



**COUNCIL OF  
THE EUROPEAN UNION**

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**RECH 296  
COMPET 320**

**NOTE**

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from :            Presidency

to :                Delegations

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No. Cion prop. : 10148/07 RECH 167 COMPET 178

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Subject :        Proposal for a Council Regulation setting up the Clean Sky Joint Undertaking  
                    – *Presidency text*

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Delegations will find attached a revised Presidency text concerning the proposal for a Council Regulation setting up the Clean Sky Joint Undertaking in view of its discussion by the Research Working Party on Tuesday 6 November 2007.

**PRESIDENCY TEXT**

Proposal for a

**COUNCIL REGULATION**

**SETTING UP THE CLEAN SKY JOINT UNDERTAKING**

**(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,<sup>1</sup>

Having regard to the Treaty establishing the European Community, and in particular Articles 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<sup>2</sup> concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) hereinafter referred to as the "Seventh Framework Programme", provides for a Community contribution for the establishment up of long term public private partnerships in the form of Joint Technology Initiatives which could be implemented

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<sup>1</sup> Changes to the Commission proposal are underlined. Changes following the meeting of the Working Party on 24 October 2007 are **bold underlined**.

<sup>2</sup> OJ L 412, 30.12.2006, p.1.

through Joint Undertakings within the meaning of Article 171 of the Treaty. These Joint Technology Initiatives result from the work of European Technology Platforms, already set up under the 6<sup>th</sup> 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<sup>3</sup> concerning the Specific Programme "Cooperation" implementing the Seventh Framework Programme (2007-2013) of the European Community for research, technological development and demonstration activities (hereinafter referred as the "Specific Programme Cooperation"), underlines the need for ambitious pan-European public private partnerships to accelerate the development of major technologies, large research actions at Community level including, in particular, Joint Technology Initiatives.
- (3) The Lisbon Growth and Jobs Agenda underscores the need to develop favourable conditions for investment in knowledge and innovation in Europe to boost competitiveness, growth and jobs in the European Union.
- (4) In its conclusions of 20-21 March 2003<sup>4</sup>, of 22 September 2003<sup>5</sup> and of 24 September 2004<sup>6</sup>, the Competitiveness Council highlighted the importance of further developing actions following the 3% Action Plan for research and the innovation policy<sup>7</sup> including the development of new initiatives aimed at intensifying co-operation between industry and the public sector in funding research to enhance trans-national public-private links.

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<sup>3</sup> OJ L 400, 30.12.2006, p. 86-241.

<sup>4</sup> Doc. 9039/03.

<sup>5</sup> Doc. 12339/03.

<sup>6</sup> Doc. 12487/04.

<sup>7</sup> COM(2003) 226.

- (5) In its conclusions of 4 December 2006<sup>8</sup> and of 19 February 2007<sup>9</sup>, the Competitiveness Council, and its conclusions of 9 March 2007<sup>10</sup> the European Council invited the Commission to present proposals for the setting up of Joint Technology Initiatives for such initiatives that have reached an appropriate stage of preparedness.
- (6) The Aeronautics European Technology Platform “ACARE” (Advisory Council for Aeronautics Research in Europe) developed a Strategic Research Agenda, which identified the reduction of aviation impact on environment as one of its high level target concepts, concluding that step technological changes are needed to reach the goals by 2020 of cutting CO<sub>2</sub> emissions by 50%, reduce NOx by 80%, reduce perceived external noise by 50%, and making substantial progress in reducing the environmental impact of the manufacture, maintenance and disposal of aircraft and related products.
- (7) The extent of the effort required to address the environmental challenges to the air transport system as defined in the Strategic Research Agenda of ACARE justified the setting of a Joint Undertaking as the appropriate instrument coordinating the relevant research activities.
- (8) The Joint Technology Initiative on Clean Sky should mitigate the different types of market failure which discourage private investment in aeronautics research generally and clean Air Transport technologies in particular. It should provide integration and demonstration at the full- system level, thus decreasing the risk for private investment in developing new environment-friendly aeronautics products. It should stimulate EU private R&D investment in environment-friendly technologies thus addressing the existing R&D and environmental externalities.

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<sup>8</sup> Doc. 15717/06.

<sup>9</sup> Doc. 6044/07.

<sup>10</sup> Doc. 7224/07.

- (9) The Joint Technology Initiative on Clean Sky should accelerate the development in the EU of clean Air Transport technologies for earliest possible deployment<sup>11</sup> which will contribute to achieving Europe's strategic environmental<sup>12</sup> and social priorities, in combination with sustainable economic growth.
- (10) The Joint Technology Initiative on Clean Sky should be a public-private partnership associating all key stakeholders. Taking into account the long-term nature of this partnership, the necessary pooling and availability of financial resources, the high scientific and technical expertise required, including the management of a vast amount of knowledge, and appropriate intellectual property rules, it is vital to set up a legal entity capable of ensuring the coordinated use and efficient management of the funds assigned to the Joint Technology Initiative on Clean Sky. It therefore warrants setting up a Joint Undertaking under Article 171 of the Treaty, hereafter referred to as the "Clean Sky Joint Undertaking".
- (11) The Clean Sky Joint Undertaking aims at addressing the implementation of innovative environmentally friendly technologies in all segments of civil air transport, including large commercial aircraft, regional aircraft and rotorcraft and in all supporting technologies such as engines, systems and materials life cycle. Clean Sky will deliver full scale demonstrators in all areas of research activities, which should be tested either in flight or on ground, as a result of a fully integrated approach and monitoring of the technological progress and impact.
- (12) The Clean Sky Joint Undertaking should be set up for a period up to 31 December 2017 to ensure the appropriate management of research activities including exploitation of the results by the members of the Clean Sky Joint Undertaking and the participants initiated but not concluded during the 7<sup>th</sup> Framework Programme (2007-2013).

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<sup>11</sup> See COM(2007) 2.

<sup>12</sup> The European Parliament and European Council in spring 2005 re-affirmed the EU objective of limiting global temperature increase to a maximum of 2°C (the 2° objective).

- (13) The members of the Clean Sky Joint Undertaking should be the European Community represented by the Commission as public representative, the leaders of Integrated Technology Demonstrators (ITDs) and the Associate members to the individual ITDs.
- (14) The Clean Sky Joint Undertaking should be open to new members.
- (15) The Clean Sky Joint Undertaking should be a body set up by the Communities and discharge for the implementation of its budget should be given by the European Parliament<sup>13</sup>, on the recommendation of the Council, taking however into account the specificities resulting from the nature of JTIs as public-private partnerships and in particular from the private sector contribution to the budget.
- (16) The leaders of Integrated Technology Demonstrators have signed a Memorandum of Understanding committing their respective companies to technical, managerial and financial participation to the Clean Sky Joint Undertaking for its full duration. All Associate members have committed themselves to a threshold financial participation for the whole duration of Clean Sky Joint Undertaking.
- (17) The research activities should be covered by funding from the European Community and at least on an equal level by resources from the others members.

**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 EIB and the Commission, pursuant to Annex III of Council Decision on the Specific Programme "Cooperation" 2006/971/EC of 19 December 2006 the Joint Technology Initiatives are also eligible to benefit from the Risk Sharing Finance Facility regarding funding from the European Investment Bank.**

- (18) The running costs of the Clean Sky Joint Undertaking should be covered by equal amounts by the European Community and the other members.

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<sup>13</sup> Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the budget of the European Communities (OJ L 248, 16.9.2002 p. 1; corrigendum in OJ L 25, 30.1.2003, p. 43).

- (19) The leaders of Integrated Technology Demonstrators (ITDs) and the Associate Members to the individual ITDs should receive support from the Clean Sky Joint Undertaking for the carrying out of the research activities they should be in charge of.
- (20) The Clean Sky Joint Undertaking should be capable of organising competitive calls for proposals for supporting research activities, where appropriate.
- (21) Research activities carried out under the Clean Sky Joint Undertaking should respect fundamental ethical principles applicable in the Seventh Framework programme.
- (22) The Clean Sky Joint Undertaking should ~~have~~ **adopt, in accordance with Article 185(1) of Council Regulation 1605/2002<sup>14</sup> and** subject to prior consent of the Commission, **specific financial rules** ~~a distinct Financial Regulation based on the principles of the framework financial regulation~~ which takes into account its specific operating needs arising, in particular, from the need to combine Community and private funding to support research and development activities in an efficient and timely manner.
- (23) The need to ensure stable employment conditions and equal treatment of staff, and in order to attract specialised scientific and technical staff of the highest calibre, requires the application of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, ("the Staff Regulation") to all staff recruited by the Clean Sky Joint Undertaking.
- (24) The rules for organisation and operation of the Clean Sky Joint Undertaking should be laid down in the Statutes of the Clean Sky Joint Undertaking as part of this Regulation.
- (25) The Commission should have specific tasks associated with the monitoring of public funds and safeguarding Community interests in the Joint Undertaking.
- (26) The Clean Sky Joint Undertaking should regularly report to the European Parliament and the Council on its progress.

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<sup>14</sup> **OJ L 248, 16.9.2002, p.1.**

- (27) The Clean Sky Joint Undertaking should rely on a number of external advisory bodies, involving National States and the ACARE European Technology Platform for Aeronautics, and maintain regular contacts with National States.
- (28) As a body possessing legal personality, the Clean Sky Joint Undertaking should be accountable for its actions. As regards the resolution of disputes in contractual matters, any grant agreements or contracts concluded by the Clean Sky Joint Undertaking could provide that the Court of Justice has jurisdiction.
- (29) The Intellectual Property Rights policy of the Clean Sky Joint Undertaking should promote knowledge creation and exploitation.
- (30) 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<sup>15</sup>, 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<sup>16</sup>, and the Regulation (EC) No 1073/1999 of the European Parliament and of the Council concerning investigations concluded by the European Anti-Fraud Office (OLAF)<sup>17</sup>.
- (31) In order to facilitate the setting up of the Clean Sky Joint Undertaking, its Members should take all necessary preparatory actions until the bodies responsible for its operation have been set up.
- (32) The Clean Sky Joint Undertaking should be established in Brussels, Belgium. A host agreement should be concluded between the Clean Sky Joint Undertaking and Belgium concerning office accommodation, privileges and immunities and other support to be provided by Belgium to the Clean Sky Joint Undertaking.

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<sup>15</sup> OJ L 312,23.12.1995, p.1.

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

<sup>17</sup> OJ L 136,31.05.1999, p.1.

- (33) Since the objective of the action to be taken, namely the establishment of the Clean Sky Joint Undertaking, cannot be sufficiently achieved by the Member States due to the transnational nature of the great research challenge identified, which requires the pooling of complementary knowledge and financial resources across the 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 of a Joint Undertaking*

1. For the implementation of the Joint Technology Initiative on "Clean Sky", a Joint Undertaking within the meaning of Article 171 of the Treaty is hereby set up for a period up to 31 December 2017 (hereinafter referred to as "Clean Sky Joint Undertaking").
2. Its seat shall be located in Brussels, Belgium.

*Article 2*

*Objectives of the Joint Undertaking*

The Clean Sky Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and in particular the Theme 7, Transport (including Aeronautics) of the Specific Programme 'Cooperation'.

The objectives of the Clean Sky Joint Undertaking shall be the following:

- (a) accelerating in the EU the development, validation and demonstration of clean Air Transport technologies for earliest possible deployment;
- (b) Ensuring coherent implementation of European research efforts aiming at environmental improvements in the field of Air Transport;
- (c) creating a radically innovative Air Transport System based on the integration of advanced technologies and full scale demonstrators, with the target of reducing the environmental impact of air transport through significant reduction of noise and gaseous emissions, and improvement of the fuel economy of aircraft.
- (d) Accelerating the generation of new knowledge, innovation and the uptake of research in proof of the comprised technologies and fully integrated system of systems, in the appropriate operational environment, leading to strengthened industrial competitiveness;

### *Article 3*

#### *Legal status*

The Clean Sky Joint Undertaking shall be a Community body and shall have legal personality. In all 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 be a party to legal proceedings.

#### *Article 4*

##### *Statutes*

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

#### *Article 5*

##### *Community contribution*

1. The maximum Community contribution to the Clean Sky Joint Undertaking covering running costs and Research Activities shall be EUR 800 million (eight hundred million) paid from the budget appropriation allocated to the Theme 'Transport' of the Specific Programme 'Cooperation' implementing the Seventh Framework Programme for research, technical development and demonstration (2007-2013) according to the provisions of Article 54(2)(b) of Council Regulation (EC, Euratom) No1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.
2. Where appropriate, the Community contribution to the Clean Sky Joint Undertaking for the funding of the Research Activities shall include funding of proposals selected via open and competitive Calls for Proposals.

The evaluation and selection process shall ensure that allocation of the Clean Sky Joint Undertaking public funding follows the principles of excellence and competition, and shall be as necessary carried out with the assistance of independent experts.

Any public or private entity established in a Member State or in a country associated to the Seventh Framework Programme, shall be eligible for such funding.

- 3.** The arrangements for the Community financial contribution shall be established by means of a general agreement and annual financial implementation agreements to be concluded between the Commission, on behalf of the Community, and the Clean Sky Joint Undertaking.
- 4.** Other Members of the Joint Undertaking shall contribute resources at least equal to the Community contribution excluding those allocated through Calls for Proposals in order to carry out the research activities of Clean Sky.

*Article 6*

*Financial Regulation*

1. The Clean Sky Joint Undertaking shall adopt **specific financial rules in accordance with Article 185(1) of Council Regulation 1605/2002<sup>18</sup>** ~~a distinct Financial Regulation shall be based on the principles of the Framework Financial Regulation<sup>19</sup>~~. ~~It~~ **They** may depart from the framework Financial Regulation<sup>20</sup> where the specific operating needs of the Clean Sky Joint Undertaking so require and subject to prior ~~consultation with~~ consent of the Commission.
2. The Clean Sky Joint Undertaking shall have its own internal audit capability.

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<sup>18</sup> **OJ 248, 16.9.2002, p.1.**

<sup>19</sup> OJ L 357, 31.12.2002 p. 72; corrigendum in OJ L 2, 7.12003, p. 39.

<sup>20</sup> **Commission Regulation (EC, Euratom) No2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the budget of the European Communities, OJ L 357, 31.12.2002 p. 72; corrigendum in OJ L 2, 7.12003, p. 39.**

## *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 European Communities for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the Clean Sky Joint undertaking and its Executive Director.
2. Without prejudice to paragraph 3 and Article 6(3) of the Statutes, the Clean Sky 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.
3. The Commission shall 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 Clean Sky Joint Undertaking that will be set out in its the annual budget.
5. The staff of the Clean Sky Joint Undertaking shall consist of temporary agents and contract agents engaged for fixed period that may be renewed 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 costs related to the staff shall be borne by the Clean Sky Joint Undertaking.

*Article 8*  
*Privileges and Immunities*

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

*Article 9*  
*Liability*

1. The contractual liability of the Clean Sky 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 Clean Sky 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 Clean Sky 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 Clean Sky Joint Undertaking and shall be covered by the resources of the Clean Sky Joint Undertaking.
4. The Clean Sky 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/or the Statutes referred to in Article 4;
  - (b) pursuant to any arbitration clause contained in agreements and contracts concluded by the Clean Sky Joint Undertaking;

- (c) in actions brought against the Clean Sky Joint Undertaking, including decisions of its Bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;
  - (d) in disputes related to compensation for damage caused by the staff of the Clean Sky 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 Clean Sky Joint Undertaking is located shall apply.

#### *Article 11*

##### *Report, evaluation and discharge*

1. Every year, the Commission shall present to the European Parliament and to the Council an annual report on the progress achieved by the Clean Sky Joint Undertaking. This report shall contain details of implementation including number of proposals submitted, number selected for funding, type of participants, including SMEs, and country statistics. In particular this annual report will include assessment results of the Technology Evaluator as appropriate.
2. By 3 years after the adoption of this Regulation (but in any case no later than 31 December 2010), as well as by 31 December 2013, the Commission shall carry out an evaluation with the assistance of independent experts on the basis of terms of reference **established** after consultation with the Joint Undertaking. These evaluations shall cover the quality and efficiency of the Clean Sky Joint Undertaking, and progress towards the objectives set. 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 Council.

3. Not later than six months after the end of the Joint Undertaking, the Commission shall conduct a final evaluation of the Clean Sky 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 Clean Sky Joint Undertaking shall be given by the European Parliament, upon recommendation of the Council, in accordance with a procedure provided for by the Financial Regulation of the Clean Sky Joint Undertaking.

#### *Article 12*

##### *Protection of the Financial Interests of the Members and Anti-fraud Measures*

1. The Clean Sky Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or by allowing the carrying out of appropriate internal and external controls.
2. Should the Members discover any irregularities, they shall reserve the right to reduce or suspend any subsequent contribution to the Clean Sky Joint Undertaking, or to recover amount unduly spent.
3. For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 of the European Parliament and of the Council shall apply.
4. The Clean Sky Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the Clean Sky Joint Undertaking's public funding.
5. The Commission and/or the Court of Auditors may, if necessary, carry out on-the-spot checks among the recipients of the Clean Sky Joint Undertaking's funding and the agents responsible for allocating it. To that end, the Clean Sky 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 the appropriate controls and, in the event of the detection of irregularities, to impose dissuasive and proportionate penalties.

6. The European Anti-Fraud Office (OLAF) set up by Commission Decision 1999/352/EC, ECSC, Euratom shall enjoy the same powers in respect of the Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the 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. The Clean Sky Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

### *Article 13*

#### *Confidentiality*

Without prejudice to Article 14, the Clean Sky Joint Undertaking shall ensure the protection of sensitive information, disclosure of which could damage the interests of its Members or of participants in the activities of the Clean Sky 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<sup>21</sup> shall apply to documents held by the Clean Sky Joint Undertaking.
2. The Clean Sky Joint Undertaking shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months after the entry into force of this Regulation.

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<sup>21</sup> OJ L 145, 31.5.2001, p. 43.

3. Decisions taken by the Clean Sky 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 EC Treaty respectively.
4. The Clean Sky Joint Undertaking shall adopt the practical arrangements for implementing Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies within six months after the entry into force of these Regulation<sup>22</sup>.

#### *Article 15*

##### *Intellectual Property*

The Clean Sky Joint Undertaking shall adopt rules governing the **protection, use and** dissemination of research results based on the principles of Regulation (EC) 1906/2006<sup>23</sup>, which ensure that, where appropriate, intellectual property generated in Research Activities under this Regulation is protected, and that research results are used and disseminated.

#### *Article 16*

##### *Preparatory actions*

The Members shall be responsible for carrying out all activities relating to the establishment and initial operation of the Clean Sky Joint Undertaking until the bodies responsible for its operation have been set up.

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<sup>22</sup> OJ L 264, 25.9.2006, p. 13.

<sup>23</sup> OJ L 391, 30.12.2006, p.1.

*Article 17*

*Support from the host State*

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

*Article 18*

*Entry into force*

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

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

Done at Brussels,

*For the Council*

*The President*

## STATUTES OF THE CLEAN SKY JOINT UNDERTAKING

### Article 1

#### Definitions

For the purposes of these Statutes, the following definitions shall apply:

Associate means a single legal entity selected following call for membership and which commits for full duration of the Joint Undertaking and **for a minimum fixed share of the ITD budget. For the first call for membership, this minimum is set at 5%.**

Calls for Proposals: means open calls for specific tasks, resulting in the selection of Partners on a competitive basis.

Calls for Tender means calls for subcontracting specific tasks issued by ITD Leaders or Associates.

Integrated Technology Demonstrator (ITD) means one of the 6 technological areas to be covered by Clean Sky Joint Undertaking.

ITD Leader means Co-leader of one of the 6 ITDs;

National States means Member States and countries associated to the Seventh Framework Programme.

Partner means a legal entity selected in the course of JTI to perform specific tasks and is not necessarily committed for the full duration of the Joint Undertaking.

Subcontractor means a legal entity which performs tasks under contract to ITD Leader or Associate;

Technology Evaluator (TE) means the central activity **established in accordance with** Article 7(1).

## Article 2

### Tasks and Activities

In order to achieve the objectives of the Clean Sky Joint Undertaking its main tasks and activities shall be the following:

- (a) Bringing together a range of Integrated Technology Demonstrators with the emphasis on innovative technologies and development of full scale demonstrators;
- (b) Focussing efforts within Integrated Technology Demonstrators on key deliverables that can help meet Europe's environmental and competitiveness goals;
- (c) Enhancing the technology verification process in order to identify and remove obstacles to future market penetration;
- (d) Pooling user requirements to guide investment in research and development towards operational and marketable solutions;
- (e) Implementing the research and development activities needed, where appropriate by awarding grants following Calls for Proposal.
- (f) Awarding grants to support research performed by its Members and by other entities selected following Calls for Proposals in accordance with open criteria agreed by the Governing Board;
- (g) Ensuring the provision of services and supply contracts, where appropriate, through Calls for Tender;
- (h) Mobilising the public and private sector funds needed;
- (i) Liaising with national and international activities in the Joint Undertaking technical domain, in particular with the SESAR Joint Undertaking<sup>24</sup>;

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- (j) Informing via periodic meetings the National States Representative Group and involving ACARE;
- (k) Notifying legal entities that have concluded a grant agreement with the Clean Sky 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.
- (l) Stimulating the involvement of SMEs in its activities, in line with the objectives of the Seventh Research Framework Programme; in this respect the Clean Sky Joint Undertaking shall establish relevant quantitative targets in the annual implementation plan;
- (m) Develop close cooperation and ensure coordination with related European (in particular the Framework Programme), national and transnational activities.

### *Article 3*

#### *Members*

1. **Upon signature of a stakeholder agreement including the acceptance of these Statutes** the following shall be founding members of the Clean Sky Joint Undertaking:
  - (a) the European Community, represented by the Commission;
  - (b) 12 ITD leaders and the Associates.

The Commission and the ITD Leaders shall have overall visibility of the activities of the JTI, and shall be responsible for taking overall strategic decisions.

The Associates shall participate in one or more ITDs, will co-determine technical decisions to be taken regarding these ITDs, and contribute a fair share of the total work programme of these ITDs.

**The founding ITD Leaders and Associates are listed in Annex II, subject to first subparagraph. The founding Associates are listed on a provisional basis.**

2. Any public or private entity established in a Member State or in a country associated to the Seventh Framework Programme may apply to become a member of the Clean Sky Joint Undertaking, provided that:
  - (a) as ITD Leaders, they commit themselves to contribute resources proportional to and consistent with the overall JTI activities;
  - (b) as Associates, their commitment is proportional to the budget of the ITD they participate in and consistent with the ITD requirements.
3. The founding members as referred to in paragraph 1 and new members as referred to in paragraph 2 shall be hereinafter referred to as "Members".

#### Article 4

#### Accession and changes to membership

1. **Accession Rules:** Any public or private legal entity established in a Member State or in a country associated to the Seventh Framework Programme may apply to become a Member of the Clean Sky Joint Undertaking, under conditions below:
  - the legal entities applying to become Integrated Technology Demonstrator Leaders or Associates shall sign the stakeholder agreement referred to in Article 3(1), which will include acceptance of the Statutes.
  - the legal entities applying to become Integrated Technology Demonstrators Leaders shall commit themselves to the exploitation of its results afterwards, to contribute financially to the running costs of the Clean Sky Joint Undertaking with a commitment proportional to its overall budget, and to contribute to the Integrated Technology Demonstrators they lead;

- the legal entities applying to become Associates shall commit themselves to contribute financially to the Clean Sky Joint Undertaking in one or more ITDs according to a predefined threshold of commitment proportional to the budget of that ITD, and to contribute financially to the running costs of the Clean Sky Joint Undertaking.
- Calls for Associates shall be driven by the need for key capabilities within the various ITDs. Vacancies shall be publicised via the Clean Sky web site, communicated via the National States Representative Group and other channels where appropriate.

2. **Governing Board decision:** Any application of new membership to the Clean Sky Joint Undertaking shall be addressed to the Governing Board for its approval according to the procedure set out in Article 5 and transmitted to the National States Representatives Group for information.

Decisions of the Governing Board on accession of any other legal entity shall be made taking into account the relevance and potential added value of the applicant for the achievement of the objectives of the Clean Sky Joint Undertaking, as well as their capacity to exploit the technologies developed. For any application for new membership, the Commission shall provide timely information to the Council on the assessment and, where applicable, on the decision of the Governing Board.

4. **Membership** of the Clean Sky Joint Undertaking may not be transferred to a third party unless the prior agreement of the Governing Board is given.

Any Member may, in exceptional circumstances and subject to the consent of the Governing Board and the Steering Committee of any relevant ITDs, withdraw from the Clean Sky Joint Undertaking. Following withdrawal the former Member shall be discharged from any obligation other than those already undertaken through contracts entered into with the Clean Sky Joint Undertaking and with other Members in accordance with these Statutes, prior to the Member's withdrawal.

*Article 5*

*Bodies of the Clean Sky Joint Undertaking*

1. The bodies of the Clean Sky Joint Undertaking shall be:
  - the Governing Board,
  - the Executive Director,
  - the Integrated Technology Demonstrator Steering Committees
  - the Technology Evaluator Steering Committee, and
  - the General Forum.

A National States Representative Group shall be an external advisory body to the Clean Sky Joint Undertaking.

2. In case a specific task is not assigned to one of the bodies, the Governing Board shall be the competent one.
3. An **Advisory Board** shall be established as appropriate by the Joint Undertaking to advise, and issue recommendations to, the Clean Sky Joint Undertaking on managerial, financial and technical topics. The Advisory Board shall be appointed by the Commission.

*Article 6*

*Governing Board*

1. The Governing Board is the **governing body** of the Clean Sky Joint Undertaking.

2. **Composition:** The Governing Board shall be composed of named representatives of the following parties:
- (a) The European Community represented by the Commission
  - (b) The Integrated Technology Demonstrator Leaders
  - (c) One Associate per Integrated Technology Demonstrator, as laid out in Article 7.4(f) of these Statutes.

3. **Decision making:**

Each individual member of the Governing Board shall have one equal vote.

The Governing Board shall make decisions by a 2/3 majority of all eligible votes. Eligible votes include those of members that are not present at the meeting.

The consent of all affected Integrated Technology Demonstrator Leaders is required in order to modify the budget allocation to and within Integrated Technology Demonstrators.

4. **Chairmanship:**

(a) The Governing Board shall appoint among its representatives a chairman and a vice-chairman. The Commission representative shall not be eligible for either function.

(b) The chairman and the vice-chairman of the Governing Board shall be elected for a period of one (1) year and may be re-elected for one further year.

5. **Meetings:** The Governing Board shall meet at least twice a year.

Extraordinary meetings shall be convened at the request of the chairman of the Governing Board or the Commission or the Executive Director.

The meetings shall normally take place at the seat of the Clean Sky Joint Undertaking.

Unless otherwise decided, the Executive Director shall participate in the meetings.

6. **Role and tasks:**

The Governing Board shall be responsible in particular for:

- (a) Definition or change of the strategic orientation;
- (b) Conclusion, release and/or amendment of contracts;
- (c) Adoption of the Financial Regulation of the Clean Sky Joint Undertaking in accordance with Article 6 of this Regulation;
- (d) Adoption of the budget and the annual accounts of the Clean Sky Joint Undertaking;
- (e) Adoption of changes of budget allocation to Integrated Technology Demonstrators;
- (f) Adoption of the annual ITD work programmes;
- (g) Approval of annual reports from Integrated Technology Demonstrator Leaders and the Executive Director and reviewing progress of research;
- (h) Actions against defaulting Integrated Technology Demonstrator Leaders and Associates and/or reaching terms of compromise in disputes between the Clean Sky Joint Undertaking and any of its Members;
- (i) Third instance settlement of disputes within ITDs;
- (j) Second instance settlement of disputes across ITDs;
- (k) Admission of new Integrated Technology Demonstrator leaders and Associates **as well as setting their minimum level of commitment;**
- (l) Selection procedures via Calls for Proposals/Tenders;
- (m) Transfer of Membership;

- (n) Second instance review and re-opening of contested partners' selection decisions;
- (o) Adoption of changes in the major deliverables;
- (p) Appointment, **extension of the mandate or removal of** the Executive Director;
- (q) Approval of Executive Director's proposals for changes on Directorate staffing levels;
- (r) Specification of the duties and responsibilities of the Executive Director set out in Article 6(4);
- (s) Approval of the Clean Sky Joint Undertaking Communication and Dissemination strategy;
- (t) Approval of principles for public consultation and dialogue;
- (u) Promotion of a policy of human resource diversity and gender equality;
- (v) Development of an external relations strategy in an international perspective;
- (w) Rules for assessing in-kind contributions.

7. The Community shall hold veto right on all decisions related to the use of its financial contribution, decisions concerning the liquidation and winding-up of the Joint Undertaking, adoption of major changes in budget allocations<sup>25</sup> to and within Integrated Technology Demonstrators, and decisions related to points (a), (b), (c), (h), (k), (l), (m), (n), (o), (p) and (w).

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<sup>25</sup> A "major" change in budget is seen in the order of 10% of the budget of the ITD affected.

8. Rules:

The Governing Board shall adopt its detailed rules of procedure.

*Article 6*

Executive Director

1. The Executive Director shall be responsible for the day-to-day management of the Clean Sky Joint Undertaking and is its legal representative. He/she shall be accountable to the Governing Board.

The Executive Director shall perform his/her duties with complete independence.

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

2. **Staff:** The Executive Director shall be aided in the performance of his/her duties by the Directorate staff. The Directorate staff shall perform all necessary supporting functions. The Executive Director of the Joint Undertaking shall select and appoint the Directorate staff.

3. **Appointment of the Executive Director**

1. The Executive Director shall be appointed by the Governing Board for a period of ~~up to~~ three years, on the basis of a list of candidates proposed by the Commission after consultation with other Members following a call for expression of interest published in the Official Journal of the European Union and in other 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 no more than four years.

2. The Executive Director may be removed from office by the Governing Board.

4. **Role and tasks of the Executive Director:** The Executive Director shall in particular:
- (a) Report to the Governing Board.
  - (b) Coordinate and follow-up the Integrated Technology Demonstrator activities (through Integrated Technology Demonstrator coordination meetings), prepare technical and financial reports.
  - (c) Supervise integration and interface activities and call and chair reviews as required.
  - (d) Chair the Steering Committee of the Technology Evaluator, participate as active observer to the Integrated Technology Demonstrators Steering Committees.
  - (e) Monitor the progress of the ITDs towards achieving the environmental goals, based on the assessments of the Technology Evaluator.
  - (f) Monitor the participation of SMEs to ensure target levels of participation are met.
  - (g) Implement Calls for Proposal and Calls for Tender processes based on the content defined by the relevant ITD Steering Committee.
  - (h) Implement first instance reviewing process in case of contested Partner selection decisions.
  - (i) Handle second instance settlement of disputes within ITDs.
  - (j) Handle first instance settlement of disputes across ITDs.
  - (k) Verify financial contributions from Integrated Technology Demonstrator leaders, Associates, check expenditures against plans and carry out reviews of financial contributions on a yearly basis.
  - (l) Prepare yearly budgets, implement them, and represent the Clean Sky Joint Undertaking in the annual budget discharge procedure.
  - (m) Provide the Governing Board and the Commission with the technical and financial reports.

- (n) Prepare, together with Governing Board chairman, the Agenda of Governing Board meetings.
- (o) Attend National States Representative Group and ACARE meetings alongside the Commission and report on status of Clean Sky activities, including SME issues.
- (p) Run the communication and public relations aspects of the Clean Sky Joint Undertaking, including the organisation of presentation and dissemination events.
- (q) Organise the dialogue with users and relevant interest groups.
- (r) Oversee the evaluation and selection process of the Calls for Proposals
- (s) Report on the results of the Calls for Proposals and Calls for Tender

#### *Article 7*

#### *Integrated Technology Demonstrator Steering Committees*

- 1. Establishment:** Integrated Technology Demonstrator (ITD) Steering Committees shall be established by the Governing Board for each of the six Integrated Technology Demonstrators. The following ITDs shall be established:
  - (a) Smart Fixed Wing Aircraft
  - (b) Green Regional Aircraft
  - (c) Green Rotorcraft
  - (d) Systems for Green Operations
  - (e) Green and Sustainable Engine
  - (f) Eco-Design

**An independent** Technology Evaluator shall be established for the entire duration of Clean Sky. Its tasks are:

- (a) To assess the environmental impact of the technology results arising from individual ITDs
- (b) To provide recommendations to ITDs to optimise environment performance across Clean Sky activities
- (c) To regularly inform, through the Executive Director, the Commission and the National States Representative Group about the environmental impact of the technology results of the ITDs

The Governing Board shall decide on the composition and setting up of the Technology Evaluator Steering Committee.

**2. Composition:** Each Integrated Technology Demonstrator Steering Committee shall be composed of:

- (a) Chairperson – a senior representative of the Integrated Technology Demonstrator Leader(s);
- (b) Representatives of each Associate within the Integrated Technology Demonstrator and other participating Integrated Technology Demonstrator leaders;
- (c) The Executive Director and Integrated Technology Demonstrator Responsible Officer;
- (d) A Commission representative as appropriate/if requested by the Executive Director of the Clean Sky Joint Undertaking, as observer;
- (e) Other Integrated Technology Demonstrator Leaders with an interest in the results of the Integrated Technology Demonstrator upon invitation.

**3. Meetings:** Each Integrated Technology Demonstrator Steering Committee shall meet at least every three months.

Extraordinary meetings shall be convened at the request of the chairman of the relevant Integrated Technology Demonstrator Steering Committee or the Executive Director.

4. **Responsibility:** Each Integrated Technology Demonstrator Steering Committee shall be responsible for:
- (a) Guiding and monitoring the technical functions of its Integrated Technology Demonstrator and taking decisions on behalf of the Clean Sky Joint Undertaking on all technical matters specific to the relevant Integrated Technology Demonstrator.
  - (b) Establishing the detailed annual work programmes for the ITD.
  - (c) Defining contents of the Calls for Proposals.
  - (d) Selecting the external partners with the assistance of independent experts as necessary.
  - (e) Defining contents of the Calls for Tender in conjunction and cooperation with the Member concerned.
  - (f) Establishing the order of rotation for the Associate representation in the Governing Board; the decision on this item is taken by the Associates only, ITD Leaders shall not have the right of vote.
  - (g) Handling of disputes within the ITD.
  - (h) Modifications of the budget allocation within its Integrated Technology Demonstrator subject to Article 5(3).
5. **Voting:** Each Integrated Technology Demonstrator Steering Committee shall make decisions by a simple majority with votes weighted according to the financial commitment to the Integrated Technology Demonstrator of each member of the Steering Committee. The Integrated Technology Demonstrator Leaders will have a right of veto over any resolution of the Steering Committee of the Integrated Technology Demonstrator of which they are leaders.

6. **Rules:** Each Integrated Technology Demonstrator Steering Committee shall adopt its rules of procedure, based on a common baseline across all ITDs and including detailed provisions governing the exercise of the Integrated Technology Demonstrator leaders' rights and obligations, including veto rights.

*Article 8*  
*General Forum*

1. The General Forum is a **consultative body** to the Clean Sky Joint Undertaking.  
The General Forum shall be composed of one representative from:
  - (a) each Member of the Clean Sky Joint Undertaking
  - (b) each Partner.
  
2. **Meetings:** The General Forum shall meet at least once a year.  
Extraordinary meetings shall be convened at the request of at least 30% of the General Forum members.  
The meetings shall normally take place in Brussels.
  
- 3 **Roles:** The General Forum shall:
  - (a) Be informed about the Clean Sky Joint Undertaking state of play.
  - (b) Be informed of the annual budget and receive annual reports and accounts.
  - (c) Make recommendations and raise issues, by 2/3 majority voting, to the Governing Board and the Executive Director on matters of technical, managerial and financial nature.

4. **Rules:** The General Forum shall adopt its rules of procedure.

Article 9

National States Representative Group

1. Composition

The National States Representative Group shall consist of one representative of each Member State and of each other country associated to the Framework Programme.

2. Role and tasks

The National States Representative Group shall have an advisory role for the Joint Undertaking and shall interact with the Commission in association with the Governing Board chairman and/or the Executive Director. It shall in particular review information and provide opinions on the following topics:

- a) Programme progress in the Clean Sky Joint Undertaking;
- b) Compliance and respect of targets;
- c) Updating of strategic orientation.
- d) Links to Framework Programme Collaborative Research
- e) Calls for proposals and tenders outcome and planning;
- f) Involvement of SMEs.
- g) New applications, accessions and changes to Membership.

It shall also provide input to the Commission and the Executive Director on the following:

- a) Status of and interface to Joint Undertaking activities to relevant national research programmes and identification of potential areas of co-operation;

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

The National States Representative Group may issue, on its own initiative, recommendations to the Clean Sky Joint Undertaking on technical, managerial and financial matters, in particular when these affect national interests.

3. The National States Representative Group shall meet at least bi-annually and shall be convened and chaired by the Commission. Extraordinary meetings can be convened to deal with specific matters of major relevance to Clean Sky Joint Undertaking activities. These meetings will be called by the Commission either on its own initiative or upon request from National States representatives.

The Executive Director and the chairman of the Governing Board and/or their representatives shall attend the meetings.

The National States Representative Group shall adopt its rules of procedure.

#### *Article 10*

##### *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 scope of the Clean Sky Joint Undertaking.

## *Article 11*

### *Sources of financing*

1. All the resources of the Clean Sky Joint Undertaking shall be devoted to the objectives of the Clean Sky Joint Undertaking.
2. The resources of the Clean Sky Joint Undertaking shall be made up of contributions brought in by its Members and their participating affiliates. A participating affiliate shall be defined as a legal entity that:
  - (a) Is directly or indirectly owned or controlled by, or owns and controls, or is under the same ownership or control, as the relevant ITD leader or Associate and;
  - (b) Is incorporated and resident in, and subject to the law of, a Member State of the Community, or an Associated country to the 7<sup>th</sup> Framework Programme and;
  - (c) Participates in the activities of the relevant ITD Leader or Associate in the Clean Sky work programme.
3. The running costs of the Clean Sky Joint Undertaking shall be shared equally between on the one hand the European Community, which shall contribute with 50% of total cost, and on the other hand the rest of the Members, that shall contribute in cash the remaining 50%. The running costs of the Clean Sky Joint Undertaking shall not exceed 3% of the overall cash contribution and of the contributions in kind of the Members and Partners referred to in Article 12. **If part of the contribution from the Community is not used it may be available for Research Activities referred to in Article 12.**
4. All the resources shall be entered into the annual budget.
5. The annual financial contribution of the European Community to the Clean Sky Joint Undertaking shall be subject to the verification of the activities carried out by the other Members.

6. Should any Member of the Clean Sky Joint Undertaking, or any participating affiliates, fail to meet its commitments concerning its agreed contributions, the Governing Board shall decide:
  - in the case of a defaulting Member, whether the remaining Members should repeal the defaulting Member’s membership or if any other measures should be taken until its obligation has been met; or
  - in case of a defaulting participating affiliate, whether the remaining Members should repeal the defaulting affiliate's participation or if any other measures should be taken until its obligation has been met.
7. The Clean Sky Joint Undertaking shall own all the tangible assets created by it or transferred to it. Demonstrators and other tangible and intangible outputs of the Clean Sky research and development programme shall be the property of the Members and/or Partners creating them.

#### *Article 12*

##### *Contributions to the activities carried out within the Clean Sky Joint Undertaking*

1. In order to support the activities to be developed within the Clean Sky Joint Undertaking, the other Members of the Clean Sky Joint Undertaking shall provide resources equal to the Community contribution; this includes their contribution to the running cost of the Clean Sky Joint Undertaking.

2. The Community contribution will be distributed as follows:
- (a) An amount of up to EUR 400 million shall be allocated to the ITD leaders and an amount of up to EUR 200 million to ITD associates<sup>26</sup>. ITD leaders and associates will contribute resources at least matching the Community contribution.
  - (b) An amount of at least EUR 200 million shall be allocated to Partners selected via competitive calls for proposals. Particular attention shall be paid to ensuring adequate participation of SMEs. The Community financial contribution shall comply with the upper funding limits of the total eligible costs, laid down by the Rules of Participation of the Seventh Framework Programme.  
  
To the extent that a Call for Proposals remains unanswered or unallocated, the Members shall fulfil the corresponding tasks themselves.
3. A preliminary distribution of the Community contribution across the various research activities has been set forward as follows<sup>27</sup>:
- (a) 24% to the Smart Fixed Wing ITD
  - (b) 11% to the Green Regional Aircraft ITD
  - (c) 10% to the Green Rotorcraft ITD
  - (d) 27% to the Sustainable and Green Engines ITD
  - (e) 19% to the Systems for Green Operations ITD
  - (f) 7% to the Eco-Design ITD
  - (g) 2% to the Technology Evaluator

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<sup>26</sup> This breakdown of cost distribution is in line with normal practice in aeronautical R&D projects, where the biggest share of the work and investment risk is taken on board by the major integrators.

<sup>27</sup> This distribution was obtained using a bottom-up approach, where the budgetary requirements of individual ITDs and the Technology Evaluator were mapped against their technical objectives.

A detailed breakdown of the resource allocations across the various work packages and Clean Sky Joint Undertaking members will be established. The detailed breakdown will be adopted by the Governing Board. This process will be supervised by Commission, and will follow the principle of equal treatment between the members <sup>26</sup>.

4. In order to implement the Clean Sky programme, the Clean Sky Joint Undertaking may award grants to its Members and the participants for the performance of their research activities.
5. Except for the running cost of the Clean Sky Joint Undertaking, contributions in kind are possible. They shall be subject to an evaluation of their value and relevance to the carrying-out of the activities of the Clean Sky Joint Undertaking, and to acceptance by the Governing Board. The procedure for valuing of the in-kind contributions will be determined in detail and will be adopted by the Governing Board. It will be based on the following principles:
  - (a) The overall approach shall be based on FP7 principles, where in-kind contributions in projects are assessed at review level.
  - (b) The Financial Regulations of the Clean Sky Undertaking shall apply.
  - (e) Verification will take place via an independent auditor.
6. The contributions of the other members shall be registered by the Clean Sky Joint Undertaking.

### *Article 13*

#### *Financial commitments*

The financial commitments of the Clean Sky Joint Undertaking shall not exceed the amount of financial resources at its disposal or committed to its budget.

### *Article 14*

#### *Financial revenues*

Except when the Clean Sky Joint Undertaking is wound up pursuant to Article 24, any excess revenue over expenditure shall not be paid to the Members of the Clean Sky Joint Undertaking.

*Article 15*

*Financial year*

The financial year shall correspond to the calendar year.

*Article 16*

*Financial implementation*

The Executive Director shall implement the budget of the Clean Sky Joint Undertaking.

*Article 17*

*Financial reporting*

1. Every year, the Executive Director shall present to the Governing Board a preliminary draft Annual Budget Plan containing a forecast of annual expenditure for the following two years and including the staff establishment plan. Within this forecast, the estimates of revenue and expenditure for the first of those two 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 Clean Sky 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 communicate to the Executive Director their comments on the preliminary draft Annual Budget Plan 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 Annual Budget Plan for the following year. Before 1 September of each year, the Executive Director shall submit the Annual Budget Plan to the Governing Board for approval.

The Annual Budget Plan and the Annual Implementation Plan for a particular year shall be adopted by the Governing Board of the Clean Sky Joint Undertaking by 31 October of the previous year.

4. Within two months of 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.

#### *Article 18*

##### *Planning and reporting*

1. An Annual Report shall present the progress made by the Clean Sky Joint Undertaking every calendar year, in particular in relation to the Annual Implementation Plan for that year. The Annual Report shall be presented by the Executive Director together with the annual accounts and balance sheets. This Annual Report shall include the participation of SMEs in the R&D activities of the Clean Sky Joint Undertaking.
2. The Annual Implementation Plan shall specify the plan for the execution of all the activities of the Clean Sky Joint Undertaking for a particular year, including planned calls for proposals and actions which should be implemented through Calls for tenders. The Annual Implementation Plan shall be presented by the Executive Director to the Governing Board together with the Annual Budget Plan. Once approved by the Governing Board, a publishable version of the Annual Implementation Plan shall be made publicly available.
3. The Annual Work Programme shall describe the scope and the budget of calls for proposals needed to implement the research agenda for a particular year.

#### *Article 19*

##### *Service and supply contracts*

The Clean Sky Joint Undertaking shall set up all the appropriate procedures and mechanisms for the implementation, supervision and control of service and supply contracts concluded where necessary for the operations of the Clean Sky Joint Undertaking.

*Article 20*  
*Liability of Members, Insurance*

1. The Members shall have no liability for the debts of the Clean Sky Joint Undertaking.
3. The Clean Sky Joint Undertaking shall take out and maintain appropriate insurance.

*Article 21*  
*Conflict of interests*

The Clean Sky Joint Undertaking shall avoid any conflict of interest in the implementation of its activities.

Members involved in defining work that is subject to a Call for Proposals or a Call for Tender, cannot take part in carrying out this work.

*Article 22*  
*Intellectual property policy*

The intellectual property policy of the Clean Sky Joint Undertaking shall be incorporated in the grant agreements concluded by the Clean Sky Joint Undertaking.

Its objective is to promote knowledge creation and its exploitation, to achieve fair allocation of rights, to reward innovation, and to achieve a broad participation of private and public entities responding to Calls for Proposal, subject to signature of a grant agreement with the Clean Sky Joint Undertaking.

The IP policy shall be governed by the following principles:

1. Each legal entity having concluded a grant agreement with the Clean Sky Joint Undertaking shall remain the owner of:
  - (a) Information which is held by participants prior to their accession to the grant agreement, as well as copyrights or other intellectual property rights pertaining to such information, the

application for which has been filed before their accession to the grant agreement, and which is needed for carrying out the project or for using the Foreground of the project (hereafter called "Background").

- (b) The results, including information, whether or not they can be protected, which are generated by the project concerned. Such results include rights related to copyright, design rights, patent rights or similar forms of protection (hereafter called "Foreground"). Jointly developed Foreground shall belong to all participants developing it if their respective contributions cannot be ascertained. Unless otherwise agreed each joint owner shall be entitled to use such jointly developed Foreground free of charge in its own business and for future research.
  - (c) Creators of Foreground shall take reasonable steps to protect it, in particular by filing patents. Where such steps are not taken by the creator or by other participants in the ITD with the creator's consent the JU itself, acting through the relevant ITD Steering Committee, may apply for protection.
2. The terms and conditions of access rights and licenses between legal entities having concluded a grant agreement with the Clean Sky Joint Undertaking shall be defined in the grant agreement with regards to Background and Foreground for the purposes of completing the projects, Foreground for research use, and Background necessary to use Foreground for research use.
  3. Subject to appropriate undertakings of confidentiality, the legal entities having concluded a grant agreement with the Clean Sky Joint Undertaking shall disclose information relating to Foreground and disseminate Foreground under terms and conditions defined in the grant agreement.

### *Article 23*

#### *Amendments to the Statutes*

1. Any Member of the Clean Sky 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 who shall adopt them, as appropriate .
3. However, any amendment affecting the essential elements of these Statutes and in particular amendments to Articles 3, 4, 5, 6, 9, 11, 12, 20, 23, and 24, shall be adopted in accordance with Article 172 of the Treaty.

#### *Article 24*

##### *Liquidation and winding-up*

1. At the end of the period provided for in Article 1(1) of the Regulation, or following an amendment of this Regulation pursuant to Article 11(2) of the Regulation, the Clean Sky Joint Undertaking shall be wound up.
2. For the purpose of conducting the proceedings in winding up of the Clean Sky Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.
3. When the Clean Sky 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.
4. When any physical support item has been dealt with as provided in paragraph 3, any further assets shall be used to cover the liabilities of the Clean Sky 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 of their actual contribution to the Clean Sky Joint Undertaking. **Any surplus distributed to the Community shall be returned to the Commission budget.**
5. Remaining assets shall be distributed to the Members existing at the time of the winding up in proportion to their actual contribution to the Clean Sky Joint Undertaking.
6. An *ad hoc* procedure shall be set up to ensure the appropriate management of any grant agreement and service and supply contract with duration longer than the duration of the Clean Sky Joint Undertaking.