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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL REGULATION establishing the Fuel Cells and Hydrogen 2 Joint Undertaking

COUNCIL REGULATION (EU) No .../2014

of ...

establishing 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 European Economic and Social Committee²,

¹ OJ ... [EP opinion].

² Opinion of 10 December 2013 (not yet published in the Official Journal).

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 Council¹.
- (2) Council Decision 2006/971/EC of 19 December 2006² 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) The Communication from the Commission entitled: "Europe 2020: A strategy for smart, sustainable and inclusive growth" ('Europe 2020 Strategy') emphasises 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, the European Parliament and the Council have endorsed the Europe 2020 Strategy.

¹ 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) (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) (OJ L 400, 30.12.2006, p. 86).

- (4) Regulation (EU) No 1291/2013 of the European Parliament and of the Council¹ ('Horizon 2020') aims to achieve a greater impact on research and innovation by combining Horizon 2020 and private sector funds within public-private partnerships in key areas where research and innovation can contribute to the Union's wider competitiveness goals, leverage private investment, and help tackle societal challenges. Those partnerships should be based on a long-term commitment, including a balanced contribution from all partners, be accountable for the achievement of their objectives and be aligned with the Union's strategic goals relating to research, development and innovation. The governance and functioning of those partnerships should be open, transparent, effective and efficient and give the opportunity to a wide range of stakeholders active in their specific areas to participate. In accordance with Regulation (EU) No 1291/2013, the involvement of the Union in those public-private partnerships may take the form of financial contributions to joint undertakings established on the basis of Article 187 of the Treaty on the Functioning of the European Union (TFEU) under Decision No 1982/2006/EC.
- (5) In accordance with Regulation (EU) No 1291/2013 and Council Decision 2013/743/EU², further support should be provided to joint undertakings established under Decision (EU) No 1982/2006/EC under the conditions specified in Decision 2013/743/EU.

¹ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - The Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

² Council Decision 2013/743/EU of 3 December 2013 establishing the Specific Programme implementing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decisions 2006/971/EC, 2006/972/EC, 2006/973/EC, 2006/974/EC and 2006/975/EC (OJ L 347, 20.12.2013, p. 965).

- (6) The Fuel Cells and Hydrogen Joint Undertaking, set up by Council Regulation (EC) No 521/2008¹ 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 Undertaking set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 2011 entitled 'Partnering in Research and Innovation' has shown that the Joint Undertaking has served as a platform for creating a strong partnership, for leveraging public and private funding and for the strong involvement of industry, in particular SMEs. That evaluation also recommended an increase of the activities in relation to hydrogen production, storage and distribution, which has been taken up in the new objectives. The Joint Undertaking's research area should therefore continue to be supported with the aim of developing a portfolio of clean, efficient and affordable solutions to the point of market introduction.
- (7) For that purpose, a new Joint Undertaking for the implementation of the Joint Technology Initiative on Fuel Cells and Hydrogen (the 'Fuel Cells and Hydrogen 2 Joint Undertaking') should be established and should replace and succeed the Fuel Cells and Hydrogen Joint Undertaking.

¹ Council Regulation (EC) No 521/2008 of 30 May 2008 setting up the Fuel Cells and Hydrogen Joint Undertaking (OJ L 153, 12.6.2008, p. 1).

- (8) Continued support for the Fuel Cells and Hydrogen research programme should also take into account the experience acquired from the activities of the Fuel Cells and Hydrogen Joint Undertaking, including the results of the Commission's first interim evaluation and the results of stakeholders' recommendations. That continued support should be implemented using a structure and rules that are more fit for its purpose in order to enhance efficiency and to ensure simplification. To that effect the Fuel Cells and Hydrogen 2 Joint Undertaking should adopt financial rules specific to its needs in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council¹.
- (9) The Members other than the Union of the Fuel Cells and Hydrogen Joint Undertaking have expressed their agreement in writing 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 the Annex to this Regulation by means of a letter of endorsement.
- (10) 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.

¹ 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 Union (OJ L 298, 26.10.2012, p. 84).

- (11) Contributions from Members other than the Union and their constituent entities or their affiliated entities should not be limited only 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. Their contributions should also cover 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 of those additional activities, they should represent contributions to the broader Fuel Cells and Hydrogen Joint Technology Initiative.
- (12) 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 participants are constituent entities of a Member other than the Union, in accordance with Regulation (EU) No 1290/2013 of the European Parliament and of the Council¹.

¹ Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the Horizon 2020 Rules for Participation and Dissemination in 'Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)' (OJ L 347, 20.12.2013, p. 81).

- (13) The specific characteristics of the Fuel Cells and Hydrogen sector, in particular, the fact that it is still a pre-mature sector, without a clear return on investment and that its main benefits are societal, justify that the Union contribution is higher than the contributions 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 to support the 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.
- (14) In assessing the overall impact of the Fuel Cells and Hydrogen Joint Technology Initiative, the investments from all legal entities other than the Union that contribute 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 that contribute to the objectives of the Fuel Cells and Hydrogen 2 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 665 000 000.
- (15) Participation in indirect actions funded by the Fuel Cells and Hydrogen 2 Joint Undertaking should comply with Regulation (EU) No 1290/2013. The Fuel Cells and Hydrogen 2 Joint Undertaking should, moreover, ensure consistent application of those rules based on relevant measures adopted by the Commission.

- (16) The Fuel Cells and Hydrogen 2 Joint Undertaking should also use electronic means managed by the Commission to ensure openness and transparency and facilitate participation. Therefore, the calls for proposals launched by the Fuel Cells and Hydrogen 2 Joint Undertaking should also be published on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission. Moreover, relevant data on inter alia proposals, applicants, grants and participants should be made available by the Fuel Cells and Hydrogen 2 Joint Undertaking for inclusion in Horizon 2020 reporting and dissemination electronic systems managed by the Commission, in an appropriate format and with the periodicity corresponding to the Commission's reporting obligations.
- (17) The Fuel Cells and Hydrogen 2 Joint Undertaking should take into account the OECD definitions regarding Technological Readiness Level in the classification of technological research, product development and demonstration activities.
- (18) 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 1268/2012¹.
- (19) For the purpose of simplification, the administrative burden should be reduced for all parties. Double audits and a disproportionate amount of documentation and reporting should be avoided. Audits of recipients of Union funds under this Regulation should be carried out in compliance with Regulation (EU) No 1291/2013.

¹ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p.1).

- (20) 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.
- (21) 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.
- (22) In view of the specific nature and the current status of the joint undertakings, and in order to ensure continuity with the Seventh Framework Programme, the joint undertakings should continue to be subject to a separate discharge. By way of derogation from Articles 60(7) and 209 of Regulation (EU, Euratom) No 966/2012, discharge for the implementation of the budget of the Fuel Cells and Hydrogen 2 Joint Undertaking should therefore be given by the European Parliament on the recommendation of the Council. Hence, the reporting requirements set out in Article 60(5) of Regulation (EU, Euratom) No 966/2012 should not apply to the Union financial contribution to the Fuel Cells and Hydrogen 2 Joint Undertaking but should be aligned to the extent possible to those foreseen for bodies under Article 208 of Regulation (EU, Euratom) No 966/2012. The auditing of accounts and of the legality and regularity of the underlying transactions should be undertaken by the Court of Auditors.

- (23) The Fuel Cells and Hydrogen 2 Joint Undertaking should operate in an open and transparent way providing all relevant information in a timely manner to its appropriate bodies as well as promoting its activities, including information and dissemination activities to the wider public. The rules of procedure of the bodies of the Fuel Cells and Hydrogen 2 Joint Undertaking should be made publicly available.
- (24) Horizon 2020 should contribute to the closing of the research and innovation divide within the Union by promoting synergies with the European Structural and Investment Funds (ESIF). Therefore the Fuel Cells and Hydrogen 2 Joint Undertaking should seek to develop close interactions with the ESIF, which can specifically help to strengthen local, regional and national research and innovation capabilities in the area of the Fuel Cells and Hydrogen 2 Joint Undertaking and underpin smart specialisation efforts.
- (25) The Fuel Cells and Hydrogen Joint Undertaking was set up for the 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 implementing the remaining actions initiated under Regulation (EC) No 521/2008 and in accordance with that Regulation. 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 Horizon 2020 to ensure optimal use of the funding available for research. In the interest of legal certainty and clarity, Regulation (EC) No. 521/2008 should therefore be repealed and transitional provisions should be set out.

- (26) Given the aim of Horizon 2020 to achieve greater simplification and coherence, all calls for proposals under the Fuel Cells and Hydrogen 2 Joint Undertaking should take into account the duration of Horizon 2020.
- (27) Since the objective of this Regulation, namely to establish the Fuel Cells and Hydrogen 2 Joint Undertaking in order to strengthen industrial research and innovation across the Union cannot be sufficiently achieved by the Member States but can rather, by reason of avoiding duplication, retaining critical mass and ensuring that public financing is used in an optimal way, be better achieved at Union level, the Union may adopt measures, in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

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 on the Functioning of the European Union (hereinafter 'FCH 2 Joint Undertaking'), is established for the period until 31 December 2024. In order to take into account the duration of Horizon 2020, calls for proposals by the FCH 2 Joint Undertaking shall be launched at the latest by 31 December 2020. In duly justified cases calls for proposals may be launched by 31 December 2021.
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 be a body entrusted with the implementation of a public-private partnership referred to in Article 209 of Regulation (EU, Euratom) No 966/2012.
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.
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 1291/2013, and in particular the Secure, Clean and Efficient Energy Challenge and the Smart, Green and Integrated Transport Challenge under part III of Annex I of Decision 2013/743/EU;
 - (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 aim to:
 - (a) reduce the production cost of fuel cell systems to be used in transport applications, while increasing their lifetime to levels which can compete with conventional technologies,
 - (b) increase the electrical efficiency and the durability of the different fuel cells used for power production to levels which can compete with conventional technologies, while reducing costs,

- (c) 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 can compete with the alternatives for electricity production available on the market;
- (d) 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;
- (e) reduce the use of the EU defined "Critical raw materials", for instance through low-platinum or platinum-free resources and through recycling or reducing or avoiding the use of rare earth elements.

Article 3

Union financial contribution

1. The Union financial contribution to the FCH 2 Joint Undertaking, including EFTA appropriations, to cover administrative costs and operational costs shall be up to EUR 665 000 000, and shall consist of:
 - (a) up to EUR 570 000 000 corresponding to the contribution committed by the Members of the FCH 2 Joint Undertaking other than the Union or their constituent entities or their affiliated entities in accordance with Article 4(1),

- (b) up to EUR 95 000 000 to match any additional contribution committed by the Members of the FCH 2 Joint Undertaking other than the Union or their constituent entities or their affiliated entities above the minimum amount specified in Article 4(1).

The Union financial contribution shall be paid from the appropriations in the general budget of the Union allocated to the Horizon 2020 Specific Programme implementing Horizon 2020 in accordance with point (c)(iv) of Article 58(1) 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 FCH 2 Joint Undertaking.
3. The delegation agreement referred to in paragraph 2 of this Article 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 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 2013/743/EU;
 - (b) the requirements for the FCH 2 Joint Undertaking's contribution in view of the monitoring referred to in Annex III to Decision 2013/743/EU;

- (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; including on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission;
- (e) provisions for the publication of calls for proposals of the FCH 2 Joint Undertaking also on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission;
- (f) 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 380 000 000 over the period defined in Article 1.

2. The contribution referred to in paragraph 1 of this Article shall consist of the following:
- (a) contributions to the FCH 2 Joint Undertaking set out in Article 13(2) and point (b) of Article 13(3) of the Statutes.
 - (b) in-kind contributions of at least EUR 285 000 000 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 accordance with the applicable rules and procedures. In such cases, Union financing shall not be a substitute for the in kind contributions from the Members other than the Union or their constituent entities or their affiliated entities.

The costs referred to in point (b) of the first subparagraph 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 of this Article and Article 13(3)(b) of the Statutes, the costs shall be determined in accordance with the usual cost accounting practices of the entities concerned, to the applicable accounting standards of the country where the entity is established, and to the applicable International Accounting Standards and International Financial Reporting Standards. The costs shall be certified by an independent external auditor appointed by the entity concerned. The valuation method may be verified by the FCH 2 Joint Undertaking should there be any uncertainty arising from the certification. For the purposes of this Regulation, the costs incurred in additional activities shall not be audited by the FCH 2 Joint Undertaking or any Union body.
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 Article 21(2) of the Statutes if the Members of the FCH 2 Joint Undertaking other than the Union 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 of this Article. The Commission decision shall not hinder the reimbursement of eligible costs already incurred by the Members of the FCH 2 Joint Undertaking other than the Union by the time the decision to terminate, proportionally reduce or suspend the Union financial contribution is notified to the FCH 2 Joint Undertaking.

Article 5
Financial rules

Without prejudice to Article 12 of this Regulation, the FCH 2 Joint Undertaking shall adopt its specific financial rules in accordance with Article 209 of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 110/2014¹.

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 259/68² ("Staff Regulations" and 'Conditions of Employment') and the rules adopted jointly by the institutions of the Union for the purpose of applying those Staff Regulations and Conditions of Employment shall apply to the staff of the FCH 2 Joint Undertaking.

¹ Commission Delegated Regulation (EU) No 110/2014 of 30 September 2013 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 38, 7.2.2014, p. 2).

² Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ 56, 4.3.1968, p. 1).

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 the powers conferred by the Conditions of Employment on the authority empowered to conclude contracts (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 on Article 6 of the Conditions of Employment delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which that delegation may be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Governing Board may by decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and any subsequent sub-delegation of those powers by the latter. In such cases, the Governing Board shall exercise the powers of the appointing authority itself or delegate them to one of its members or to a staff member of the FCH 2 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 in accordance with Article 110 of the Staff Regulations.
4. The staff resources shall be determined in 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 FCH 2 Joint Undertaking. The number of seconded national experts expressed in full-time equivalents shall be added to the information on staff as referred to in Article 6(4) 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 (No 7) on the privileges and immunities of the European Union, annexed to the Treaty on European Union and the Treaty on the Functioning of the European 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 or 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 or contracts concluded by the FCH 2 Joint Undertaking or in its decisions;

- (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 staff within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment.
2. Regarding any matter not covered by this Regulation or by other Union legal acts, the law of the State where the seat of the FCH 2 Joint Undertaking is located shall apply.

Article 11
Evaluation

1. By 30 June 2017 the Commission shall, with the assistance of independent experts, carry out an interim evaluation of the FCH 2 Joint Undertaking, which shall, in particular, assess 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 prepare a report on that evaluation which includes conclusions of the evaluation and observations by the Commission. The Commission shall send that report to the European Parliament and to the Council by 31 December 2017. The results of the interim evaluation of the FCH 2 Joint Undertaking shall be taken into account in the in-depth assessment and in the interim evaluation referred to in Article 32 of Regulation (EU) No 1291/2013.

2. On the basis of the conclusions of the interim evaluation referred to in paragraph 1 of this Article, 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 Article 21 of the Statutes, 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

By way of derogation from Article 60(7) and Article 209 of Regulation (EU, Euratom) No 966/2012, the discharge for the implementation of the budget of the FCH 2 Joint Undertaking shall be given by the European Parliament, upon recommendation of the Council in accordance with the procedure provided for in the financial rules of the FCH 2 Joint Undertaking.

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 29 of Regulation (EU) No 1291/2013 as part of the Horizon 2020 indirect actions.

2. The Commission may decide to carry out itself the audits referred to in paragraph 1 of this Article. In such cases it shall do so in accordance with the applicable rules, in particular the provisions of Regulation (EU, Euratom) No 966/2012, Regulation (EU) No 1290/2013 and Regulation (EU) No 1291/2013.

Article 14

Protection of the financial interests of the Members

1. The FCH 2 Joint Undertaking shall grant Commission staff and other persons authorised by the Commission or the FCH 2 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 Council Regulation (Euratom, EC) No 2185/96¹ and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council² 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, a decision or a contract funded under this Regulation.

¹ Council Regulation (Euratom, EC) No 2185/96 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 (OJ L 292, 15.11.1996, p. 2).

² Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

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, in accordance with 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 the European Anti-Fraud Office (OLAF)¹. 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 the disclosure of which could damage the interests of its Members or of participants in the activities of the FCH 2 Joint Undertaking.

¹ OJ L 136, 31.5.1999, p. 15.

Article 16
Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹, shall apply to documents held by the FCH 2 Joint Undertaking.
2. The FCH 2 Joint Undertaking Governing Board may adopt the practical arrangements for implementing Regulation (EC) No 1049/2001.
3. Without prejudice to Article 10 of this Regulation, 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 TFEU.

Article 17
Rules for participation and dissemination

Regulation (EU) No 1290/2013 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 Article 1 of the Statutes.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Pursuant to Article 9(5) of the Regulation (EU) No 1290/2013, work plans may provide for justified additional conditions according to specific policy requirements or to the nature and objective of the action.

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 is hereby repealed.
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) of this Regulation shall include a final evaluation of the FCH Joint Undertaking 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 and the Conditions of Employment.

In particular, the Executive Director appointed under Regulation (EC) No 521/2008 shall, for his remaining term of office, be assigned to the functions of the Executive Director as provided for in this Regulation with effect from ...*. The other conditions of the 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 Regulation (EC) No 521/2008 shall be 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.

* OJ: please insert the date of entry into force of this Regulation.

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 ...,

For the Council
The President

ANNEX

STATUTES OF THE FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING

Article 1

Tasks

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

- (a) provide financial support to research and innovation indirect actions mainly in the form of grants;
- (b) reach the critical mass of research efforts to build confidence in industry, public and private investors, decision makers and other stakeholders to embark on a long-term programme;
- (c) integrate research and technology developments and focus on achieving long-term sustainability and industrial competitiveness targets for cost, performance and durability and overcome critical technology bottlenecks;
- (d) stimulate innovation and the emergence of new value chains;
- (e) facilitate interaction between industry, universities and research centres;
- (f) promote the involvement of SMEs in its activities, in line with the objectives of Horizon 2020;

- (g) perform broadly-conceived socio-techno-economic research to assess and monitor technological progress and nontechnical barriers to market entry;
- (h) encourage the development of new regulations and standards and review existing ones to eliminate artificial barriers to market entry and to support inter-changeability, inter-operability, cross-border trading, and export markets;
- (i) ensure the efficient management of the FCH 2 Joint Undertaking;
- (j) commit Union funding and mobilise the private sector and other public sector resources needed to implement fuel cells and hydrogen research and innovation activities;
- (k) foster and facilitate the involvement of industry in additional activities implemented outside indirect actions;
- (l) engage in information, communication, exploitation and dissemination activities by applying *mutatis mutandis* Article 28 of Regulation (EU) No 1291/2013, including making the detailed information on results from calls for proposals available and accessible in a common Horizon 2020 e-database;
- (m) liaise with a broad range of stakeholders including research organisations and universities;
- (n) any other task needed to achieve the objectives set out in Article 2 of this Regulation.

Article 2
Members

The Members of the FCH 2 Joint Undertaking shall be:

- (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 (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 (the 'Research Grouping').

Constituent entities are the entities that constitute each Member of the FCH 2 Joint Undertaking other than the Union, according to that Member's Statutes.

Article 3
Changes to membership

1. Any Member may terminate its membership of 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 the prior agreement of the Governing Board.
3. The FCH 2 Joint Undertaking shall, upon any change to membership pursuant to this Article, immediately publish an updated list of Members of the FCH 2 Joint Undertaking on its website together with the date when such change takes effect.

Article 4
Bodies 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 of the FCH 2 Joint Undertaking.

Article 5

Composition of the Governing Board

The Governing Board shall be composed of:

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

Article 6
Functioning of the Governing Board

1. The Union shall hold 50 % of the voting rights. The voting rights of the Union 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 absent.
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 and take part in its deliberations, but shall have no voting rights.

The chairperson of the Scientific Committee shall have the right, whenever issues falling within its tasks are discussed, to attend meetings of the Governing Board as an observer and take part in its deliberations, but shall have no voting rights.

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 within the Union.

4. The representatives of the Members shall not be personally liable for actions they have taken in their capacity as representatives on the Governing Board.
5. The Governing Board shall adopt its own rules of procedure.

Article 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 Commission, within its role in the Governing Board, shall seek to ensure coordination between the activities of the FCH 2 Joint Undertaking and the relevant activities of Horizon 2020 with a view to promoting synergies when identifying priorities covered by collaborative research.

3. 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 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 activity report, including the corresponding expenditure;
- (j) arrange, as appropriate, for the establishment of an internal audit capability of the FCH 2 Joint Undertaking;
- (k) approve the calls as well as, where appropriate, the related rules for submission, evaluation, selection, award and review procedures;
- (l) approve the list of actions selected for funding on the basis of the ranking list produced by a panel of independent experts;
- (m) establish the FCH 2 Joint Undertaking's communications policy upon recommendation by the Executive Director;
- (n) where appropriate, establish implementing rules to the Staff Regulations and the Conditions of Employment in accordance with Article 6(3) of this Regulation;
- (o) where appropriate, establish rules on the secondment of national experts to the FCH 2 Joint Undertaking and on the use of trainees in accordance with Article 7 of this Regulation;

- (p) where appropriate, set up advisory groups in addition to the bodies of the FCH 2 Joint Undertaking;
- (q) where appropriate, submit to the Commission a request to amend this Regulation proposed by a Member of the FCH 2 Joint Undertaking;
- (r) be responsible for any task that is not specifically allocated to a particular body of the FCH 2 Joint Undertaking; it may assign such a task to any of those bodies.

Article 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 Members of the FCH 2 Joint Undertaking other than the Union in the selection procedure as appropriate.

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

2. The Executive Director shall be 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.

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 Members of the FCH 2 Joint Undertaking other than the Union 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 a period of 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 Members of the FCH 2 Joint Undertaking other than the Union as appropriate.

Article 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. The Executive Director 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 opinion to the Governing Board the annual accounts;

- (d) prepare and submit for approval to the Governing Board the annual activity report, including the information on corresponding expenditure;
- (e) submit to the Governing Board the report on in-kind contributions in indirect actions as provided for in point (b) of Article 13(3) of the Statutes;
- (f) submit for approval to the Governing Board the list of proposals to be selected for funding;
- (g) inform the States Representatives Group and the Scientific Committee regularly of all matters relevant to their advisory role;
- (h) sign individual grant agreements and decisions;
- (i) sign procurement contracts;
- (j) implement the FCH 2 Joint Undertaking's communications policy;
- (k) organise, direct and supervise the operations and the staff of the FCH 2 Joint Undertaking within the limits of the delegation by the Governing Board as provided for in Article 6(2) of this Regulation;
- (l) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Governing Board;
- (m) ensure that risk assessment and risk management are performed;

- (n) take any other measures needed for assessing the progress of the FCH 2 Joint Undertaking towards achieving its objectives;
 - (o) 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 and 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 advisory groups set up by the Governing Board.

Article 10
Scientific Committee

1. The Scientific Committee shall consist of no more than nine members. It shall elect a chairperson from among its members.
2. The members of the Scientific Committee shall reflect a balanced representation of world-wide recognised experts from academia, industry and regulatory bodies. Collectively, the members of the Scientific Committee 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 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 twice 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.

Article 11

States Representatives Group

1. The States Representatives Group shall consist of one representative of each Member State and of each country associated to Horizon 2020. It shall elect a chairperson from 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 within the Union.

3. The States Representatives Group shall be consulted and, in particular review information and provide opinions on the following matters:
 - (a) the programme progress in the FCH 2 Joint Undertaking and the achievement of its targets;

- (b) the updating of strategic orientation;
 - (c) the links to Horizon 2020;
 - (d) the annual work plans;
 - (e) the 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, on its own initiative, issue 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 the States Representatives Group without undue delay of the follow up it has given to such recommendations or proposals, or it shall give reasons if they are not followed up.

6. 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 for proposals and project implementation, on synergies with other relevant Union programmes, and on the execution of the FCH 2 Joint Undertaking's budget.
7. The FCH 2 States Representatives Group shall adopt its own rules of procedure.

Article 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.

Article 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 38 000 000 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 50 %, the Industry Grouping 43 % and the Research Grouping 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 in 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 achievement of its objectives.
7. Except when the FCH 2 Joint Undertaking is wound up, any excess revenue over expenditure shall not be paid to the Members of the FCH 2 Joint Undertaking.

Article 14

Financial commitments

The 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.

Article 15

Financial year

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

Article 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 point (b) of Article 13(3) of the Statutes.
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 financial contribution as set out in the Union budget.

Article 17

Operational and financial reporting

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

Within two months of the closure of each financial 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. The annual activity 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. By 1 March of the following financial year, the accounting officer of the FCH 2 Joint Undertaking shall send the provisional accounts to the Commission's accounting officer and the Court of Auditors.

By 31 March of the following financial year, the FCH 2 Joint Undertaking shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors.

On receipt of the Court of Auditors' observations on the FCH 2 Joint Undertaking's provisional accounts pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the FCH 2 Joint Undertaking shall draw up the FCH 2 Joint Undertaking's final accounts and the Executive Director shall submit them to the Governing Board for an opinion.

The Governing Board shall deliver an opinion on the FCH 2 Joint Undertaking's final accounts.

The Executive Director shall, by 1 July of the following financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Governing Board's opinion.

The final accounts shall be published in the *Official Journal of the European Union* by 15 November of the following financial year.

The Executive Director shall provide the Court of Auditors with a reply to its observations made in its annual report by 30 September. The Executive Director shall also submit that reply to the Governing Board.

The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of Regulation (EU, Euratom) No 966/2012.

Article 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.

Article 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 contributions already made to the administrative costs.
2. The FCH 2 Joint Undertaking shall take out and maintain appropriate insurance.

Article 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 shall adopt rules for the prevention and management of conflicts of interest in respect of its Members, bodies and staff. Those rules shall contain provision intended to avoid a conflict of interest in respect of the representatives of the Members serving in the Governing Board.

Article 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. In addition to paragraph 1, the winding up procedure shall be automatically triggered if the Union 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 the duration of the FCH 2 Joint Undertaking.
