least one of which shall represent SMEs;
- (c) one representative of the Research Grouping.

6 – Functioning of the Governing Board

1. The Commission shall hold 50 % of the voting rights. The vote of the Commission shall be indivisible. The Industry Grouping shall hold 43 % of the voting rights and the Research Grouping 7 % of the voting rights. The Members shall use their best efforts to achieve consensus. Failing consensus, the Governing Board shall take its decisions by a majority of at least 75 % of all votes, including the votes of those who are not in attendance.
2. The Governing Board shall elect its chairperson for a period of two years.
3. The Governing Board shall hold its ordinary meetings at least twice a year. It may hold extraordinary meetings at the request of the Commission or of a majority of the representatives of the Industry Grouping and the Research Grouping or at the request of the chairperson. The meetings of the Governing Board shall be convened by its chairperson and shall usually take place at the seat of the FCH 2 Joint Undertaking.

The Executive Director shall have the right to take part in the deliberations, but shall have no voting rights.

The chairperson of the States Representatives Group shall have the right to attend meetings of the Governing Board as an observer.

The Governing Board may invite, on a case by case basis, other persons to attend its meetings as observers, in particular representatives of regional authorities of the Union.

The representatives of the Members shall not be personally liable for actions they have taken in their capacity as representatives on the Governing Board.

The Governing Board shall adopt its own rules of procedure.

7 – Tasks of the Governing Board

1. The Governing Board shall have overall responsibility for the strategic orientation and the operations of the FCH 2 Joint Undertaking and shall supervise the implementation of its activities.
2. The Governing Board shall in particular carry out the following tasks:
 - (a) decide on the termination of the membership in the FCH 2 Joint Undertaking of any Member that does not fulfil its obligations;
 - (b) adopt the Financial rules of the FCH 2 Joint Undertaking in accordance with Article 5 of this Regulation;
 - (c) adopt the annual budget of the FCH 2 Joint Undertaking, including the staff establishment plan indicating the number of temporary posts by function group and by grade as well as the number of contract staff and seconded national experts expressed in full-time equivalents;
 - (d) exercise the appointing authority powers with respect of the staff, in accordance with Article 6(2) of this Regulation;
 - (e) appoint, dismiss, extend the term of office of, provide guidance to and monitor the performance of the Executive Director;
 - (f) approve the organisational structure of the Programme Office referred to in clause 9(5) upon recommendation by the Executive Director;

- (g) adopt the annual work plan and the corresponding expenditure estimates, as proposed by the Executive Director, after having consulted the Scientific Committee and the States Representatives Group;
- (h) approve the annual additional activities plan referred to in Article 4(2)(b) of this Regulation on the basis of a proposal from the Members other than the Union and after having consulted, where appropriate, an ad hoc advisory group;
- (i) approve the annual accounts;
- (j) approve the annual activity report, including the corresponding expenditure;
- (k) arrange, as appropriate, for the establishment of an internal audit capability of the FCH 2 Joint Undertaking;
- (l) approve the calls as well as, where appropriate, the related rules for submission, evaluation, selection, award and review procedures;
- (m) approve the list of actions selected for funding on the basis of the ranking list produced by a panel of independent experts;
- (n) establish the FCH 2 Joint Undertaking's communications policy upon recommendation by the Executive Director;
- (o) where appropriate, establish implementing rules in line with Article 6(3) of this Regulation;
- (p) where appropriate, establish rules on the secondment of national experts to the FCH 2 Joint Undertaking and on the use of trainees in line with Article 7 of this Regulation;
- (q) where appropriate, set up advisory groups in addition to the bodies to the FCH 2 Joint Undertaking;

- (r) where appropriate, submit to the Commission any request to amend this Regulation proposed by any Member of the FCH 2 Joint Undertaking;
- (s) be responsible for any task that is not specifically allocated to one of the bodies of the FCH 2 Joint Undertaking which it may assign to one of those bodies.

8 – Appointment, dismissal or extension of the term of office of the Executive Director

1. The Executive Director shall be appointed by the Governing Board, from a list of candidates proposed by the Commission, following an open and transparent selection procedure. The Commission shall associate the representation from the other Members of the FCH 2 Joint Undertaking in the selection procedure as appropriate.

In particular, an appropriate representation from the other Members of the FCH 2 Joint Undertaking shall be ensured at the pre-selection stage of the selection procedure. For that purpose, the other Members of the FCH 2 Joint Undertaking shall appoint by common accord a representative as well as an observer on behalf of the Governing Board.

2. The Executive Director is a member of staff and shall be engaged as a temporary agent of the FCH 2 Joint Undertaking under point (a) of Article 2 of the Conditions of Employment of Other Servants of the Union.

For the purpose of concluding the contract of the Executive Director, the FCH 2 Joint Undertaking shall be represented by the chairperson of the Governing Board.

3. The term of office of the Executive Director shall be three years. By the end of that period, the Commission associating the other Members of the FCH 2 Joint Undertaking as appropriate shall undertake an assessment of the performance of the Executive Director and the FCH 2 Joint Undertaking's future tasks and challenges.

4. The Governing Board, acting on a proposal from the Commission which takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for no more than four years.
5. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
6. The Executive Director may be dismissed only upon a decision of the Governing Board acting on a proposal from the Commission associating the other Members of the FCH 2 Joint Undertaking as appropriate.

9 – Tasks of the Executive Director

1. The Executive Director shall be the chief executive responsible for the day-to-day management of the FCH 2 Joint Undertaking in accordance with the decisions of the Governing Board.
2. The Executive Director shall be the legal representative of the FCH 2 Joint Undertaking. He shall be accountable to the Governing Board.
3. The Executive Director shall implement the budget of the FCH 2 Joint Undertaking.
4. The Executive Director shall in particular carry out the following tasks in an independent manner:
 - (a) prepare and submit for adoption to the Governing Board the draft annual budget, including the corresponding staff establishment plan indicating the number of temporary posts in each grade and function group and the number of contract staff and seconded national experts expressed in full-time equivalents;
 - (b) prepare and submit for adoption to the Governing Board the annual work plan and the corresponding expenditure estimates;

- (c) submit for approval to the Governing Board the annual accounts;
- (d) prepare and submit for approval to the Governing Board the annual activity report, including the corresponding expenditure;
- (e) submit to the Governing Board the report on in-kind contributions in indirect actions as provided for in Clause 13(3)(b) of the Statutes contained in the Annex;
- (f) submit for approval to the Governing Board the list of proposals to be selected for funding;
- (g) sign individual grant agreements or decisions;
- (h) sign the procurement contracts;
- (i) implement the FCH 2 Joint Undertaking's communications policy;
- (j) organise, direct and supervise the operations and the staff of the FCH 2 Joint Undertaking within the constraints of the delegation by the Governing Board as provided for in Article 6(2) of this Regulation;
- (k) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Governing Board;
- (l) ensure that risk assessment and risk management are performed;
- (m) take any other measures needed for assessing the progress of the FCH 2 Joint Undertaking towards achieving its objectives;
- (n) perform any other tasks entrusted or delegated to the Executive Director by the Governing Board.

5. The Executive Director shall set up a Programme Office for the execution, under his/her responsibility, of all support tasks arising from this Regulation. The Programme Office shall be composed of the staff of the FCH 2 Joint Undertaking and shall, in particular, carry out the following tasks:
- (a) provide support in establishing and managing an appropriate accounting system in accordance with the Financial rules of the FCH 2 Joint Undertaking;
 - (b) manage the calls as provided for in the annual work plan, and the administration of the agreements or decisions, including their coordination;
 - (c) provide to the Members and the other bodies of the FCH 2 Joint Undertaking all relevant information and support necessary for them to perform their duties as well as responding to their specific requests;
 - (d) act as the secretariat of the bodies of the FCH 2 Joint Undertaking and provide support to any advisory group set up by the Governing Board.

10 – Scientific Committee

1. The Scientific Committee shall consist of no more than nine members. It shall elect a chairperson from amongst its members.
2. The members shall reflect a balanced representation of world-wide recognised experts from academia, industry and regulatory bodies. Collectively, the Scientific Committee members shall have the necessary scientific competencies and expertise covering the technical domain needed to make science-based recommendations to the FCH 2 Joint Undertaking.
3. The Governing Board shall establish the specific criteria and selection process for the composition of the Scientific Committee and shall appoint its members. The Governing Board shall take into consideration the potential candidates proposed by the FCH 2 States Representatives Group.

4. The Scientific Committee shall carry out the following tasks:
 - (a) advise on the scientific priorities to be addressed in the annual work plans;
 - (b) advise on the scientific achievements described in the annual activity report.
5. The Scientific Committee shall meet at least once a year. The meetings shall be convened by its chairperson.
6. The Scientific Committee may, with the agreement of the chairperson, invite other persons to attend its meetings.
7. The Scientific Committee shall adopt its own rules of procedure.

11 - States Representatives Group

1. The FCH 2 States Representatives Group shall consist of one representative of each Member State and of each country associated to the Horizon 2020 Framework Programme. It shall elect a chairperson among its members.
2. The States Representatives Group shall meet at least twice a year. The meetings shall be convened by its chairperson. The Executive Director and the chairperson of the Governing Board or their representatives shall attend the meetings.

The chairperson of the States Representatives Group may invite other persons to attend its meetings as observers, in particular representatives of regional authorities of the Union.

3. The States Representatives Group shall be consulted and, in particular review information and provide opinions on the following matters:
 - (a) programme progress in the FCH 2 Joint Undertaking and achievement of its targets;
 - (b) updating of strategic orientation;
 - (c) links to the Horizon 2020 Framework Programme;

- (d) annual work plans;
 - (e) involvement of SMEs.
4. The States Representatives Group shall also provide information to and act as an interface with the FCH 2 Joint Undertaking on the following matters:
- (a) the status of relevant national or regional research and innovation programmes and identification of potential areas of cooperation, including deployment of FCH technologies to allow synergies and avoid overlaps;
 - (b) specific measures taken at national or regional level with regard to dissemination events, dedicated technical workshops and communication activities.
5. The States Representatives Group may issue, on its own initiative, recommendations or proposals to the Governing board on technical, managerial and financial matters as well as on annual plans, in particular when those matters affect national or regional interests.
- The Governing board shall inform without undue delay the States Representatives Group of the follow up it has given to such recommendations or proposals, including the reasoning if they are not followed up.
- 5bis. The States Representatives Group shall receive information on a regular basis, among others on the participation in indirect actions funded by the FCH 2 Joint Undertaking, on the outcome of each call and project implementation, on synergies with other relevant Union programmes, and on the execution of the FCH 2 budget.
6. The FCH 2 States Representatives Group shall adopt its own rules of procedure.

12 - Stakeholder Forum

1. The Stakeholder Forum shall be open to all public and private stakeholders, international interest groups from Member States, associated countries as well as from other countries.
2. The Stakeholder Forum shall be informed of the activities of the FCH 2 Joint Undertaking and shall be invited to provide comments.
3. The meetings of the Stakeholder Forum shall be convened by the Executive Director.

13 - Sources of financing

1. The FCH 2 Joint Undertaking shall be jointly funded by the Union and the Members other than the Union or their constituent entities or their affiliated entities through financial contributions paid in instalments and contributions consisting of the costs incurred by them in implementing indirect actions that are not reimbursed by the FCH 2 Joint Undertaking.
2. The administrative costs of the FCH 2 Joint Undertaking shall not exceed ~~EUR 40~~ **38** million and shall be covered through financial contributions divided on an annual basis between the Union and the Members other than the Union. The Union shall contribute with 50%, the Industry Grouping with 43% and the Research Grouping with 7%. If part of the contribution for administrative costs is not used, it may be made available to cover the operational costs of the FCH 2 Joint Undertaking.
3. The operational costs of the FCH 2 Joint Undertaking shall be covered through:
 - (a) a financial contribution by the Union
 - (b) in-kind contributions by the constituent entities of the Members other than the Union or their affiliated entities participating in the indirect actions, consisting of the costs incurred by them in implementing indirect actions less the contribution of the FCH 2 Joint Undertaking and any other Union contribution to those costs.

4. The resources of the FCH 2 Joint Undertaking entered to its budget shall be composed of the following contributions:

- (a) Members' financial contributions to the administrative costs;
- (b) Union financial contribution to the operational costs;
- (c) any revenue generated by the FCH 2 Joint Undertaking;
- (d) any other financial contributions, resources and revenues.

Any interest yielded by the contributions paid to the FCH 2 Joint Undertaking by its Members shall be considered to be its revenue.

5. All resources of the FCH 2 Joint Undertaking and its activities shall be devoted to the objectives set out in Article 2 of this Regulation.

6. The FCH 2 Joint Undertaking shall own all assets generated by it or transferred to it for the fulfilment of its objectives set out in Article 2 of this Regulation.

7. Except when the FCH 2 Joint Undertaking is wound up pursuant to clause 21, any excess revenue over expenditure shall not be paid to the Members of the FCH 2 Joint Undertaking.

14 – Financial commitments

Financial commitments of the FCH 2 Joint Undertaking shall not exceed the amount of financial resources available or committed to its budget by its Members.

15 - Financial year

The financial year shall run from 1 January to 31 December.

16 - Operational and financial planning

1. The Executive Director shall submit for adoption to the Governing Board a draft annual work plan, which shall include a detailed plan of the research and innovation activities, the administrative activities and the corresponding expenditure estimates for the coming year. The draft work plan shall also include the estimated value of the contributions to be made in accordance with clause 13(3)(b).
2. The annual work plan for a particular year shall be adopted by the end of the previous year. The annual work plan shall be made publicly available.
3. The Executive Director shall prepare the draft annual budget for the following year and submit it to the Governing Board for adoption.
4. The annual budget for a particular year shall be adopted by the Governing Board by the end of the previous year.
5. The annual budget shall be adapted in order to take into account the amount of the Union contribution as set out in the Union budget.

17 - Operational and financial reporting

1. The Executive Director shall report annually to the Governing Board on the performance of his duties in accordance with the financial rules of the FCH 2 Joint Undertaking.

By 15 February each year the Executive Director shall submit to the Governing Board for approval an annual activity report on the progress made by the FCH 2 Joint Undertaking in the previous calendar year, in particular in relation to the annual work plan for that year.

That report shall include, inter alia, information on the following matters:

- (a) research, innovation and other actions carried out and the corresponding expenditure;

- (b) the actions submitted, including a breakdown by participant type, including SMEs, and by country;
 - (c) the actions selected for funding, including a breakdown by participant type, including SMEs, and by country and indicating the contribution of the FCH 2 Joint Undertaking to the individual participants and actions.
- 2. Once approved by the Governing Board, the annual activity report shall be made publicly available.
- 3. The FCH 2 Joint Undertaking shall report annually to the Commission in accordance with Article 60(5) of Regulation (EU, Euratom) No 966/2012.
- 4. The accounts of the FCH 2 Joint Undertaking shall be examined by an independent audit body as laid down in Article 60(5) of Regulation (EU, Euratom) No 966/2012.

The accounts of the FCH 2 Joint Undertaking shall not be subject to examination by the Court of Auditors.

18 - Internal audit

The Commission's internal auditor shall exercise the same powers over the FCH 2 Joint Undertaking as those exercised in respect of the Commission.

19 - Liability of Members and insurance

- 1. The financial liability of the Members for the debts of the FCH 2 Joint Undertaking shall be limited to their contribution already made for the administrative costs.
- 2. The FCH 2 Joint Undertaking shall take out and maintain appropriate insurance.

20 - Conflict of interest

1. The FCH 2 Joint Undertaking, its bodies and staff shall avoid any conflict of interest in the implementation of their activities.
2. The FCH 2 Joint Undertaking Governing Board may adopt rules for the prevention and management of conflicts of interest in respect of its Members, bodies and staff. In those rules, provision shall be made to avoid a conflict of interest for the representatives of the Members serving in the Governing Board.

21 - Winding up

1. The FCH 2 Joint Undertaking shall be wound up at the end of the period defined in Article 1 of this Regulation.
2. The winding up procedure shall be automatically triggered if the Commission or all Members other than the Union withdraw from the FCH 2 Joint Undertaking.
3. For the purpose of conducting the proceedings to wind up the FCH 2 Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.
4. When the FCH 2 Joint Undertaking is being wound up, its assets shall be used to cover its liabilities and the expenditure relating to its winding up. Any surplus shall be distributed among the Members at the time of the winding up in proportion to their financial contribution to the FCH 2 Joint Undertaking. Any such surplus distributed to the Union shall be returned to the Union budget.
5. An ad hoc procedure shall be set up to ensure the appropriate management of any agreement concluded or decision adopted by the FCH 2 Joint Undertaking as well as any procurement contract with duration longer than its duration.