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COUNCIL REGULATION (EC) No 521/2008

of 30 May 2008

setting up the Fuel Cells and Hydrogen Joint Undertaking

(Text with EEA relevance)

(OJ L 153, 12.6.2008, p. 1)

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COUNCIL REGULATION (EC) No 521/2008

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setting up the Fuel Cells and Hydrogen Joint Undertaking

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 171 and 172 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Whereas:

(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) ([1]) (hereinafter referred to as the Seventh Framework Programme), provides for a Community contribution for the establishment of long term public-private partnerships in the form of Joint Technology Initiatives (hereinafter referred to as JTI) which could be implemented through Joint Undertakings within the meaning of Article 171 of the Treaty. These JTI were established as a result of the work of European Technology Platforms, already set up under the Sixth Framework Programme, and cover selected aspects of research in their field. They should combine private-sector investment and European public funding, including funding from the Seventh Framework Programme.

(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 to 2013) ([2]), underlines the need for ambitious pan-European public-private partnerships to accelerate the development of major technologies and large research actions at Community level including, in particular, JTI.

(3) The Lisbon Growth and Jobs Agenda underscores the need to develop favourable conditions for investment in knowledge and innovation in the Community to boost competitiveness, growth and jobs.

(4) In March 2007 the European Council concluded that Member States were determined to promote eco-innovations through an

([1]) OJ L 412, 30.12.2006, p. 1.
([2]) OJ L 400, 30.12.2006, p. 86, as corrected by OJ L 54, 22.2.2007, p. 30.

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ambitious approach, taking full advantage of lead markets in areas such as sustainable and safe low carbon technologies, renewable energies and energy and resource efficiency; it recognised the need to strengthen energy research in particular to accelerate the competitiveness of sustainable energies, notably renewables, and low carbon technologies and the further development of energy efficiency technologies.

(5) In its conclusions of 3 March 2003, of 22 September 2003 and of 24 September 2004, the Council highlighted the importance of further developing actions following the 3 % Action Plan for research and the innovation policy, including the development of new initiatives aimed at intensifying cooperation between industry and the public sector in funding research to enhance trans-national public-private links.

(6) In November 2003 the European Council adopted a European Initiative for Growth. This Initiative, in the Quick-start Programme, includes a Project Area 'Hydrogen economy' with a total amount of EUR 2 800 million between 2004 and 2015 and possible funding from the Research, Technological development and Demonstration (hereinafter referred to as 'RTD') Framework Programmes and the Structural Funds.

(7) In May 2003 a Hydrogen and Fuel Cell High Level Group presented a vision report on 'Hydrogen Energy and Fuel Cells — a vision of our future', recommending, *inter alia*, the formation of a fuel cell and hydrogen technology partnership and a substantially increased RTD budget, as well as a demonstration and pilot programme to extend the technology validation exercises into the market development arena.

(8) In December 2003, the Commission facilitated the creation of the European Hydrogen and Fuel Cell Technology Platform (hereinafter referred to as EHFC TP), bringing together all interested stakeholders in a joint effort to move towards achieving the High Level Group's vision. In March 2005, the said Technology Platform adopted a Strategic Research Agenda and Deployment Strategy, aimed at accelerating the development and market introduction of fuel cell and hydrogen technologies in the Community.

(9) The technology challenge facing fuel cells and hydrogen is of great complexity and scale and the dispersion of technical competencies is very high. Therefore, in order to achieve critical mass in terms of scale of activity, excellence, and potential for innovation, this challenge needs to be tackled in a focused and coherent way at EU level. This, and its potential contribution to Community policies, in particular energy, environment, transport, sustainable development and economic growth, calls for the JTI approach in this sector.

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(10) The objective of the JTI on ‘Fuel Cells and Hydrogen’ is to implement a programme of RTD activities in Europe in the fields of fuel cells and hydrogen. These should be carried out, building on the EHFC TP, with the cooperation and involvement of stakeholders from industry including small and medium-sized enterprises (hereinafter referred to as SMEs), research centres, universities, and regions.

(11) Significant breakthroughs in a number of fields are needed in order for fuel cell and hydrogen technologies to be effectively deployed. Proper emphasis should be put on long-term research, taking into account advice provided by the advisory bodies of the Fuel Cells and Hydrogen Joint Undertaking (hereinafter the FCH Joint Undertaking).

(12) Taking into account the public-private partnership involving major stakeholders and its long term activity, the generated socioeconomic benefits for European citizens, the pooling of financial resources and co-financing in the field of fuel cells and hydrogen RTD activity provided by the Commission and industry, the high scientific and technical expertise required, and the input of industrial property rights, it is vital to set up a FCH Joint Undertaking under Article 171 of the Treaty. This legal entity should ensure the coordinated use and efficient management of the funds assigned to the JTI on ‘Fuel Cells and Hydrogen’. To ensure the appropriate management of activities initiated but not concluded during the Seventh Framework Programme the FCH Joint Undertaking should be set up for a period up to 31 December 2017.

(13) The objectives of the FCH Joint Undertaking should be pursued by pooling resources from the public and private sectors to support RTD activities with a view to increase the overall efficiency of European research efforts and accelerate the development and deployment of fuel cell and hydrogen technologies. To that end, the FCH Joint Undertaking should be able to organise competitive calls for proposals for projects to implement the RTD activities. Research activities should respect fundamental and ethical principles applicable to the Seventh Framework Programme.

(14) The founding members of the FCH Joint Undertaking should be the Community represented by the Commission as public representative and the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping (hereinafter referred to as the ‘Industry Grouping’), which represents the interests of industry and is open to private companies. A Research Grouping may become a member of the FCH Joint Undertaking.

(15) The running costs of the FCH Joint Undertaking should be covered equally in cash by the Community and the Industry Grouping from the outset. If the Research Grouping is established it should also contribute to the running costs.

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(16) The operational costs should be funded by the Community, industry and other public and private legal entities participating in the activities. Further financing options may be available, *inter alia*, from the European Investment Bank, in particular through the Risk-Sharing Finance Facility developed jointly with the European Investment Bank and the Commission pursuant to Annex III to Decision 2006/971/EC.

(17) According to the Seventh Framework Programme and Council Decision 2006/975/EC of 19 December 2006 concerning the Specific Programme to be carried out by means of direct actions by the Joint Research Centre under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ([1]), the Joint Research Centre may participate in joint technology initiatives where relevant. The Joint Research Centre has specific expertise in the fields of fuel cells and hydrogen, and therefore, it is appropriate to clarify that its possible contribution to joint technology initiatives is not intended to form part of the Community contribution foreseen in the legal acts setting up the joint technology initiatives.

(18) The FCH Joint Undertaking should be a body set up by the Community and discharge for the implementation of its budget should be given by the European Parliament, on the recommendation of the Council. However, account should be taken of the specificities resulting from the nature of JTI as a public-private partnership and in particular from the private-sector contribution to the budget.

(19) The FCH Joint Undertaking should adopt, in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([2]) and subject to prior consent with the Commission, specific financial rules which take into account its specific operating needs arising, in particular, from the need to combine Community and private funding to support RTD activities in an efficient and timely manner. In order to ensure a harmonised treatment between the participants of the FCH Joint Undertaking research activities and those of the indirect actions of the Seventh Framework Programme, it is appropriate that value added tax should not be an eligible cost for Community funding, in line with Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) ([3]).

(20) The rules for the organisation and operation of the FCH Joint Undertaking should be laid down in the Statutes of the FCH Joint Undertaking as part of this Regulation.

([1]) OJ L 400, 30.12.2006, p. 368, as corrected by OJ L 54, 22.2.2007, p. 126.
([2]) OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).
([3]) OJ L 391, 30.12.2006, p. 1.

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(21) The intellectual property rights policy of the FCH Joint Undertaking should provide for rights ownership for the participants of the projects as the owners of the industrial property created through the FCH Joint Technology Initiative, and should enable its proper exploitation.

(22) Appropriate measures should be taken to prevent irregularities and fraud and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ([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 ([2]), and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations concluded by the European Anti-Fraud Office (OLAF) ([3]).

(23) As a body endowed with legal personality, the FCH Joint Undertaking should be accountable for its actions. Where relevant, the Court of Justice of the European Communities should be competent for resolution of disputes arising from the activities of the FCH Joint Undertaking.

(24) Since the objective of this Regulation, namely the establishment of the FCH Joint Undertaking, cannot be sufficiently achieved by the Member States due to the trans-national nature and magnitude of the research challenges identified, which requires the pooling of complementary knowledge and financial resources across sectors and borders and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 this objective,

HAS ADOPTED THIS REGULATION:

Article 1

Establishment

1. For the implementation of the Joint Technology Initiative (hereinafter referred to as JTI) on Fuel Cells and Hydrogen, a Joint Undertaking within the meaning of Article 171 of the Treaty (hereinafter referred to as the FCH Joint Undertaking) is hereby set up for a period up to 31 December 2017.

2. The seat of the FCH Joint Undertaking shall be located in Brussels, Belgium.

([1]) OJ L 312, 23.12.1995, p. 1. Regulation as last amended by Commission Regulation (EC) No 1233/2007 (OJ L 279, 23.10.2007, p. 10).
([2]) OJ L 292, 15.11.1996, p. 2.
([3]) OJ L 136, 31.5.1999, p. 1.

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Article 2

Objectives

1. The FCH Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and in particular the Specific Programme 'Cooperation' themes for 'Energy', 'Nanosciences, Nanotechnologies, Materials and New Production Technologies', 'Environment (including Climate Change)', and 'Transport (including Aeronautics)'.

2. It shall, in particular:

(a) aim at placing Europe at the forefront of fuel cell and hydrogen technologies worldwide and at enabling the market breakthrough of fuel cell and hydrogen technologies, thereby allowing commercial market forces to drive the substantial potential public benefits;

(b) support Research, Technological development and Demonstration (hereinafter referred to as RTD) in the Member States and countries associated with the Seventh Framework Programme (hereinafter referred as Associated countries) in a coordinated manner to overcome the market failure and focus on developing market applications and thereby facilitate additional industrial efforts towards a rapid deployment of fuel cells and hydrogen technologies;

(c) support the implementation of the RTD priorities of the JTI on Fuel Cells and Hydrogen, notably by awarding grants following competitive calls for proposals;

(d) aim to encourage increased public and private research investment in fuel cells and hydrogen technologies in the Member States and Associated countries.

Article 3

Legal status

The FCH Joint Undertaking shall be a Community body and shall have legal personality. In each of the Member States of the European Community, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

Article 4

Statutes

The Statutes of the FCH Joint Undertaking, as set out in the Annex hereto, constitute an integral part of this Regulation and are hereby adopted.

Article 5

Community contribution

1. The maximum Community contribution to the FCH Joint Undertaking covering running costs and operational costs shall be EUR 470 million. The contribution shall be paid from the appropriations in the

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general budget of the European Union allocated to the 'Energy', 'Nanosciences, Nanotechnologies, Materials and New Production Technologies', 'Environment (including Climate Change)', and 'Transport (including Aeronautics)' themes of the Specific Programme 'Cooperation' implementing the Seventh Framework Programme according to the provisions of Article 54(2)(b) of Regulation (EC, Euratom) No 1605/2002.

2. The arrangements for the Community financial contribution shall be established by means of a general financing agreement and annual financing agreements to be concluded between the Commission, on behalf of the Community, and the FCH Joint Undertaking.

3. The Community contribution to the FCH Joint Undertaking used to fund projects shall be allocated following open and competitive calls for proposals and evaluation with the assistance of independent experts.

4. Any possible financial or in-kind contribution from the Joint Research Centre to the FCH Joint Undertaking shall not be considered as part of the Community contribution referred to in paragraph 1.

Article 6

Financial rules

1. The FCH Joint Undertaking shall adopt specific financial rules in accordance with Article 185(1) of Regulation (EC, Euratom) No 1605/2002. They may depart from the rules laid down in Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation ([1]) where the specific operating needs of the FCH Joint Undertaking so require and subject to prior consent of the Commission.

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2. The FCH Joint Undertaking may have its own internal audit capability.

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Article 7

Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Community for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the FCH Joint Undertaking and its Executive Director.

2. Without prejudice to paragraph 3 of this Article and Article 6(3) of the Statutes, the FCH Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority empowered to conclude contracts by the Conditions of Employment of Other Servants of the European Communities in respect of its staff.

([1]) OJ L 357, 31.12.2002, p. 72.

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3. The Governing Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations of Officials of the European Communities, and the Conditions of Employment of Other Servants of the European Communities.

4. The staff resources shall be determined in the establishment plan of the FCH Joint Undertaking that will be set out in its annual budget.

5. The staff of the FCH Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed no more than once for a fixed period. The total period of engagement shall not exceed seven years and shall not in any case exceed the lifetime of the Joint Undertaking.

6. All cost related to the staff shall be borne by the FCH Joint Undertaking.

Article 8

Privileges and Immunities

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

Article 9

Liability

1. The contractual liability of the FCH Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement or contract in question.

2. In the case of non-contractual liability, the FCH 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 Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the FCH Joint Undertaking and shall be covered by the resources of the FCH Joint Undertaking.

4. The FCH 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) in any dispute between the members which relates to the subject matter of this Regulation and the Statutes referred to in Article 4;

(b) pursuant to any arbitration clause contained in agreements or contracts concluded by the FCH Joint Undertaking;

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(c) in actions brought against the FCH Joint Undertaking, including decisions of its bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;

(d) in disputes relating to compensation for damage caused by the staff of the FCH Joint Undertaking in the performance of their duties.

2. For any matter not covered by this Regulation or by other acts of Community law, the law of the State where the seat of the FCH Joint Undertaking is located shall apply.

Article 11

Report, evaluation and discharge

1. The Commission shall present to the European Parliament and to the Council an annual report on the progress achieved by the FCH Joint Undertaking. This report shall contain details of implementation including number of proposals submitted, number of proposals selected for funding, type of participants, including SMEs, and country statistics.

2. By 30 May 2011, but in any case no later than 30 June 2011, as well as by 31 December 2013, the Commission shall conduct an interim evaluation of the FCH Joint Undertaking with the assistance of independent experts, on the basis of the terms of reference established after consultation of the FCH Joint Undertaking. These evaluations shall cover the quality and efficiency of the FCH Joint Undertaking and progress towards its objectives. The Commission shall communicate the conclusions thereof, accompanied by its observations and, where appropriate, proposals to amend this Regulation, including the possible early termination of the Joint Undertaking, to the European Parliament and to the Council.

3. No later than six months after the winding-up of the Joint Undertaking, the Commission shall conduct a final evaluation of the FCH Joint Undertaking with the assistance of independent experts. The results of the final evaluation shall be presented to the European Parliament and to the Council.

4. Discharge for the implementation of the budget of the FCH Joint Undertaking shall be given by the European Parliament, upon recommendation of the Council, in accordance with a procedure provided for by the financial rules of the FCH Joint Undertaking.

Article 12

Protection of the financial interests of the members and anti-fraud measures

1. The FCH Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls.

2. In case of irregularities committed by the FCH Joint Undertaking or its staff, the members of the FCH Joint Undertaking shall reserve the right to recover any amount unduly spent, including by a reduction or suspension of subsequent contributions to the FCH Joint Undertaking.

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3. For the purposes of combating fraud, corruption and any other illegal activities, Regulation (EC) No 1073/1999 shall apply.

4. The FCH Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the FCH Joint Undertaking's public funding.

5. The Commission and/or the Court of Auditors may, as necessary, carry out on-the-spot checks among the recipients of the FCH Joint Undertaking's funding and the agents responsible for its allocation. To that end, the FCH Joint Undertaking shall ensure that grant agreements and contracts provide for the right of the Commission and/or the Court of Auditors to carry out, on behalf of the FCH Joint Undertaking, the appropriate controls and, in the event of the detection of irregularities, to impose dissuasive and proportionate penalties.

6. The European Anti-Fraud Office (hereinafter referred to as OLAF) set up by Commission Decision 1999/352/EC, ECSC, Euratom ([1]) shall enjoy the same powers in respect of the FCH Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the FCH Joint Undertaking is established, it shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF ([2]). The FCH Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

Article 13

Confidentiality

Without prejudice to Article 14, the FCH Joint Undertaking shall ensure the protection of sensitive information whose disclosure could damage the interests of its members or of participants in the activities of the FCH Joint Undertaking.

Article 14

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents ([3]), shall apply to documents held by the FCH Joint Undertaking.

2. The FCH Joint Undertaking shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 by 15 December 2008.

3. Decisions taken by the FCH Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

([1]) OJ L 136, 31.5.1999, p. 20.
([2]) OJ L 136, 31.5.1999, p. 15.
([3]) OJ L 145, 31.5.2001, p. 43.

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Article 15

Intellectual property

The FCH Joint Undertaking shall adopt distinct rules governing the protection, use and dissemination of research results based on the principles of Regulation (EC) No 1906/2006 (hereinafter referred to as the Rules of Participation of the Seventh Framework Programme), as referred to in Article 25 of the Statutes which ensure that, where appropriate, intellectual property generated in RTD activities under this Regulation is protected, and that research results are used and disseminated.

Article 16

Preparatory actions

1. The Commission shall be responsible for the establishment and initial operation of the FCH Joint Undertaking until the Joint Undertaking has the operational capacity to implement its own budget. The Commission shall carry out, in accordance with Community law, all necessary actions in collaboration with its members and the involvement of the competent bodies.

2. For that purpose, until such time as the Executive Director takes up his/her duties following his/her appointment by the Governing Board in accordance with Article 6(4) of the Statutes, the Commission may assign a limited number of its officials, including one to fulfil the functions of the Executive Director, on an interim basis.

3. The interim Executive Director may authorise all payments covered by the credits provided in the budget of the FCH Joint Undertaking once approved by the Governing Board and may conclude contracts, including staff contracts following the adoption of the FCH Joint Undertaking establishment plan. The Commission authorising officer may authorise all payments covered by the credits provided in the general budget of the FCH Joint Undertaking.

Article 17

Support from the host State

A host agreement shall be concluded between the FCH Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the FCH Joint Undertaking.

Article 18

Entry into force

This Regulation shall enter into force on the third day following 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.

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ANNEX

STATUTES OF THE FUEL CELLS AND HYDROGEN JOINT UNDERTAKING

Article 1

Main tasks and activities

The main tasks and activities of the FCH Joint Undertaking shall be the following:

(a) to ensure the establishment and the efficient management of the Joint Technology Initiative on Fuel Cells and Hydrogen;

(b) to reach the critical mass of research effort to give confidence to industry, public and private investors, decision-makers and other stakeholders to embark on a long-term programme;

(c) to leverage further industrial, national and regional RTD investment;

(d) to integrate RTD, and focus on achieving long-term sustainability and industrial competitiveness targets for cost, performance and durability and overcome critical technology bottlenecks;

(e) to stimulate innovation and the emergence of new value chains including SMEs;

(f) to facilitate the interaction between industry, universities and research centres including on basic research;

(g) to promote the involvement of SMEs in its activities, in line with the objectives of the Seventh Framework Programme;

(h) to encourage the participation of institutions from all Member States and Associated countries;

(i) to perform broadly-conceived socio-techno-economic research to assess and monitor technological progress and non-technical barriers to market entry;

(j) to perform research to support the development of new, and review existing regulations and standards to eliminate artificial barriers to market entry and support interchangeability, inter-operability, cross-border hydrogen trading, and export markets whilst ensuring safe operation and not inhibiting innovation;

(k) to undertake communication and dissemination activities, and to provide reliable information to improve the public awareness and create public acceptance concerning hydrogen safety, and the benefits from the new technologies to the environment, security of supply, energy costs, and employment;

(l) to establish and implement a Multiannual Implementation Plan;

(m) to commit the Community funding and mobilise the private-sector and other public-sector resources needed to implement its RTD activities;

(n) to ensure the sound operation of the RTD activities and sound financial management of the resources;

(o) to communicate and disseminate information on the projects, including the names of the participants, the results from the RTD activities, and the amount of the financial contribution from the FCH Joint Undertaking;

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(p) to notify the legal entities that have concluded a Grant Agreement with the FCH Joint Undertaking of the potential borrowing opportunities from the European Investment Bank, in particular the Risk Sharing Finance Facility set up under the Seventh Framework Programme;

(q) to ensure a high level of transparency and fair competition under equal access conditions for all applicants to the RTD activities of the FCH Joint Undertaking, whether or not they are members of the Research Grouping or the Industry Grouping, (in particular SMEs);

(r) to follow the international developments in the area and engage in international cooperation when appropriate;

(s) to develop close cooperation and ensure coordination with the Research Framework Programme and other European, national and trans-national activities, bodies and stakeholders;

(t) to monitor progress toward the objectives of the FCH Joint Undertaking;

(u) to carry out any other activity needed to achieve the objectives referred to in Article 2 of this Regulation.

Article 2

Members

1. The founding members (hereinafter referred to as the founding members) of the FCH Joint Undertaking shall be:

(a) the Community, represented by the Commission, and

(b) upon acceptance of these Statutes, the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping Aisbl, a non-profit organisation established under Belgian law (registration number: 890025478, with its permanent office in Brussels, Belgium) whose purpose is to contribute to achieving the objectives of the FCH Joint Undertaking (hereinafter referred to as the Industry Grouping).

2. The Industry Grouping shall:

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— ensure that its contribution to the resources of the FCH Joint Undertaking, in accordance with Article 12 of these Statutes, is provided in advance as a cash contribution to cover 50 % of the running costs of the FCH Joint Undertaking and transferred to the budget of the FCH Joint Undertaking in agreed instalments,

— ensure that industry's contribution to the achievement of the RTD activities funded by the FCH Joint Undertaking, together with contributions from other beneficiaries, at least matches the Union contribution,

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— be open to membership, on fair conditions, by any private legal entity (including SMEs), formed in accordance with the law of a Member State or Associated country and having its registered office, central administration or principal place of business within the above area, provided it is active in the field of fuel cells and hydrogen in Europe, and is committed to contribute to the objectives and resources of the FCH Joint Undertaking.

3. A Research Grouping may become a member, after the establishment of the FCH Joint Undertaking, provided it has accepted these Statutes.

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The Research Grouping shall:

— be open to membership, on fair conditions, to any research organisation including universities and research centres established in a Member State or an Associated country excluding those representing the interests of industry or those set up by a company for the sole purpose of undertaking research for this company,

— be a non-profit organisation whose purpose is to contribute to achieving the objectives of the FCH Joint Undertaking,

— be legally established under Belgian law and operate under its registered by-laws duly adopted to pertain to the JTI,

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— ensure that its contribution to the resources of the FCH Joint Undertaking, in accordance with Article 12 of these Statutes, is provided in advance as a cash contribution to cover 1/12 of the running costs of the FCH Joint Undertaking and transferred to the budget of the FCH Joint Undertaking in agreed instalments.

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Article 3

Accession and changes to membership

1. Possible membership application by the Research Grouping to the FCH Joint Undertaking shall be addressed to the Governing Board for its approval.

2. Decisions of the Governing Board on accession of the Research Grouping shall be made taking into account the relevance and potential added value of the Research Grouping for the achievement of the objectives of the FCH Joint Undertaking. The Commission shall provide timely information to the Council on the assessment and, where applicable, on the decision of the Governing Board.

3. Membership of the FCH Joint Undertaking may not be transferred to a third party unless the prior agreement of the Governing Board is given.

4. A founding member may terminate its membership of the FCH Joint Undertaking. The FCH Joint Undertaking shall then be wound up as provided for in Article 27.

5. The Research Grouping may terminate its membership of the FCH Joint Undertaking. The termination shall become effective and irrevocable six months after notification to the founding members following which the leaving member shall be discharged from any obligations other than those approved by the FCH Joint Undertaking prior to the membership termination.

6. The founding members and the Research Grouping, if it becomes a member, are hereinafter referred to as ‘members’.

Article 4

Bodies

1. The bodies of the FCH Joint Undertaking shall be:

(a) the Governing Board;

(b) the Executive Director;

(c) the Scientific Committee.

2. In case a specific task is not assigned to one of the bodies, the Governing Board shall be the competent one.

3. The FCH States Representatives Group and the Stakeholders General Assembly shall be external advisory bodies to the FCH Joint Undertaking.

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Article 5

Governing Board

1. Composition and decision-making process:

(a) the Governing Board shall be composed of six representatives of the Industry Grouping and of six representatives of the Commission;

(b) the Commission shall, in case the Research Grouping is established, transfer one seat to its representative;

(c) each seat in the Governing Board gives one voting right. The vote of the Commission shall be indivisible. The members shall use their best efforts to achieve consensus. Failing consensus, the Governing Board shall take its decisions by a three-quarters majority;

(d) at least one of the representatives appointed by the Industry Grouping shall represent SMEs;

(e) the Governing Board shall elect its chairperson. The chairperson shall be elected for two years;

(f) the chairperson shall convene the Stakeholders' General Assembly;

(g) the Secretary of the Governing Board shall be the Executive Director. The Executive Director shall take part in the deliberations, but shall have no voting rights;

(h) the representatives of the members shall not be personally liable for actions undertaken in their capacity as representatives on the Governing Board;

(i) the Governing Board shall adopt its rules of procedure in accordance with paragraph 3.

2. Roles and tasks

The Governing Board shall have overall responsibility for the operations of the FCH Joint Undertaking and shall oversee the implementation of its activities.

The Governing Board shall in particular:

(a) assess applications and decide changes in membership in accordance with Article 3;

(b) decide on the termination of the membership in the FCH Joint Undertaking of any member which does not fulfil its obligations;

(c) approve the annual and multiannual implementation plans and the corresponding expenditure estimates, as proposed by the Executive Director after having consulted the FCH States Representatives Group and the Scientific Committee;

(d) approve the annual budget, including the staff establishment plan;

(e) approve the annual activity report, including the corresponding expenditure;

(f) approve the annual accounts and the balance-sheet;

(g) arrange for the establishment of the internal audit capabilities of the FCH Joint Undertaking;

(h) adopt the financial rules of the FCH Joint Undertaking in accordance with Article 6 of this Regulation;

(i) approve the initiatives to amend these Statutes in accordance with Article 26;

(j) appoint, dismiss or replace the Executive Director, provide guidance to the Executive Director and monitor the Executive Director's performance;

(k) approve the organisational structure of the Programme Office as proposed by the Executive Director;

(l) approve the methodology for assessing the in-kind contributions in accordance with the principles referred to in Article 12;

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(m) approve the guidelines on evaluation and selection of project proposals as proposed by the Executive Director;

(n) approve the list of project proposals selected for funding;

(o) approve the model grant agreement;

(p) approve service and supply contracts;

(q) approve the annual independent assessment of the level of in-kind contribution before it is presented to the Commission;

(r) assign any task which is not specifically allocated to one of the bodies of the FCH Joint Undertaking;

(s) approve procedures of the FCH Joint Undertaking, including the rules on the Intellectual Property Rights in line with Article 25;

(t) adopt practical arrangements for implementing Regulation (EC) No 1049/2001 as referred to in Article 14 of this Regulation;

(u) approve the calls for proposals;

(v) supervise the overall activities of the FCH Joint Undertaking.

3. Rules of procedure

(a) The Governing Board shall hold its ordinary meeting twice a year. It may hold any extraordinary meeting at the request of the Commission or a majority of the representatives of the Industry Grouping or at the request of the chairperson. The meetings shall normally take place at the Seat of the FCH Joint Undertaking. The meetings of the Governing Board shall be convened by its Chairperson.

(b) The Chairperson of the FCH States Representatives Group shall have the right to attend meetings of the Governing Board as an observer.

(c) The Governing Board may invite observers on a case-by-case basis, without voting rights, to attend their meetings, in particular representatives of the regions and of regulatory bodies.

Article 6

Executive Director

1. The Executive Director shall be the chief executive responsible for the day-to-day management of the FCH Joint Undertaking in accordance with the decisions of the Governing Board. In that context, he/she shall regularly inform as well as respond to any specific ad hoc requests for information from the Governing Board and the Scientific Committee.

2. The Executive Director shall be the legal representative of the FCH Joint Undertaking. He/she shall perform his/her tasks with independence, and shall be accountable to the Governing Board.

3. The Executive Director shall exercise, in respect of the staff, the powers laid down in Article 7(2) of this Regulation.

4. The Executive Director shall be appointed by the Governing Board for a period of three years, following a call for expression of interest published in the *Official Journal of the European Union* and in other publicly accessible periodicals or Internet sites. After an evaluation of the Executive Director's performance, the Governing Board may extend the term of office once for a further period of not more than four years.

5. The Executive Director shall in particular:

(a) submit to the Governing Board the Annual and Multiannual Implementation Plans and the corresponding expenditure estimates;

(b) submit to the Governing Board the annual budget proposal, including the staff establishment plan;

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(c) submit to the Governing Board the annual activity report, including the corresponding expenditure;

(d) submit to the Governing Board the annual accounts and the balance-sheet;

(e) submit for the approval of the Governing Board, the arrangements and guidelines for evaluation and selection of project proposals, including procedures for the dissemination of research results;

(f) supervise the management of the calls for project proposals;

(g) submit for the approval of the Governing Board the list of project proposals selected for funding;

(h) submit for the approval of the Governing Board the list of Grant Agreements to be concluded;

(i) approve and sign the individual grant agreements established in line with the model grant agreement. Grant agreements with provisions that do not fully correspond to the model grant agreement shall be submitted to the Governing Board for approval;

(j) submit for the approval of the Governing Board the service and supply contracts to be concluded;

(k) submit to the Governing Board his/her proposal(s) concerning the organisation structure of the Programme Office and organise, direct and supervise the staff of the FCH Joint Undertaking;

(l) organise meetings of the Governing Board;

(m) ensure the secretariat for the Stakeholders' General Assembly;

(n) attend as appropriate the meetings of the Scientific Committee as observer;

(o) if appropriate, set up ad hoc expert groups, as decided by the Governing Board, to gather advice from experts;

(p) monitor public and private financing and have the responsibility to propose to the Governing Board any corrective action necessary to maintain the required balance;

(q) assess the level of in-kind contribution in accordance with the principles referred to in Article 12 (the first one at the end of the second financial year after the start of the FCH Joint Undertaking), and take responsibility for the assessment results being approved by the Governing Board and presented to the Commission within four months of the end of each financial year;

(r) provide to the Governing Board any other information that may be requested;

(s) provide the Commission with any information and service necessary for the mid-term and final reviews;

(t) be responsible for risk assessment and risk management;

(u) propose to the Governing Board any insurance that may be necessary for the FCH Joint Undertaking to take out in order to meet its obligations;

(v) be responsible for preparing, negotiating and concluding Grant Agreements for the implementation of the RTD activities, and service and supply contracts necessary for the operations of the FCH Joint Undertaking;

(w) be responsible for the preparatory work necessary for securing the annual discharge from the European Parliament.

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Article 7

Programme Office

1. The Programme Office shall, under the responsibility of the Executive Director, execute all responsibilities of the FCH Joint Undertaking.

2. The Programme Office shall in particular:

(a) manage the launch of the calls for project proposals as foreseen in the annual implementation plan, the evaluation with the assistance of independent experts, and selection of the project proposals, the negotiation of the selected project proposals, and the follow-up and administration of the grant agreements, including their coordination;

(b) be in charge of the establishment and management of the appropriate accounting system for the calculation of the actual public and private contributions to the projects;

(c) provide the Governing Board and all other subsidiary bodies with relevant documentation and logistical support;

(d) prepare the multiannual implementation plan and the corresponding expenditure estimates;

(e) prepare the annual budget proposal, including the staff establishment plan;

(f) prepare the annual activity report, including the corresponding expenditure;

(g) prepare the annual accounts and the balance-sheet;

(h) prepare all documents necessary for the mid-term and final review;

(i) manage calls for tenders for goods and services according to the financial rules of the FCH Joint Undertaking;

(j) perform any other tasks entrusted or delegated to it by the Governing Board.

Article 8

Scientific Committee

1. The Scientific Committee is an advisory body to the Governing Board. The Scientific Committee shall conduct its activities with the support of the Programme Office.

2. The Scientific Committee shall consist of no more than nine members.

3. The members shall reflect a balanced representation of world class expertise from academia, industry and regulatory bodies. Collectively, the Scientific Committee members shall have the scientific competencies and expertise covering the complete technical domain needed to make strategic science-based recommendations regarding the FCH Joint Undertaking.

4. 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 account the potential candidates proposed by the FCH States Representative Group.

5. A chairperson shall be elected by consensus of the Scientific Committee from among its members.

6. The Scientific Committee shall have the following tasks:

(a) advise on the scientific priorities for the annual and Multiannual Implementation Plans proposal;

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(b) advise on the scientific achievements described in the annual activity report;

(c) advise on the composition of the peer review committees.

7. The Scientific Committee shall meet at least once a year and shall be convened by the chairperson.

8. The Scientific Committee may, with the agreement of the chairperson, invite non-member persons to participate in its meetings.

Article 9

FCH States Representatives Group

1. The FCH States Representatives Group shall have an advisory role for the FCH Joint Undertaking.

2. The FCH States Representatives Group shall consist of one representative of each Member State and of each Associated country. It shall elect a chairperson among its members.

3. It shall in particular review information and provide opinions on the following topics:

(a) programme progress in the FCH Joint Undertaking;

(b) compliance and respect of targets;

(c) updating of strategic orientation;

(d) links to Framework Programme Collaborative Research;

(e) planning and outcome of calls for proposals and tenders;

(f) involvement of SMEs.

4. It shall also provide input to the Joint Undertaking on the following:

(a) status of and interface to Joint Undertaking activities to relevant national research programmes and identification of potential areas of cooperation;

(b) specific measures taken at national level with regard to dissemination events, dedicated technical workshops and communication activities.

5. The FCH States Representatives Group may issue, on its own initiative, recommendations to the FCH Joint Undertaking on technical, managerial and financial matters, in particular when these affect national interests. The FCH Joint Undertaking shall inform the FCH States Representatives Group of the follow up it has given to such recommendations.

6. The FCH States Representatives Group shall meet at least bi-annually and shall be convened by the Joint Undertaking. Extraordinary meetings can be convened to deal with specific matters of major relevance to FCH Joint Undertaking activities. These meetings shall be called by the FCH Joint Undertaking either on its own initiative or upon request from FCH States Representatives Group.

7. The Executive Director, the chairman of the Governing Board and/or their representatives and a Commission representative shall attend the meetings.

8. The FCH States Representatives Group shall adopt its rules of procedure.

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Article 10

Stakeholders' General Assembly

1. The Stakeholders' General Assembly shall have an advisory role to the FCH Joint Undertaking. It shall be open to all public and private stakeholders, international interest groups from Member States, Associated countries as well as from third countries. It shall be convened once a year.

2. The Stakeholders' General Assembly shall be informed of the activities of the FCH Joint Undertaking and shall be invited to provide comments.

Article 11

Internal auditing function

The functions entrusted by Article 185(3) of Regulation (EC, Euratom) No 1605/2002 to the Commission's internal auditor shall be carried out under the responsibility of the Governing Board, which shall make appropriate provision, taking into account the size and the scope of the FCH Joint Undertaking.

Article 12

Sources of financing

1. The FCH Joint Undertaking shall be jointly funded by the Members through financial contributions paid in partial instalments, and in-kind contributions from legal entities participating in the activities.

Any other contribution to the FCH Joint Undertaking may also be accepted. The Governing Board shall decide on their acceptance and utilisation.

2. The running costs of the FCH Joint Undertaking shall be covered equally in cash by the Community and the Industry Grouping from the outset. As soon as the Research Grouping becomes a member of the FCH Joint Undertaking, it shall contribute to 1/12 of the running costs. In such a case, the Community contribution to running costs will decrease correspondingly.

The total Community contribution to the FCH Joint Undertaking running costs shall not exceed EUR 20 million. If part of the contribution from the Community is not used, it may be available for the activities of the FCH Joint Undertaking.

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3. The operational costs of the FCH Joint Undertaking shall be covered through the financial contribution of the Union, and through in-kind contributions from the legal entities participating in the activities. The contribution from the participating legal entities shall at least match the financial contribution of the Union.

Receipts shall be dealt with in accordance with the Rules of Participation set out in the Decision No 1982/2006/EC.

This paragraph shall apply from the date on which the Research Grouping became member of the FCH Joint Undertaking.

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4. All resources of the FCH Joint Undertaking and its activities shall be devoted to the objectives provided for in Article 2 of this Regulation.

5. Any interest yielded by the contributions once received by the FCH Joint Undertaking shall be considered to be its revenue.

6. Any interest generated on the advance payment of grants paid out by the FCH Joint Undertaking shall be considered to be a receipt to the project consortium.

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7. The level of the in-kind contributions, calculated on a yearly basis, shall be assessed once a year. The methodology for evaluating contributions in kind shall be defined by the FCH Joint Undertaking in compliance with its financial rules and based on the Rules for Participation of the Seventh Framework Programme. The first assessment shall be initiated at the end of the second financial year after the start of the FCH Joint Undertaking. The assessment shall thereafter be performed each financial year by an independent auditor. The results of the assessment shall be presented to the Commission within four months of the end of each financial year.

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If the assessment determines that the in-kind contribution from the participating legal entities does not reach the required level, the Commission may reduce its contribution the following year.

If it is determined that, for 2 consecutive years, the in-kind contribution from the participating legal entities does not reach the required level the Commission may propose to the Council to terminate the FCH Joint Undertaking.

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

Article 13

Participation in activities

1. Participation in projects shall be open to other legal entities and international organisations once the minimum conditions have been satisfied.

2. The minimum conditions to be fulfilled for projects funded by the FCH Joint Undertaking shall be the following:

(a) at least three legal entities must participate, each of which must be established in a Member State or Associated country, and no two of which may be established in the same Member State or Associated country;

(b) all three legal entities must be independent of each other as defined in Article 6 of the Rules of Participation of the Seventh Framework Programme;

(c) at least one legal entity must be a member of the Industry Grouping or the Research Grouping.

3. The legal entities wishing to participate in a project shall form a consortium and appoint one of their members to act as its coordinator.

In general, the coordinator should come from the Industry Grouping or from the Research Grouping if such Research Grouping becomes a member of the Joint Undertaking.

4. The minimum condition for service and supply contracts, support actions, studies and training activities funded by the FCH Joint Undertaking shall be the participation of one legal entity.

Article 14

Implementation of RTD activities

1. The FCH Joint Undertaking shall support RTD activities following open and competitive calls for proposals, independent evaluation, and the conclusion for each project of a Grant Agreement and a Consortium Agreement.

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2. In exceptional cases the FCH Joint Undertaking may issue calls for tenders, if it is deemed necessary for the effective pursuance of the research objectives.

3. The FCH Joint Undertaking shall define the procedures and mechanisms for the implementation, supervision and control of Grant Agreements.

4. The Grant Agreement shall:

— provide for the appropriate arrangements for the implementation of the RTD activities,

— provide for the appropriate financial arrangements and the rules relating to intellectual property rights policy as referred to in Article 25,

— govern the relationship between the project consortium and the FCH Joint Undertaking.

5. The Consortium Agreement shall be concluded by the project participants prior to the conclusion of the Grant Agreement. It shall:

— provide for the appropriate arrangements for the implementation of the Grant Agreement,

— govern the relationship between the participants in a project, in particular the Intellectual Property Rights provisions.

Article 15

Funding of activities

1. The following shall be eligible for funding:

(a) legal entities established in a Member State or an Associated country;

(b) international organisations, which have legal personality under international public law, as well as any specialised agencies set up by such organisations;

(c) legal entities from third countries, provided that the Governing Board considers their participation to be of particular benefit to the project.

2. In order to be considered eligible for Community funding, costs incurred in the implementation of research and development activities shall be excluded of value added tax.

3. The upper funding limits of the Community financial contribution in projects shall be aligned to comply with those laid down by the Rules for Participation of the Seventh Framework Programme. In case lower levels of funding will be necessary to comply with the matching principles referred to in Article 12(3), the decreases shall be fair and balanced proportionally with the above mentioned upper funding limits of the Rules of Participation of the Seventh Framework Programme for all categories of participants in each individual project.

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4. The Governing Board may decide to specify a minimum level of funding for each category of participant for a particular Call for proposals.

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Article 16

Financial commitments

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

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Article 17

Financial revenues

Except when the FCH Joint Undertaking is wound up pursuant to Article 27, any excess revenue over expenditure shall not be paid to the Members of the FCH Joint Undertaking.

Article 18

Financial year

The financial year shall correspond to the calendar year.

Article 19

Financial implementation

The Executive Director shall implement the budget of the FCH Joint Undertaking.

Article 20

Financial reporting

1. Every year, the Executive Director shall present to the Governing Board a preliminary draft annual budget plan, which shall include a forecast of annual expenditure for the following two years. Within this forecast, the estimates of revenue and expenditure for the first of those two financial years shall be drawn up in such detail as is necessary for the internal budgetary procedure of each member regarding its financial contributions to the FCH Joint Undertaking. The Executive Director shall supply the Governing Board with all supplementary information needed for this purpose.

2. The members of the Governing Board shall forthwith communicate to the Executive Director their comments on the preliminary draft budget and in particular on the estimates of resources and expenditure for the following year.

3. Taking into account the comments received from the members of the Governing Board, the Executive Director shall prepare the draft budget for the following year and submit it to the Governing Board for approval.

4. The annual Budget Plan and the Annual Implementation Plan for a particular year shall be adopted by the Governing Board of the FCH Joint Undertaking by the end of the previous year.

5. Within two months after the closure of each financial year, the annual accounts and balance sheets for the preceding year shall be submitted by the Executive Director to the Governing Board for approval. The annual accounts and balance sheets for the preceding year shall be submitted to the Court of Auditors and the Commission.

Article 21

Planning and reporting

1. The Multiannual Implementation Plan shall describe the rolling programme of RTD activities of the FCH Joint Undertaking. The Annual Implementation Plan shall include a detailed plan of the RTD activities and corresponding expenditure estimates for the coming year. Once approved by the Governing Board, a publishable version of the Annual Implementation Plan shall be made publicly available.

2. An annual activity report shall present progress made by the FCH Joint Undertaking in each calendar year, in particular in relation to the Annual Implementation Plan for that year. It shall also include information on the performed

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RTD activities, the costs and the contribution of the FCH Joint Undertaking for any individual project, the participation of SMEs as well as on other activities during the previous year and the corresponding expenditure. The Annual Activity Report shall be presented by the Executive Director together with the Annual Accounts and balance sheets. Once approved by the Governing Board, the Annual Activity Report shall be made public.

Article 22

Service and supply contracts

The FCH Joint Undertaking shall set up all the procedures and mechanisms for the implementation, supervision and control of service and supply contracts necessary for the operations of the FCH Joint Undertaking, according to the provisions of its financial rules.

Article 23

Liability of members and insurance

1. The financial liability of the members for the debts of the FCH Joint Undertaking shall be limited to their contribution already made for the running costs.

2. The FCH Joint Undertaking shall take out and maintain appropriate insurance.

Article 24

Conflict of interest

1. The FCH Joint Undertaking and its bodies shall avoid any conflict of interest in the implementation of their activities.

2. In particular care must be taken where a conflict of interest may occur for the representatives serving in the Governing Board.

Article 25

Intellectual property rights policy

1. The FCH Joint Undertaking shall adopt its general rules governing the Intellectual Property Rights policy of the FCH Joint Undertaking in accordance with Article 15 of this Regulation that will be incorporated in the Grant Agreements and Consortium Agreements.

2. The objective of the Intellectual Property Rights policy of the FCH Joint Undertaking is to generate foreground information, promote its exploitation, use and dissemination for rapid development towards commercial results, to achieve fair allocation of rights, to reward innovation, and to achieve a broad participation of private and public entities in projects.

3. The Intellectual Property Rights policy shall reflect the following principles:

— each participant in a project shall remain the owner of the background it introduces into a project, and shall remain the owner of the foreground it generates in a project, unless otherwise mutually agreed in writing by the participants in a project. The terms and conditions of access rights and licenses with regard to the background or foreground, shall be defined in the Grant Agreement and the Consortium Agreement of the project concerned,

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— the participants in a project shall undertake to disseminate and allow the use of foreground under terms and conditions defined in the Grant Agreement and the Consortium Agreement, taking into account the protection of their intellectual property rights, confidentiality obligations and, in particular the specific nature of the FCH Joint Undertaking as a public-private partnership.

Article 26

Amending the Statutes

1. Any Member of the FCH Joint Undertaking may take an initiative to the Governing Board for the amendment of these Statutes.

2. The initiatives referred to in paragraph 1 as approved by the Governing Board shall be submitted as draft amendments to the Commission which shall adopt them, as appropriate.

3. However, any amendment affecting the essential elements of these Statutes and in particular amendments to Articles 2, 3, 5, 6, 12, 13, 14, 15, 23, 26 and 27 shall be adopted in accordance with Article 172 of the Treaty.

Article 27

Winding up

1. At the end of the period provided for in Article 1 of this Regulation, or following an amendment pursuant to Article 11(2) of this Regulation, the FCH Joint Undertaking shall be wound up.

2. The winding-up procedure shall be automatically triggered if one of the founding members terminates its membership, unless the request for termination is accompanied by a proposal for the transfer of the membership to a legal entity that can be accepted by the remaining founding member.

3. For the purpose of conducting the proceedings in winding up the FCH 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 Joint Undertaking is being wound up, it shall return to the host State any physical support item made available by the host State in accordance with the host agreement.

5. When any physical support item has been dealt with as provided in paragraph 4, any further assets shall be used to cover the liabilities of the FCH Joint Undertaking and the expenditures relating to its winding-up. Any surplus shall be distributed among the members existing at the time of the winding up in proportion to their actual contribution to the FCH Joint Undertaking. Any surplus distributed to the Community shall be returned to the Commission budget.

6. Remaining assets shall be distributed to the members existing at the time of the winding up in proportion to their actual contribution to the FCH Joint Undertaking.

7. An ad hoc procedure shall be set up to ensure the appropriate management of any Grant Agreement and service and supply contract concluded by the FCH Joint Undertaking, with a duration longer than the duration of the FCH Joint Undertaking.