



**COUNCIL OF
THE EUROPEAN UNION**

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**RECH 608
COMPET 931
BUDGET 70**

NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

Subject: Endorsement by the Council of the Joint statement on the separate discharge for Joint Undertakings under Article 209 Financial of the Financial Regulation

INTRODUCTION

1. The Commission's Innovation Investment Package, issued on 10 July 2013, includes five Article 187 proposals for Joint Undertakings (JUs). Three of these are for continuation of already existing initiatives on Innovative Medicines (IMI), aeronautical research (Cleansky), and Fuel Cells and Hydrogen (FCH). The proposal on Electronic Components and Systems for European Leadership (ECSEL) combines two previous ones (Artemis and Eniac initiatives), and there is a totally new 187 initiative proposed for Bio-based industries (BBI).
2. The Council arrived at general approaches on each of the five files in its meeting (Competitiveness) of 2-3 December 2013.

3. According to Article 5 of the general approach regarding the acts establishing the JUs, each 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 model financial Regulation for PPPs). Moreover, Article 12 of these basic acts foresees that the discharge will be given to the Commission, and not as it is the case today, separately to each Joint Undertaking.
4. On 30 September 2013, the European Commission adopted the delegated regulation on the model financial regulation for public-private partnership bodies referred to in Article 209 of the Financial Regulation (FR), which now is subject to scrutiny by the Parliament and the Council. This regulation will be published and enter into force if neither the Parliament nor the Council raise objections.
5. On 7 November 2013, the joint EP CONT/BUDG Committees insisted on a separate discharge for the Joint Undertakings (JUs) under H2020 and extended the period of scrutiny on the delegated model financial regulation which, in compliance with the general Financial Regulation does not foresee such a separate discharge, until 30 January 2014. This was confirmed by a letter of EP CONT and BUDG Committee Chairs on 14 November 2013 to Commissioner Lewandowski. The motion for a resolution objecting to the model grant agreement is scheduled for a vote on 17 December in the joint EP CONT/BUDG Committees.
6. In case that the joint EP CONT/BUDG Committee would object and this decision would be confirmed by the January EP plenary (13-16 January 2014), the delegated regulation could not enter into force and consequently the basic acts establishing the JUs could not become operational as they foresee that the financial rules of the JUs shall respect a delegated act (PPP Model FR) that does not exist.

7. In the absence of an agreed PPP Model FR, the other possibility would be to apply the “decentralized agencies” regime of FFR based on Article 208 which foresees a separate discharge. However, this regime is not conceived to apply to PPPs and lacks the necessary elements of flexibility. It would also require a modification of the general approach regarding the establishment of the JUs, as reference would need to be made to Article 208 of the Financial Regulation instead of Article 209.
8. A compromise solution should therefore be found maintaining the simplifications introduced in the PPP model FR under Article 209 while introducing a separate discharge procedure for the PPPs as requested by the EP.

POSSIBLE COMPROMISE

9. A possible compromise to allow progress to be made on the files in a timely manner could be proposed as follows:

- **Introduction of a separate discharge in the basic acts setting up the Joint Undertakings**

Article 3(2) FR allows secondary legislation (in this case the basic acts setting up the JUs) to derogate from the FR and its delegated acts (such as the PPP Model FR) provided that the reasons for such a derogation are stated in the recitals and explanatory memorandum (in this case, the need to maintain a separate discharge for the JUs under H2020 by way of derogation from Articles 60(7) and 209 of the Financial Regulation).

This would necessitate the introduction in the basic acts setting up the JUs of a specific article on discharge to be given to the Executive Directors of the JUs by the EP on recommendation of the Council¹.

- **EP Commitment not to object to the PPP Model FR** otherwise it would not be possible to make the PPPs benefit from the simplification of the PPP Model FR.

¹ The introduction of a separate discharge would also require other modifications of the basic acts of the JUs (a reference to the scrutiny of the accounts by the Court of Auditors in accordance with Article 287(1) TFEU; and provisions on reporting derogating from Article 60 FR and repeating the ones applicable to decentralised agencies).

- **Commission commitment to ensure that the financial rules of the Joint undertakings reflect the inclusion of the separate discharge in their basic acts.**

Article 209 FR confers on the Commission the power to agree that the financial rules of the Joint undertakings depart from the PPP Model FR where their specific needs so require. This would allow the adoption by the Joint Undertakings of financial rules containing the derogations from the Model PPP FR needed as a result of the separate discharge.

- **Commission commitment to propose relevant modifications to Articles 209 and 60 (7) FR in a future revision of the FR.**

CONCLUSION

10. In order to ensure timely progress, the proposed compromise could be formalised in a Joint Statement by the three Institutions involved and a draft text for such a Joint Statement is proposed for consideration in annex to this document.
11. On the basis of the above, the Permanent Representatives Committee is invited to suggest to the Council to endorse the Joint Statement in annex to this document.

Draft Joint statement on the separate discharge for Joint Undertakings under Article 209 of the Financial Regulation

1. The European Parliament, the Council and the Commission agree that in order for the Joint Undertakings to benefit from simplified financial rules better adapted to their public-private nature, they should be set up under Article 209 of the Financial Regulation.

However, they also agree that:

- In view of the specific nature and the current status of the Joint Undertakings, and in order to ensure continuity with the 7th Framework Programme, the Joint Undertakings should continue to be subject to a separate discharge to be given by the European Parliament upon recommendation of the Council. For this reason, specific derogations from Article 209 of the Financial Regulation shall be introduced in the constituent acts of the Joint Undertakings to be set up under Horizon 2020 Programme. Those derogations will refer to the separate discharge and will include any additional necessary adaptations.
 - In order to allow the Joint Undertakings to benefit immediately from the simplifications introduced in the new financial framework, it is necessary that the Commission delegated regulation of 30 September 2013 on the model financial regulation for PPP bodies under Article 209 of the Financial Regulation enters into force.
2. The European Parliament and the Council take note that the Commission:
 - will ensure that the financial rules of the Joint Undertakings include derogations from the Model Financial Regulation for PPP bodies to reflect the introduction of the separate discharge in their constituent acts;
 - intends to propose relevant modifications to Articles 209 and 60(7) of the Financial Regulation in the framework of the future revision of the Financial Regulation.
