Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the Fuel Cells and Hydrogen 2 Joint Undertaking (Text with EEA relevance)

COUNCIL REGULATION (EU) No 559/2014

of 6 May 2014

establishing the Fuel Cells and Hydrogen 2 Joint Undertaking

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament

Having regard to the opinion of the European Economic and Social Committee[(1)],

Whereas:

(1) Public-private partnerships in the form of Joint Technology Initiatives were initially provided for in Decision No 1982/2006/EC of the European Parliament and of the Council[(2)].

(2) Council Decision 2006/971/EC[(3)] identified specific public-private partnerships to be supported, including a public-private partnership in the specific area of the Fuel Cells and Hydrogen Joint Technology Initiative.

(3) The Communication from the Commission entitled: 'Europe 2020: A strategy for smart, sustainable and inclusive growth' ('Europe 2020 Strategy') emphasises the need to develop favourable conditions for investment in knowledge and innovation so as to achieve smart, sustainable and inclusive growth in the Union. Both, the European Parliament and the Council have endorsed the Europe 2020 Strategy.

(4) Regulation (EU) No 1291/2013 of the European Parliament and of the Council[(4)] ('Horizon 2020') aims to achieve a greater impact on research and innovation by combining Horizon 2020 and private sector funds within public-private partnerships in key areas where research and innovation can contribute to the Union's wider competitiveness goals, leverage private investment, and help tackle societal challenges. Those partnerships should be based on a long-term commitment, including a balanced contribution from all partners, be accountable for the achievement of their objectives and be aligned with the Union's strategic goals relating to research, development and innovation. The governance and functioning of those partnerships should be open, transparent, effective and efficient and give the opportunity to a wide range of stakeholders active in their specific areas to participate. In accordance with Regulation (EU) No 1291/2013, the involvement of the Union in those public-private partnerships

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 559/2014. (See end of Document for details)*

may take the form of financial contributions to joint undertakings established on the basis of Article 187 of the Treaty on the Functioning of the European Union (TFEU) under Decision No 1982/2006/EC.

(5) In accordance with Regulation (EU) No 1291/2013 and Council Decision 2013/743/EU[(5)], further support should be provided to joint undertakings established under Decision (EU) No 1982/2006/EC under the conditions specified in Decision 2013/743/EU.

(6) The Fuel Cells and Hydrogen Joint Undertaking, set up by Council Regulation (EC) No 521/2008[(6)] has demonstrated the potential of hydrogen as an energy carrier, and of fuel cells as energy converters, to offer a pathway for clean systems that reduce emissions, enhance energy security, and stimulate the economy. The interim evaluation of the Fuel Cells and Hydrogen Joint Undertaking set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 2011 entitled 'Partnering in Research and Innovation' has shown that the Joint Undertaking has served as a platform for creating a strong partnership, for leveraging public and private funding and for the strong involvement of industry, in particular SMEs. That evaluation also recommended an increase of the activities in relation to hydrogen production, storage and distribution, which has been taken up in the new objectives. The Joint Undertaking's research area should therefore continue to be supported with the aim of developing a portfolio of clean, efficient and affordable solutions to the point of market introduction.

(7) For that purpose, a new Joint Undertaking for the implementation of the Joint Technology Initiative on Fuel Cells and Hydrogen (the 'Fuel Cells and Hydrogen 2 Joint Undertaking') should be established and should replace and succeed the Fuel Cells and Hydrogen Joint Undertaking.

(8) Continued support for the Fuel Cells and Hydrogen research programme should also take into account the experience acquired from the activities of the Fuel Cells and Hydrogen Joint Undertaking, including the results of the Commission's first interim evaluation and the results of stakeholders' recommendations. That continued support should be implemented using a structure and rules that are more fit for its purpose in order to enhance efficiency and to ensure simplification. To that effect the Fuel Cells and Hydrogen 2 Joint Undertaking should adopt financial rules specific to its needs in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council[(7)].

(9) The Members other than the Union of the Fuel Cells and Hydrogen Joint Undertaking have expressed their agreement in writing for the research activities in the area of the Fuel Cells and Hydrogen Joint Undertaking to be pursued within a structure better adapted to the nature of a public-private partnership. It is appropriate that the Members other than the Union to the Fuel Cells and Hydrogen 2 Joint Undertaking accept the Statutes set out in the Annex to this Regulation by means of a letter of endorsement.

(10) In order to achieve its objectives, the Fuel Cells and Hydrogen 2 Joint Undertaking should provide financial support mainly in the form of grants to participants following open and competitive calls for proposals.

(11) Contributions from Members other than the Union and their constituent entities or their affiliated entities should not be limited only to the administrative costs of the Fuel Cells and Hydrogen 2 Joint Undertaking and to the co-financing required to carry out research and innovation actions supported by the Fuel Cells and Hydrogen 2 Joint Undertaking. Their contributions should also cover additional activities to be undertaken by the Members other than the Union or their constituent entities or their affiliated entities, as specified in an additional activities plan. In order to get a proper overview of the leverage effect of those additional activities, they should represent contributions to the broader Fuel Cells and Hydrogen Joint Technology Initiative.

(12) Any eligible institution may become a participant or a coordinator in selected projects. According to specific policy requirements or to the nature and objective of the action set out in the work plan, it can be required that the participants are constituent entities of a Member other than the Union, in accordance with Regulation (EU) No 1290/2013 of the European Parliament and of the Council[8].

(13) The specific characteristics of the Fuel Cells and Hydrogen sector, in particular, the fact that it is still a pre-mature sector, without a clear return on investment and that its main benefits are societal, justify that the Union contribution is higher than the contributions from the Members other than the Union. In order to encourage broader representativeness of the groupings that are members of the Fuel Cells and Hydrogen 2 Joint Undertaking and to support the participation of new constituent entities in the Joint Technology Initiative, the Union contribution should be divided in two instalments, the second of which should be made conditional upon additional commitments, in particular from new constituent entities.

(14) In assessing the overall impact of the Fuel Cells and Hydrogen Joint Technology Initiative, the investments from all legal entities other than the Union that contribute to the objectives of the Fuel Cells and Hydrogen Joint Technology Initiative will be taken into account. Costs incurred by all legal entities on additional activities outside the work plan of the Fuel Cells and Hydrogen 2 Joint Undertaking that contribute to the objectives of the Fuel Cells and Hydrogen 2 Joint Undertaking should be declared upon signature of grant agreements. These overall investments to the Fuel Cells and Hydrogen Joint Technology Initiative are expected to amount to at least EUR 665 000 000.

(15) Participation in indirect actions funded by the Fuel Cells and Hydrogen 2 Joint Undertaking should comply with Regulation (EU) No 1290/2013. The Fuel Cells and Hydrogen 2 Joint Undertaking should, moreover, ensure consistent application of those rules based on relevant measures adopted by the Commission.

(16) The Fuel Cells and Hydrogen 2 Joint Undertaking should also use electronic means managed by the Commission to ensure openness and transparency and facilitate participation. Therefore, the calls for proposals launched by the Fuel Cells and Hydrogen 2 Joint Undertaking should also be published on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission. Moreover, relevant data on, inter alia, proposals, applicants, grants and participants should be made available by the Fuel Cells and Hydrogen 2 Joint Undertaking for inclusion in Horizon 2020 reporting and

dissemination electronic systems managed by the Commission, in an appropriate format and with the periodicity corresponding to the Commission's reporting obligations.

(17) The Fuel Cells and Hydrogen 2 Joint Undertaking should take into account the OECD definitions regarding Technological Readiness Level in the classification of technological research, product development and demonstration activities.

(18) The Union financial contribution should be managed in accordance with the principle of sound financial management and with the relevant rules on indirect management set out in Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012[9].

(19) For the purpose of simplification, the administrative burden should be reduced for all parties. Double audits and a disproportionate amount of documentation and reporting should be avoided. Audits of recipients of Union funds under this Regulation should be carried out in compliance with Regulation (EU) No 1291/2013.

(20) The financial interests of the Union and of the other Members of the Fuel Cells and Hydrogen 2 Joint Undertaking should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.

(21) The Commission's internal auditor should exercise the same powers over the Fuel Cells and Hydrogen 2 Joint Undertaking as those exercised in respect of the Commission.

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

(23) The Fuel Cells and Hydrogen 2 Joint Undertaking should operate in an open and transparent way providing all relevant information in a timely manner to its appropriate bodies as well as promoting its activities, including information and dissemination activities to the wider public. The rules of procedure of the bodies of the Fuel Cells and Hydrogen 2 Joint Undertaking should be made publicly available.

(24) Horizon 2020 should contribute to the closing of the research and innovation divide within the Union by promoting synergies with the European Structural and Investment Funds (ESIF). Therefore the Fuel Cells and Hydrogen 2 Joint Undertaking should seek to develop close interactions with the ESIF, which can specifically help to strengthen

local, regional and national research and innovation capabilities in the area of the Fuel Cells and Hydrogen 2 Joint Undertaking and underpin smart specialisation efforts.

(25) The Fuel Cells and Hydrogen Joint Undertaking was set up for the period up to 31 December 2017. The Fuel Cells and Hydrogen 2 Joint Undertaking should provide continued support to the Fuel Cells and Hydrogen research programme by implementing the remaining actions initiated under Regulation (EC) No 521/2008 and in accordance with that Regulation. The transition from the Fuel Cells and Hydrogen Joint Undertaking to the Fuel Cells and Hydrogen 2 Joint Undertaking should be aligned and synchronized with the transition from the Seventh Framework Programme to Horizon 2020 to ensure optimal use of the funding available for research. In the interest of legal certainty and clarity, Regulation (EC) No 521/2008 should therefore be repealed and transitional provisions should be set out.

(26) Given the aim of Horizon 2020 to achieve greater simplification and coherence, all calls for proposals under the Fuel Cells and Hydrogen 2 Joint Undertaking should take into account the duration of Horizon 2020.

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

HAS ADOPTED THIS REGULATION:

Article 1

Establishment

1 For the implementation of the Joint Technology Initiative on Fuel Cells and Hydrogen, a joint undertaking within the meaning of Article 187 of the Treaty on the Functioning of the European Union (hereinafter 'FCH 2 Joint Undertaking'), is established for the period until 31 December 2024. In order to take into account the duration of Horizon 2020, calls for proposals by the FCH 2 Joint Undertaking shall be launched at the latest by 31 December 2020. In duly justified cases calls for proposals may be launched by 31 December 2021.

2 The FCH 2 Joint Undertaking shall replace and succeed the FCH Joint Undertaking as established by Regulation (EC) No 521/2008.

3 The FCH 2 Joint Undertaking shall be a body entrusted with the implementation of a public-private partnership referred to in Article 209 of Regulation (EU, Euratom) No 966/2012.

4 The FCH 2 Joint Undertaking shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those Member States. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.