



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 5 November 2013  
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**RECH 478  
COMPET 746  
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ENER 479  
AGRI 686**

**NOTE**

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From:	Presidency
To:	Delegations
No. prev. doc.:	14598/13 RECH 449 COMPET 712 IND 274 ENER 457 AGRI 645
No. Cion doc.:	12355/13 RECH 354 COMPET 573 IND 212 ENER 363 AGRI 483
Subject:	Proposal for a Council regulation on the Bio-Based Industries Joint Undertaking - Presidency text

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In view of the Research Working Party meeting of 7 November 2013, delegations will find attached a Presidency text on the Commission's proposal for a Council regulation on the Bio-Based Industries Joint Undertaking.

Explanation:

~~Strikeout~~ = deletion in relation to the Commission proposal (14598/13)

**Bold underlined** = new text

DRAFT

Proposal for a

**COUNCIL REGULATION**

**on 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 Parliament<sup>1</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>2</sup>,

Whereas

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

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<sup>1</sup> OJ ... [EP opinion]

<sup>2</sup> OJ ... [ESC opinion]

<sup>3</sup> 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)<sup>4</sup> identified specific public-private partnerships to be supported.
- (3) 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)<sup>5</sup> 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 the 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
- (4) In accordance with Decision (EU) No .../2013 of the Council of ... 2013 establishing the Specific Programme implementing Horizon 2020 (2014-2020)<sup>6</sup> support may be provided to joint undertakings established in the Horizon 2020 Framework Programme under the conditions specified in that Decision.
- (5) Europe 2020 Strategy<sup>7</sup> 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.
- (6) The Bio-based Industries Consortium (hereinafter "BIC") developed a vision paper and a Strategic Innovation and Research Agenda, based on extensive consultation with public and private stakeholders. The Strategic Innovation and Research Agenda describes the main technological and innovation challenges that need to be overcome in order to develop sustainable and competitive bio-based industries in Europe and identifies research, demonstration and deployment activities to be carried out by a Joint Technology Initiative on "Bio-based Industries".

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<sup>4</sup> OJ L 400, 30.12.2006, p. 86.

<sup>5</sup> OJ ... [H2020 FP]

<sup>6</sup> OJ ... [H2020 SP]

<sup>7</sup> COM(2010)2020 final.

- (7) BIC is a non-profit organisation that was created to represent the industry group that supports the Joint Technology Initiative on Bio-based Industries. Its members cover the entire bio-based value chain and consist of large industries, small and medium-sized enterprises (SMEs), regional clusters, European trade associations, and European Technology Platforms. The aim of BIC is to ensure and promote the technological and economic development of the bio-based industries in Europe. Any interested stakeholders along the bio-based value chain may apply for membership. It applies general principles of openness and transparency regarding membership, ensuring a wide industrial involvement.
- (7bis) Any eligible institution may become a participant or a coordinator in the selected projects.
- (8) The Commission Communication of 13 February 2012 "Innovating for Sustainable Growth: A Bioeconomy for Europe"<sup>8</sup> and in particular its Action Plan calls for a public private partnership to support the establishment of sustainable and competitive bio-based industries and value chains in Europe. In view of moving towards a post-petroleum society, the Communication aims to integrate better biomass producing and processing sectors in order to reconcile food security and natural resource scarcity and environmental objectives with the use of biomass for industrial and energy purposes.
- (9) The Commission Communication of 10 October 2012 "A Stronger European Industry for Growth and Economic Recovery"<sup>9</sup> confirms the strategic importance of bio-based industries for the future competitiveness of Europe, as identified in the Commission Communication of 21 December 2007 "A lead market initiative for Europe"<sup>10</sup> and stresses the need for a Joint Technology Initiative on "Bio-based Industries".

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<sup>8</sup> COM(2012) 60.

<sup>9</sup> COM(2012) 582 final.

<sup>10</sup> COM(2007) 860 final.

- (10) Bio-based industries and their value chains are facing complex and substantial technology and innovation challenges. As a nascent sector, bio-based industries have to overcome the dispersion of technical competences and the limited publically available data on real resource availability in order to build sustainable and competitive value chains. In order to tackle these challenges, critical mass has to be achieved in a focused and coherent way at European level in terms of scale of activity, excellence, and potential for innovation.
- (11) The Joint Technology Initiative on Bio-based Industries should mitigate the different types of market failures that discourage private investment into pre-competitive research, demonstration and deployment activities for bio-based industries in Europe. In particular, it should ascertain the availability of reliable biomass supply taking into account other competing social and environmental demands, and support the development of advanced processing technologies, large scale demonstration activities and policy instruments, thus reducing the risk for private research and innovation investment in the development of sustainable and competitive bio-based products and biofuels.
- (12) The Joint Technology Initiative on Bio-based Industries should be a public-private partnership aiming at increasing investment in the development of a sustainable bio-based industry sector in Europe. It should provide environmental and socio-economic benefits for European citizens, increase the competitiveness of Europe and contribute to establishing Europe as a key player in research, demonstration and deployment of advanced bio-based products and biofuels.
- (13) The objective of the Joint Technology Initiative on Bio-based Industries is to implement a programme of research and innovation activities in Europe that will assess the availability of renewable biological resources that can be used for the production of bio-based materials and on that basis support the establishment of sustainable bio-based value chains. These activities should be carried out through collaboration between stakeholders along the entire bio-based value chains, including primary production and processing industries, consumer brands, SMEs, research and technology centres and universities.

- (14) The ambition and scope of the objectives of the Joint Technology Initiative on Bio-based Industries, the scale of the financial and technical resources that need to be mobilized, and the need to achieve effective coordination and synergy of resources and funding, require the involvement of the Union. Therefore a Joint Undertaking for the implementation of the Joint Technology Initiative on Bio-based Industries (hereinafter the BBI Joint Undertaking) should be established as a legal entity.
- (15) The objective of the BBI Joint Undertaking should be achieved through support of research and innovation activities by using resources from the public and private sectors. To this end, the BBI Joint Undertaking should organise calls for proposals for supporting research, demonstration and deployment activities.
- (16) To achieve maximum impact, the Bio-Based Industries Joint Undertaking should develop 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.
- (17) The founding members of the BBI Joint Undertaking should be the Union and BIC.
- (18) The rules for the organisation and operation of the BBI Joint Undertaking should be laid down in the Statutes of the BBI Joint Undertaking as part of this Regulation.
- (19) BIC has expressed, in writing, its agreement to pursue the research activities in the area of the BBI Joint Undertaking within a structure well adapted to the nature of a public-private partnership. It is appropriate that BIC accedes to the Statutes set out in Annex to this Regulation by signing a letter of endorsement.
- (20) In order to achieve its objectives, the BBI Joint Undertaking should provide **the EU contribution to the actions through open and transparent procedures** ~~financial support~~ mainly in the form of grants to participants following open and competitive calls ~~for proposals~~.

- (21) Contributions from the private Members should not only be limited to the administrative costs of the BBI Joint Undertaking and to the co-financing required to carry out research and innovation actions supported by the BBI Joint Undertaking.
- (22) Their contributions should also relate to additional activities to be undertaken by the private Members, 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 Joint Technology Initiative on Bio-Based Industries.
- (23) Participation in indirect actions funded by the BBI Joint Undertaking should comply with Regulation (EU) No ... /2013 of the European Parliament and of the Council of ... 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)"<sup>11</sup>.
- (24) The Union financial contribution to the BBI Joint Undertaking 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 966/2012<sup>12</sup>.
- (25) Audits of recipients of Union funds under this Regulation should be carried out in such a manner that the administrative burden is reduced, in compliance with Regulation (EU) No .../2013 [the Horizon 2020 Framework Programme].
- (26) The financial interests of the Union and of the other members of the BBI 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.

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<sup>11</sup> OJ ... [H2020 RfP]

<sup>12</sup> OJ L 362, 31.12.2012, p. 1.

- (27) The Commission's internal auditor should exercise the same powers over the BBI Joint Undertaking as those exercised in respect of the Commission.
- (28) 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 BBI Joint Undertaking should not be subject to examination by the Court of Auditors.
- (28bis) The BBI Joint Undertaking should operate in a transparent way providing all relevant available information to its appropriate bodies as well as promoting its activities accordingly.
- (29) In order to facilitate its establishment, the Commission should be responsible for the establishment and initial operation of the BBI Joint Undertaking until it has the operational capacity to implement its own budget.
- (30) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty on European Union, the objectives of the BBI 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.



HAS ADOPTED THIS REGULATION:

*Article 1*

*Establishment*

1. For the implementation of the Joint Technology Initiative on Bio-Based Industries, a joint undertaking within the meaning of Article 187 of the Treaty (hereinafter "BBI Joint Undertaking"), is established for a period from 1 January 2014 until 31 December 2024.
2. The BBI 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 Council<sup>13</sup>.
3. The BBI 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.
4. The seat of the BBI Joint Undertaking shall be located in Brussels, Belgium.
5. The Statutes of the BBI Joint Undertaking are set out in the Annex.

*Article 2*

*Objectives*

The BBI 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.

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<sup>13</sup> OJ L 298, 26.10.2012, p.1.

- (b) to contribute to the objectives of the Biobased Industries Joint Technology Initiative for a more resource efficient and sustainable low-carbon economy and increasing economic growth and employment, in particularly in rural areas, by developing sustainable and competitive bio-based industries in Europe based on advanced biorefineries that source their biomass sustainably; and in particular to:
- (c) demonstrate technologies that enable new chemical building blocks, new materials, and new consumer products from European biomass and which replace the need for fossil based inputs;
- (d) develop business models that integrate economic actors along the whole value chain from supply of biomass to biorefinery plants to consumers of bio-based materials, chemicals and fuels, including through creating new cross-sector interconnections and supporting cross-industry clusters; and
- (e) set up flagship biorefinery plants that deploy the technologies and business models for bio-based materials, chemicals and fuels and demonstrate cost and performance improvements to levels that are competitive with fossil based alternatives.

### *Article 3*

#### *Union financial contribution*

1. The maximum Union contribution, including EFTA appropriations to the BBI Joint Undertaking to cover administrative costs and operational costs shall be EUR 1 000 million. 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.
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 BBI 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 BBI 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 BBI 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 BBI 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 BBI Joint Undertaking other than the Union shall make or arrange for their constituent entities to make a total contribution of at least EUR 2 800 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 BBI Joint Undertaking as laid down in clause 12(2), clause 12(3)(b) and clause 12(3)(c) of the Statutes contained in the Annex.

- (b) in kind contributions of at least EUR 1 800 million over the period defined in Article 1 by the Members other than the Union or their constituent entities consisting of the costs incurred by them in implementing additional activities outside the work plan of the BBI Joint Undertaking contributing to the objectives of the BBI 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.

Those costs referred to in point (b) shall not be eligible for financial support by the BBI 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 BBI Joint Undertaking other than the Union shall report each year by 31 January to the Governing Board of the BBI Joint Undertaking on the value of the contributions referred to in paragraph 2 made in each of the previous financial years. The States Representatives Group shall also be informed **in a timely manner**.
4. For the purpose of valuing the contributions referred to in point (b) of paragraph 2 and clause 12(3)(c) 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 BBI Joint Undertaking. In case of remaining uncertainties, it may be audited by the BBI Joint Undertaking.
5. The Commission may terminate, proportionally reduce or suspend the Union financial contribution to the BBI Joint Undertaking or trigger the winding up procedure referred to in clause 20(2) of the Statutes contained in the Annex if those Members or their constituent 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 BBI 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 259/68<sup>14</sup> 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 BBI Joint Undertaking.
  
2. The Governing Board shall exercise, with respect to the staff of the BBI 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 paragraph 1 of the Staff Regulations and on 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

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<sup>14</sup> OJ 56, 4.3.1968, p. 1.

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

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 BBI 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 BBI Joint Undertaking shall consist of temporary staff and contract staff.
6. All cost related to staff shall be borne by the BBI Joint Undertaking.

#### *Article 7*

##### *Seconded national experts and trainees*

1. The BBI 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 BBI 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 BBI Joint Undertaking and its staff.

## *Article 9*

### *Liability of the BBI Joint Undertaking*

1. The contractual liability of the BBI 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 BBI 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 BBI 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 BBI Joint Undertaking and shall be covered by the resources of the BBI Joint Undertaking.
4. The BBI 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 ~~under the conditions laid down in the Treaty as well as in the following cases:~~
  - ~~(a) in any dispute between the Members which relates to the subject matter of this Regulation;~~
  - (b~~a~~)** pursuant to any arbitration clause contained in agreements, decisions or contracts concluded by the BBI Joint Undertaking;

(eb) in disputes relating to compensation for damage caused by the staff of the BBI Joint Undertaking in the performance of their duties;

(ec) in any dispute between the BBI 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 BBI Joint Undertaking is located shall apply.

### *Article 11*

#### *Evaluation*

1. By 31 December 2017 the Commission shall conduct an interim evaluation of the BBI Joint Undertaking. 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 BBI Joint Undertaking, but no later than two years after the triggering of the winding up procedure referred to in clause 20 of the Statutes contained in the Annex, the Commission shall conduct a final evaluation of the BBI 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 BBI 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 BBI 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 BBI 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 16(4) of the Statutes contained in the Annex, the BBI Joint Undertaking shall grant Commission staff and other persons authorised by the Joint Undertaking or the Commission, 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 ~~1073/1999~~ **883/2013** of the European Parliament and of the Council<sup>15</sup> of 25 May 1999 ~~concerning investigations conducted by the European Anti-Fraud Office (OLAF)~~ and Council Regulation (Euratom, EC) No 2185/96<sup>16</sup> of 11 November 1996 ~~concerning on the spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities~~ 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.
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 BBI Joint Undertaking, the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.
4. The BBI 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 BBI 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 OLAF<sup>17</sup>. The BBI Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

#### *Article 15*

#### *Confidentiality*

Without prejudice to Article 16, the BBI 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 BBI Joint Undertaking.

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<sup>15</sup> **OJ L 248, 18.9.2013, p.1.**

<sup>16</sup> OJ L 292, 15.11.1996, p.2-5

<sup>17</sup> 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 documents<sup>18</sup>, shall apply to documents held by the BBI Joint Undertaking.
2. The BBI 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 BBI 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 participation and dissemination in Horizon 2020] shall apply to the actions funded by the BBI Joint Undertaking. In accordance with that Regulation, the BBI 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.

*Article 18*  
*Support from the host State*

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

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<sup>18</sup> OJ L 145, 31.5.2001, p. 43.

*Article 19*

*Initial actions*

1. The Commission shall be responsible for the establishment and initial operation of the BBI Joint Undertaking until it has the operational capacity to implement its own budget. The Commission shall carry out, in accordance with Union law, all necessary actions in collaboration with the other Members and with the involvement of the competent bodies of the BBI Joint Undertaking.
2. For that purpose,
  - (a) until the Executive Director takes up his duties following his/her appointment by the Governing Board in accordance with clause 8 of the Annex, the Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director who may be assisted by a limited number of Commission officials:
  - (b) by derogation from Article 6 (2) of this Regulation, the interim Director shall exercise the appointing authority powers;
  - (c) the Commission may assign a limited number of its officials on an interim basis.
3. The interim Executive Director may authorise all payments covered by the appropriations provided in the annual budget of the BBI Joint Undertaking once approved by the Governing Board and may conclude agreements, decisions and contracts, including staff contracts following the adoption of the BBI Joint Undertaking's staff establishment plan.
4. The interim Executive Director shall in common accord with the Executive Director of the BBI Joint Undertaking and subject to the approval of the Governing Board determine the day on which the BBI Joint Undertaking has the capacity to implement its own budget. From that day, the Commission shall abstain from making commitments and executing payments for the activities of the BBI Joint Undertaking.

*Article 20*

*Entry into force*

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*

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## **STATUTES OF THE BBI JOINT UNDERTAKING**

### 1 - Tasks

The BBI Joint Undertaking shall carry out the following tasks:

- (a) ensure the establishment and sustainable management of the Joint Technology Initiative on Bio-Based Industries;
- (b) mobilise the public and private sector resources needed;
- (c) establish and develop close and long-term cooperation between the Union, industry and the other stakeholders;
- (d) ensure the efficiency of the Joint Technology Initiative on Bio-Based Industries;
- (e) reach the critical mass of research effort to embark on a long-term programme;
- (f) monitor progress towards the achievement of the objectives of the BBI Joint Undertaking;
- (g) support financially research and innovation indirect actions mainly through grants;
- (h) 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]);
- (i) any other task needed to achieve the objectives set out in Article 2 of this Regulation.

## 2 - Members

1. The Members of the BBI 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 Bio-based Industries Consortium Aisbl (hereinafter referred to as BIC), a non-profit organization established under Belgium law (registration number: 0521-857-822), with its permanent office in Brussels, Belgium

## 3 - Changes to membership

1. Provided that it contributes to the funding referred to in clause 12 to achieve the objectives of the BBI Joint Undertaking set out in Article 2 of this Regulation, and accepts the Statutes of the BBI Joint Undertaking, any legal entity that directly or indirectly supports research and innovation in a Member State or in a country associated to the Horizon 2020 Framework Programme may apply to become a Member of the BBI Joint Undertaking.
2. Any application for new membership to the BBI Joint Undertaking shall be addressed to the Governing Board, accompanied by a proposal to adapt the composition of the Governing Board set out in clause 5.
3. The Governing Board shall assess the application taking into account the relevance and the potential added value of the applicant for the achievement of the objectives of the BBI Joint Undertaking. It shall then decide on the application.
4. Any Member may terminate its membership to the BBI 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 BBI Joint Undertaking prior to terminating the membership.

5. Membership of the BBI Joint Undertaking may not be transferred to a third party without prior agreement of the Governing Board.
6. The BBI Joint Undertaking shall publish on its website immediately upon any change to membership pursuant to this clause an updated list of Members of the BBI Joint Undertaking together with the date when such change takes effect.

#### 4 - Organisation of the BBI Joint Undertaking

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

#### 5 - Composition of the Governing Board

1. The Governing Board shall be composed of the following:
  - five representatives of the Commission;
  - five representatives of the private Members, at least one of which should be a Small and Medium Enterprise representative.



## 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 private Members shall hold an equal number of votes. 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 twice a year. It may hold extraordinary meetings at the request of the Commission or of a majority of the representatives of the private Members 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 BBI 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 and the chairperson of the Scientific Committee 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 and representatives of civil society.

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 BBI Joint Undertaking and shall supervise the implementation of its activities.
2. The Governing Board shall in particular carry out the following tasks:
  - (a) assess, accept or reject applications for new membership in accordance with clause 3;
  - (b) decide on the termination of the membership in the BBI Joint Undertaking of any Member that does not fulfil its obligations;
  - (c) adopt the Financial rules of the BBI Joint Undertaking in accordance with Article 5 of this Regulation;
  - (d) adopt the annual budget of the BBI 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;
  - (e) exercise the appointing authority powers with respect of the staff, in accordance with Article 6(2) of this Regulation;
  - (f) appoint, dismiss, extend the term of office of, provide guidance to and monitor the performance of the Executive Director;
  - (g) approve the organisational structure of the Programme Office, referred to in clause 9(5), upon recommendation by the Executive Director;
  - (h) 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;

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

- (t) be responsible for any task that is not specifically allocated to one of the bodies of the BBI 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 BBI Joint Undertaking in the selection procedure as appropriate.

In particular, an appropriate representation from the other Members of the BBI Joint Undertaking shall be ensured at the pre-selection stage of the selection procedure. For that purpose, the private Members 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 BBI 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 BBI 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 private Members as appropriate shall undertake an assessment of the performance of the Executive Director and the BBI 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 private Members 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 BBI Joint Undertaking in accordance with the decisions of the Governing Board.
2. The Executive Director shall be the legal representative of the BBI Joint Undertaking. He/she shall be accountable to the Governing Board.
3. The Executive Director shall implement the budget of the BBI 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 for approval to the Governing Board the list of actions selected for funding;
- (f) sign individual agreements or decisions;
- (g) sign procurement contracts;
- (h) implement the BBI Joint Undertaking's communications policy;
- (i) organise, direct and supervise the operations and the staff of the BBI Joint Undertaking within the constraints of the delegation by the Governing Board as provided for in Article 6(2) of this Regulation;
- (j) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Governing Board;
- (k) ensure that risk assessment and risk management are performed;
- (l) take any other measures needed for assessing the progress of the BBI Joint Undertaking towards achieving its objectives;
- (m) 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 BBI 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 BBI 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 BBI 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 BBI 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 ~~ten~~ **fifteen** 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, small and medium enterprises, non-governmental organisations 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 BBI 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 BBI 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 BBI 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, representatives of civil society or representatives of SME associations.

3. The States Representatives Group shall be consulted on the following matters:
  - (a) programme progress in the BBI Joint Undertaking and achievement of its targets including the calls and proposals evaluation process;
  - (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 BBI 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 relevant 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.
  - (c) specific measures taken at national or regional level with regard to deployment activities in relation to the Joint Technology Initiative on Bio-based Industries.
5. The States Representatives Group may issue, on its own initiative, recommendations to the BBI Joint Undertaking on technical, managerial and financial matters, in particular when those matters affect national or regional interests.

The BBI Joint Undertaking shall inform the States Representatives Group of the follow up it has given to such recommendations.
- 5bis. The States Representatives Group shall receive information on a regular basis, among others on the participation in indirect actions funded by the BBI Joint Undertaking, on the outcome of each call and project implementation, on synergies with other relevant Union programmes, and on the execution of the BBI budget.
6. The States Representatives Group shall adopt its own rules of procedure.

## 12 - Sources of financing

1. The BBI Joint Undertaking shall be jointly funded by the Union and the Members other than the Union or their constituent 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 BBI Joint Undertaking.
2. The administrative costs of the BBI Joint Undertaking shall not exceed EUR 60 million and shall be covered through financial contributions divided equally on an annual basis between the Union and the Members other than the Union. If part of the contribution for administrative costs is not used, it may be made available to cover the operational costs of the BBI Joint Undertaking.
3. The operational costs of the BBI Joint Undertaking shall be covered through:
  - (a) a financial contribution by the Union;
  - (b) a financial contribution by the Members other than the Union;
  - (c) in kind contributions by the Members other than the Union or their constituent entities consisting of the costs incurred by them in implementing indirect actions less the contribution of the BBI Joint Undertaking and any other Union contribution to those costs.
4. The financial contribution by the Members other than the Union to the operational costs referred to in paragraph 3(b) shall be at least EUR 182.50 million over the period provided for in Article 1 of this Regulation.

5. The resources of the BBI Joint Undertaking entered to its budget shall be composed of the following contributions:
- (a) Members' financial contributions to the administrative costs;
  - (b) Members' financial contributions to the operational costs;
  - (c) any revenue generated by the BBI Joint Undertaking;
  - (d) any other financial contributions, resources and revenues.
- Any interest yielded by the contributions paid to the BBI Joint Undertaking by its Members shall be considered to be its revenue.
6. All resources of the BBI Joint Undertaking and its activities shall be devoted to the objectives set out in Article 2 of this Regulation.
7. The BBI 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
8. Except when the BBI Joint Undertaking is wound up pursuant to clause 20, any excess revenue over expenditure shall not be paid to the Members of the BBI Joint Undertaking.

### 13 - Financial commitments

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

### 14 - Financial year

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

## 15 - 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 12(3)(c).
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.

## 16 - 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 BBI Joint Undertaking.  
  
By 15 February of each year the Executive Director shall submit to the Governing Board for approval an annual activity report on the progress made by the BBI 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 BBI 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 BBI 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 BBI 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 BBI Joint Undertaking shall not be subject to examination by the Court of Auditors.

#### 17 - Internal audit

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

## 18 - Liability of Members and insurance

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

## 19 - Conflict of interest

1. The BBI Joint Undertaking, its bodies and staff shall avoid any conflict of interest in the implementation of their activities.
2. The BBI 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.

## 20 - Winding up

1. The BBI 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 private Members withdraw from the BBI Joint Undertaking.
3. For the purpose of conducting the proceedings to wind up the BBI Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.

4. When the BBI 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 BBI 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 BBI Joint Undertaking as well as any procurement contract with duration longer than its duration.
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