



Adopted on 10/11/2017

FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING (FCH 2 JU)

DECISION

Adopting rules on the prevention and management of conflicts of interests of the Bodies of the Fuel Cells and Hydrogen 2 Joint Undertaking

THE GOVERNING BOARD OF FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING,

HAVING REGARD to Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the Fuel Cells and Hydrogen 2 Joint Undertaking¹ ('the FCH 2 JU') and in particular Article 20(2) of its Statutes;

Whereas:

- (1) Joint Undertakings are public-private partnerships and as a consequence public and private interests are intertwined;
- (2) It is understood that the members of the Governing Board, the Scientific Committee, and the States Representatives Group of the FCH 2 JU have a professional interest to work for the Joint Undertaking and to act for the good of the Joint Undertaking, notably pursuing its objectives, observing the applicable rules and protecting its general interest;
- (3) Provisions on conflicts of interests are already included in various documents, such as the Financial Rules of the FCH 2 JU (Article 24), the Rules of Procedure of the Governing Board (Articles 12 and 13), of the Scientific Committee (Article 7), and of the States Representatives Group (Article 12) respectively;
- (4) It is therefore necessary to adopt a decision aiming to complement the existing rules on the prevention and management of potential conflicts of interest, which would serve as a reference for the members of the bodies of the FCH 2 JU, other than the Union staff members, and ensure a comprehensive and coherent approach on conflicts of interest and the highest standards of administration, professional ethics, integrity and independence; The rules on prevention and management of conflict of interest in respect of the Executive Director shall be covered by a separate Decision on the matter, applicable to the staff of the Joint Undertaking;
- (5) For the purpose of clarity, this Decision will only apply to the members of the bodies of the FCH 2 JU, other than the Union staff members, and should be adopted without prejudice to the existing rights and obligations related to conflicts of interest provided in other documents such as the Financial Rules of the FCH 2 JU, and Rules of Procedure of the Governing Board, the

¹ OJ L 169, 7.6.2014, p. 108

Scientific Committee, the States Representatives Group or other advisory bodies or groups, established in accordance with Article 7(3)(p) of the Statutes,

HAS ADOPTED THE FOLLOWING DECISION

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Annex 1.2 - Annual Declaration of interests for the Members of the Governing Board, Scientific Committee, States Representatives Group or other advisory bodies or groups established in accordance with Article 7(3)(p) of the Statutes of the Joint Undertaking;

Annex 1.3 - Spontaneous Declaration of conflict of interest;

Article 1 — Subject

The present Decision lays down rules for the prevention and management of conflicts of interest of the FCH 2 JU bodies, as provided for in Article 20 of the Statutes of the Fuel Cells and Hydrogen 2 Joint Undertaking ('the FCH 2 JU'), in order to ensure the handling in a transparent and consistent manner of situations where potential conflicts of interest may arise.

Article 2 — Scope and persons concerned

2.1 This Decision shall apply to the following categories of members, other than Union staff members:

- a) Members of the Governing Board
- b) Members of the Scientific Committee
- c) Members of the States Representatives Group
- d) Members of other advisory bodies or groups, established in accordance with Article 7(3)(p) of the Statutes.

collectively referred hereafter as “FCH 2 JU bodies’ members”².

2.2 All FCH 2 JU bodies’ members shall carry out their duties and conduct themselves solely with the interests of the Joint Undertaking in mind. All FCH 2 JU bodies’ members shall carry out the duties objectively and impartially and in keeping their duty of loyalty to the Joint Undertaking. All FCH 2 JU bodies’ members shall abstain from any action adversely affecting the reputation of the Joint Undertaking.

Article 3 — Definition of conflict of interest and personal interest

3.1. A conflict of interest refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation of the Joint Undertaking is or might be perceived as being compromised by a personal interest held by or entrusted to a FCH 2 JU body member.

3.2. All FCH 2 JU bodies’ members shall not, in the performance of their duties, deal with a matter in which, directly or indirectly, they may have any personal interests such as to impair their independence.

3.3. Relevant personal interest may be of a financial or non-financial nature and it may concern a personal or family relationship or representation of any other interests of third parties or professional affiliation and other outside activities.

3.4. The appearance of a conflict of interest can constitute a reputational risk to the Joint Undertaking, even if it turns out to be unsubstantiated. Therefore, taking due consideration of proportionality, specific backgrounds, all relevant facts and mitigating circumstances, a risk of perceived conflict of interest shall be treated as if it were an actual conflict of interest.

3.5. It is the responsibility of all FCH 2 JU bodies’ members to ensure that their conduct is in line with the rules regarding the conflict of interest in both letter and spirit. Each staff member of the Joint

² Members which fall under the staff members of FCH 2 JU or of the European Union are not covered by this decision.

Undertaking shall assume an individual responsibility by declaring in good faith his interests and information to the Joint Undertaking in compliance with the provisions herein.

Any FCH 2 JU bodies’ member, who becomes aware of a potential conflict of interest, must immediately inform in writing the relevant competent authority referred to in Article 6.

3.6. To prevent conflicts of interest, FCH 2 JU bodies’ members shall not occupy the position of external expert for the evaluation of project proposals in the framework of calls for proposals organized by the Joint Undertaking.

Article 4 — Obligation to make declarations on conflicts of interest

4.1. The FCH 2 JU bodies’ members shall submit, upon appointment, to the corresponding secretariat of the body, the Declaration on confidentiality and conflict of interest, Annex I.1 hereto.

After appointment, the aforementioned members shall submit an annual updated declaration of interests (Annex I.2 hereto), with the exception where there is no change from the situation mentioned in the declaration filed in for the preceding year.

The observers and any other persons attending a meeting of the Governing Board shall also submit a Declaration on conflict of interest – Annex I.1 hereto.

4.2. Without prejudice to the provisions of the previous paragraph, at the start of each Governing Board meeting, the attendees will be asked:

- whether they have any interest which might be considered to influence or bias their judgment; and
- to confirm that they will ensure the confidentiality of sensitive information

4.3. Fulfilment of this procedure will be recorded in the minutes. All FCH 2 JU bodies’ members must promptly disclose all relevant information about a personal interest when circumstances change following their initial disclosure or when new situations arise. If at any time in the course of his duties a FCH 2 JU body member becomes aware of any potential conflict of interest or any appearance of a conflict of interest, the FCH 2 JU body member is obliged to inform the relevant authority in the Joint Undertaking by spontaneously submitting the ad-hoc Declaration on conflict of interest, Annex I.3 hereto.

Article 5 — Specific Obligations related to the conduct of the Governing Board members, other than EU staff members

5.1. The Governing Board members shall act independently, in the general interest of the FCH 2 JU and in the common interest of the sound management of the FCH 2 JU Programme and its objectives without allowing themselves to be influenced by personal interests or relationships.

5.2. When communicating on a matter on which the FCH 2 JU has taken a view, the Governing Board members shall represent the views of the FCH 2 JU; when communicating on a matter that falls within the remit of the FCH 2 JU but on which the JU has not taken a view so far, they may give their own personal view, but shall make clear that this does not necessarily represent the official view of the FCH 2 JU.

Article 6 — Procedures to Manage a Conflict of Interest

- 6.1 Any person who becomes aware of a potential conflict of interest related to the activities of the Governing Board, Scientific Committee, States Representatives Group and/or other advisory bodies or groups established in accordance with Article 7(3)(p) of the Statutes, shall immediately inform the Chairperson who will inform without delay the other Members. If the conflict of interest regards the Chairperson, the person to be informed is the Vice-Chair of the respective body or group.
- 6.2 After hearing the concerned member, the Governing Board, Scientific Committee, States Representatives Group and/or the advisory body or group shall decide on the appropriate measures to be taken in compliance with the applicable Rules of Procedure of the respective body or group.
- 6.3 Any permission granted by the related body/group of the Joint Undertaking pursuant to a Declaration submitted by FCH 2 JU bodies' members shall be limited to the specific situation described in the Declaration and cannot be extended to any other similar situations.
- Any change of the initial situation described in the Declaration and approved by the respective body or group shall be considered as a new situation and must be brought to the attention of the respective Chairperson.
- 6.4 The Chairperson of Scientific Committee, States Representatives Group and/or other advisory body or group established in accordance with Article 7(3)(p) of the Statutes shall immediately inform the Chairperson of the Governing Board of any conflict of interest related to its Members and the measures taken to prevent and manage the respective conflict of interest.

Article 7 — Ex-post treatment of situations of non-compliance with the obligations under the present rules

- 7.1 In case of a member's failure to declare an actual or potential conflict of interest or failure to comply with the Joint Undertaking's rules on conflict of interest, the Governing Board, Scientific Committee, States Representatives Group and/or the advisory body or group established in accordance with Article 7(3)(p) of the Statutes shall decide the appropriate measures, as per the respective Rules of Procedure, after hearing the respective member.
- 7.2 If the concerned member was involved in a decision-making procedure without having declared an interest, the respective body or group may undertake remedial actions, in particular to review or cancel the decision if seriously affected by the conflict of interest. This implies carrying out an ex post review of the member's activities and contributions to the Joint Undertaking's deliberations and vote.

Article 8 — Register

- 8.3 The Declarations referred to in Article 4 shall be recorded in a Register kept by the secretariat of the respective body or group for a period of 5 years.
- 8.4 The register referred to in paragraph 10.1 shall be maintained in compliance with the applicable provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data³.

Article 9 — Transparency

- 9.1 The FCH 2 JU shall publish on its website the policies and rules for the prevention of conflict of interest.
- 9.2 Bearing in mind the legal rights of individuals in relation to personal data protection, in particular Regulation (EC) No 45/2001, the below data will be published on the Joint Undertaking's website:
- the name and function/post of the Members of Governing Board, Scientific Committee, States Representatives Group and/or other advisory bodies or groups, established in accordance with Article 7(3)(p) of the Statutes;
 - the list of decisions taken in meetings of Governing Board, Scientific Committee, States Representatives Group and/or other advisory bodies or groups, established in accordance with Article 7(3)(p) of the Statutes.
- 9.3 The declarations of interest by the Members of the Governing Board shall be available for public scrutiny with due respect to the applicable EU rules on protection of personal data and access to documents. Where deemed relevant, the concerned person's CV (or a summary of his/her professional experience) could also be made available.

Article 10 - Final provisions

- 10.1 The Executive Director of the Joint Undertaking may adopt subsequent rules and guidelines to facilitate the implementation of the present Decision.
- 10.2 The present Decision establishes a minimum level of requirements and obligations applicable to FCH 2 JU bodies' members in view of management and prevention of conflict of interest.

³ Official Journal L 008 , 12/01/2001 P. 0001 - 0022

The present Decision complements the rules of procedure relating to the bodies of the Joint Undertaking or any other rules, which may provide for increased obligations.

These rules shall come into force on the day following their adoption by the Governing Board.

Done at Brussels [date]

For the Governing Board of the FCH 2 JU

Raphael Schoentgen

Chair of the Governing Board



Annexes:

Annex 1.1 - Declaration of confidentiality and of conflict of interest for the Members of the Governing Board, Scientific Committee, States Representatives Group or other advisory bodies or groups established in accordance with Article 7(3)(p) of the Statutes of the Joint Undertaking - before appointment; and for the attendees of the FCH 2 JU Governing Board meetings;

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DECLARATION OF CONFIDENTIALITY AND CONFLICT OF INTEREST

Surname:

First name:

Professional address:

Phone :

E-mail:

Position*:

☐ Chairperson or Deputy Chairperson of the [Governing Board], [Scientific Committee], [States Representatives Group] or [other advisory body or group established in accordance with Article 7(3)(p) of the Statutes of the FCH 2 JU]

☐ Representative/lead delegate/alternate of the Commission, Representative/lead delegate/ alternate of [...]

☐ Representative /lead delegate/ alternate of [...]

☐ Other (please specify)

I hereby undertake to act in the performance of my duties in the general interest of the FCH 2 JU.

At each meeting of the [Governing Board][Scientific Committee][States Representatives Group] [other advisory body or group established in accordance with Article 7(3)(p) of the Statutes of the FCH 2 JU] or before any decision is taken by written procedure, I shall declare in advance any interest which might be considered to influence or bias my judgment and therefore be prejudicial to the way an item on the agenda is handled.

I undertake to ensure the confidentiality of sensitive information whose disclosure could damage the interests or the reputation of the FCH 2 JU, the Members of the FCH 2 JU or of the participants in the activities of the FCH 2 JU.

I shall not disclose sensitive information learnt during the activities of the FCH 2 JU even after my duties have ended.

Done at [place], [date]

Name and Signature

* Delete, as appropriate.

ANNUAL DECLARATION OF INTERESTS

Name:

Professional Address:

Phone:

E-mail:

Position*:

☐ Chairperson or Deputy Chairperson of the [Governing Board], [Scientific Committee], [States Representatives Group], [other advisory body or group established in accordance with Article 7(3)(p) of the Statutes of the FCH 2 Joint Undertaking]

☐ Representative/lead delegate/alternate of the Commission ☐ Representative/lead delegate/ alternate of [...]

☐ Representative /lead delegate/ alternate of [...]

☐ Other (please specify)

do hereby declare on my honour that, to the best of my knowledge, the only direct or indirect interests I have in the sectors in which the Joint Undertaking is active, [are][is] those listed below:

1. Past activities:

[Posts held over the last 7 years in foundations or similar bodies, educational institutions, companies or other organisations (the nature of the post and the name of those bodies should also be indicated); other membership/affiliation or professional activities held over the last 3 years including services, liberal professions, consulting activities, and relevant public statements.]

2. Current activities:

[Posts held in foundations or similar bodies, educational institutions, companies or other organisations (the nature of the post and the name of those bodies should also be indicated); other membership/affiliations or professional activities, including services, liberal profession, consulting activities, and relevant public statements.]

3. Current Financial Interests

[Any direct financial interests, (managerial stakes in companies, including ownerships of patents or any other relevant intellectual property rights), or assets (shares and/or securities held in companies) or grants or other funding which might create a conflict of interests in the performance of their duties, with an indication of their number and value, as well as the name of the company/provider of the grant/funding.]

[No Interest Declared]/ [Interest...]

* Delete, as appropriate.

4. Any other relevant interests.

[No Interest Declared]/ [Interest...]

5. Family Member Interest

[Spouse's/partner's/dependent family members' current activity and financial interests that might entail a risk of conflict of interest.]

[No Interest Declared]/ [Interest...]

I confirm the information declared on this form is accurate to the best of my knowledge and I consent to my information being stored electronically by the Fuel Cells and Hydrogen 2 Joint Undertaking.

Done at [place], [date]

Name and Signature

SPONTANEOUS DECLARATION OF CONFLICT OF INTEREST

Surname and first name :

Professional address:

Phone:

E-mail:

Position:

Describe the situation you are facing - in the performance of your duties - and in which you have, or could be perceived to have, personal interests in particular possible family and financial interests, such as to impair your independence:

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.....

State the reasons why your independence may be impaired:

.....
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.....

If appropriate, propose measures to avoid this conflict of interest:

.....
.....
.....

Done at [place], [date]

Name and Signature

