



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL REGULATION amending Regulation (EC) No 521/2008
setting up the Fuel Cells and Hydrogen Joint Undertaking

COUNCIL REGULATION (EU) No .../2011

of

**amending Regulation (EC) No 521/2008
setting up the Fuel Cells and Hydrogen Joint Undertaking**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 187 and 188 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ Opinion of 13 September 2011 (not yet published in the Official Journal).

² OJ C [...], [...], p. [...].

Whereas:

- (1) The Fuel Cells and Hydrogen Joint Undertaking (hereinafter referred as the "FCH Joint Undertaking") was set up on 30 May 2008 under Council Regulation (EC) No 521/2008¹ by its founding members, the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping Aisbl (hereinafter referred as the "Industry Grouping") and the Commission.
- (2) The Research Grouping became a member of the FCH Joint Undertaking on 14 July 2008. The Research Grouping contributes both financially and in kind to the objectives of the FCH Joint Undertaking. Given the specific composition of the FCH Joint Undertaking, as well as its rules and the nature, objectives and scope of its activities, the members of the Research Grouping may benefit from the results achieved in the same manner as the members of the Industry Grouping. Therefore, it is justified to allow the in-kind contribution from both the Industry Grouping and Research Grouping to be counted as matching funds.
- (3) The Research Grouping became a member of the FCH Joint Undertaking, and it is therefore appropriate to consider that in-kind contributions from research organisations (including universities and research centres) match the contribution of the Union, within the meaning of the Statutes of the FCH Joint Undertaking annexed to Regulation (EC) No 521/2008 (hereinafter referred as the "Statutes").

¹ OJ L 153, 12.6.2008, p. 1.

- (4) The FCH Joint Undertaking has been operating for more than two years, and during this period the entire operational cycle with publishing calls for proposals, evaluations of proposals, negotiations of funding and conclusion of grant agreements has been completed. Experience gained during this period has shown that the maximum funding levels in FCH Joint Undertaking projects had to be reduced significantly for all participants. As a result, the level of participation in the actions of the FCH Joint Undertaking proved to be significantly below initial expectations.
- (5) The Governing Board approved the amendments to Regulation (EC) No 521/2008, in accordance with the Statutes.
- (6) Allowing in-kind contributions from all legal entities participating in the activities to be counted as matching funding, would recognise the membership of the Research Grouping and would improve the funding levels while still respecting the fundamental principle of matching, as well as the need to apply fair and balanced funding reductions to the different types of participants.
- (7) The running costs of the Programme Office of the FCH Joint Undertaking (hereinafter referred as the "Programme Office") should be covered by its three members. It is appropriate to provide that all members of the FCH Joint Undertaking have the same payment schedule.

- (8) The Commission should be given some flexibility regarding the measures to be taken in case of insufficient matching.
- (9) Currently the level of funding is determined after each evaluation of proposals received. To enable beneficiaries to estimate the extent of the potential funding, it should be possible for each call to specify the minimum level of funding .
- (10) Regulation (EC) No 521/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 521/2008 is hereby amended as follows:

1. in Article 6, paragraph 2 is replaced by the following:
"2. The FCH Joint Undertaking may have its own internal audit capability.";
2. the Annex is amended in accordance with the Annex to this Regulation.

Article 2

Notwithstanding Article 12(3) of the Annex to Regulation (EC) No 521/2008, this amending Regulation shall not affect the rights and obligations arising under the grant agreements and other contracts concluded by the FCH Joint Undertaking before the entry into force of this Regulation. In particular, it shall not affect the upper funding limits set out therein.

Article 3

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

However, point 2(a) of the Annex to this Regulation shall apply from 14 July 2008.

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

Done at ...,

For the Council

The President

ANNEX

The Statutes of the Fuel Cells and Hydrogen Joint Undertaking as set out in the Annex to Regulation (EC) No 521/2008 are hereby amended as follows:

1. Article 2 is amended as follows:

(a) in paragraph 2, the first and second indents are replaced by the following:

- "– 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,";

(b) in paragraph 3, second subparagraph, the fourth indent is replaced by the following:

- "– 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."

2. Article 12 is amended as follows:

(a) paragraph 3 is replaced by the following:

"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.";

(b) in paragraph 7, the second and third subparagraphs are replaced by the following:

"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 two 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.",

3. the following paragraph is added to Article 15:

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