

# FINANCIAL RULES OF THE FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING

ADOPTED BY  
FCH JU GOVERNING BOARD  
30-06-2014

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

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 559/2014 on the Fuel Cells and Hydrogen 2 Joint Undertaking (hereinafter "FCH 2 JU") and in particular Article 5 thereof;

Having regard to the Statutes annexed to the Council Regulation (EU) No 559/2014 on the FCH 2 JU (hereinafter "the Statutes"), and in particular Article 7(3)(b) thereof;

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>1</sup>, and in particular Article 209 thereof,

Whereas:

(1) Regulation (EU, Euratom) No 966/2012, based on the experience of having public-private partnerships institutionalized as Union bodies under Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002<sup>2</sup>, introduced additional categories of public-private partnerships in order to increase the choice of instruments and included bodies whose rules are more flexible and accessible for private partners than those applicable to the Union institutions. Among those additional categories are the bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 which are entrusted with the implementation of a public-private partnership (hereinafter 'PPP bodies').

(2) Article 209 of Regulation (EU, Euratom) No 966/2012 provides for the adoption of a delegated act pursuant to Article 290 of the Treaty on the Functioning of the European Union (hereinafter 'TFEU') on a Model Financial Regulation for those bodies which shall lay down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 60 of Regulation (EU, Euratom) No 966/2012 .

(3) In order to ensure sound financial management of Union funds and to enable PPP bodies to adopt their own financial rules, the Commission adopted Delegated Regulation (EU) No 110/2014 of 30 September 2013 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (hereinafter 'the Model Financial Regulation for PPPs')<sup>3</sup>.

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<sup>1</sup> OJ L 298, 26.10.2012, p. 1.

<sup>2</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p.1).

<sup>3</sup> OJ L 38, 7.2.2014, p. 2-15.

(4) In view of the specific nature of the FCH 2 JU, Council Regulation (EU) No 559/2014 established that the FCH 2 JU 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 FCH 2 JU 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 contribution of the Union to the FCH 2 JU but they should be aligned to the extent possible to the ones foreseen for bodies under Article 208 of Regulation (EU, Euratom) No 966/2012. The external audit of the accounts and of the legality and regularity of the underlying transactions should be undertaken by the Court of Auditors.

(5) Article 1 of the Model Financial Regulation for PPPs and Article 5 of the Council Regulation (EU) No 559/2014 [FCH 2 JU Council Regulation] provides that FCH 2 JU shall adopt its specific financial rules.

(6) FCH 2 JU should establish and implement its budget in accordance with the budgetary principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management, which requires effective and efficient internal control, and transparency.

(7) In order to ensure the overall implementation of tasks and activities, FCH 2 JU should be able to enter the unused appropriations for a given year in the estimate of revenue and expenditure of up to the following three financial years.

(8) It is necessary to define the powers and responsibilities of the accounting officer and of the authorising officers taking into account the public-private nature of the FCH 2 JU. The authorising officers should be fully responsible for all revenue and expenditure operations executed under their authority and should be held accountable for their actions, including, where necessary, through disciplinary proceedings.

(9) It is necessary to clarify the internal audit and internal control functions and to streamline the reporting requirements. The internal audit function within the FCH 2 JU should be performed by the Commission's internal auditor who should carry out audits when justified by the risks involved. Provisions on the establishment and functioning of the internal audit capability should be introduced.

(10) In order to guarantee that FCH 2 JU is accountable for the implementation of its budget and adheres to the objectives assigned to it at its establishment, FCH 2 JU should be allowed, for the performance of the tasks entrusted to them, to employ external private sector bodies only where necessary and not for tasks involving any public service mission or any use of discretionary powers of judgment.

(11) The principles to be followed as to the revenue and expenditure operations of the FCH 2 JU should be laid down.

(12) Given the public-private nature of the FCH 2 JU and in particular the private sector contribution to the budget of the FCH 2 JU, flexible procedures for the award of procurement contracts should be allowed. The relevant procedures should respect the principles of transparency, proportionality, equality of treatment and non-discrimination and partly depart

from the relevant provisions laid down in Commission Delegated Regulation (EU) No 1268/2012<sup>4</sup>. It is necessary to ensure better and cheaper supply of goods and services, as well as the avoidance of excessive costs in managing procurement procedures through reinforced cooperation among the Members of FCH 2 JU. FCH 2 JU should therefore also have the possibility to conclude contracts without having recourse to a procurement procedure with their Members other than the Union for the supply of products, provision of services or performance of work that those Members provide directly, without having recourse to third parties.

(13) In order to improve cost-efficiency, the possibility of sharing services or transferring them to another body or the Commission should be provided, in particular by allowing that the accounting officer of the Commission is entrusted with all or part of the tasks of the accounting officer of the FCH 2 JU.

(14) For the evaluation of grant applications, projects and tenders and for providing opinions and advice in specific cases, FCH 2 JU should be able to use external experts. These experts should be selected in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.

(15) In the award of grants and prizes, the relevant provisions of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 should apply, subject to any specific provision of the constituent instrument of the FCH 2 JU or of the basic act of the programme the implementation of which is entrusted to the FCH 2 JU in order to ensure a coherent implementation with the actions directly managed by the Commission.

(16) This Decision should enter into force on the day following its adoption by the Governing Board of FCH 2 JU.

HAS ADOPTED THIS DECISION:

## **Chapter 1**

### **Scope**

#### *Article 1* *Subject matter*

This Decision lays down the essentials financial rules of the Fuel Cells and Hydrogen 2 Joint Undertaking (hereinafter "FCH 2 JU").

#### *Article 2* *Definitions*

For the purposes of this Decision, the following definitions shall apply:

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<sup>4</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

- 'Governing Board' means the main internal body of the FCH 2 JU that is responsible for taking decisions on financial and budgetary matters;
- 'Executive Director' means the person responsible for implementing the decisions of the Governing Board and the FCH 2 JU's budget as authorising officer;
- 'Member(s)' mean(s) the Member(s) of the FCH 2 JU as referred in Article 2 of the Statutes;
- 'Constituent instrument' means Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the Fuel Cells and Hydrogen 2 Joint Undertaking<sup>5</sup>.
- 'Budget of the FCH 2 JU' means the instrument which, for each financial year, forecasts and authorizes the revenue and expenditure considered necessary for the FCH 2 JU.

*Article 3*  
*Scope of the budget*

The budget of FCH 2 JU shall consist of:

- (a) the revenue of the FCH 2 JU, comprising:
  - i) its Members' financial contribution to the administrative costs;
  - ii) the Union financial contribution to the operational costs;
  - iii) revenue assigned to specific items of expenditure;
  - iv) any revenue generated by the FCH 2 JU;
- (b) the expenditure of the FCH 2 JU, including administrative expenditure.

**Chapter 2**  
**Budgetary principles**

*Article 4*  
*Respect for budgetary principles*

The budget of the FCH 2 JU shall be established and implemented in accordance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management which requires effective and efficient internal control and transparency as set out in this Decision.

*Article 5*  
*Principles of unity and of budgetary accuracy*

1. No revenue shall be collected and no expenditure effected unless booked to a line in the budget of the FCH 2 JU.

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<sup>5</sup> OJ L 169, 07.06.2014

2. No expenditure may be committed or authorized in excess of the appropriations authorised by the budget of the FCH 2 JU.
3. An appropriation may be entered in the budget of the FCH 2 JU only if it is for an item of expenditure considered necessary.
4. Interests generated by pre-financing payments made from the budget of the FCH 2 JU shall not be due to the FCH 2 JU.

*Article 6*  
*Principle of annuality*

1. The appropriations entered in the budget of the FCH 2 JU shall be authorised for a financial year which shall run from 1 January to 31 December.
2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the financial year.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years.
4. For administrative appropriations, expenditure shall not exceed the revenue expected for the year as referred in Article 3(a)(i)
5. Given the needs of the FCH 2 JU, the unused appropriations may be entered in the estimate of revenue and expenditure of up to the following three financial years. These appropriations must be used first.

*Article 7*  
*Principle of equilibrium*

1. Revenue and payment appropriations shall be in balance.
2. Commitment appropriations shall not exceed the relevant annual Union contribution as set out in the annual transfer of funds agreement with the Commission, plus annual contributions from other Members than the Union, any other revenue referred to in Article 3 and the amount of the unused appropriations referred to in Article 6(5).
3. The FCH 2 JU may not raise loans within the framework of the budget of the FCH 2 JU.
4. If the budget result is positive, it shall be entered in the budget in the following financial year as revenue.

If the budget result is negative, it shall be entered in the budget for the following financial year as payment appropriations.

*Article 8*  
*Principle of unit of account*

The budget of the FCH 2 JU shall be drawn up and implemented in euro and the accounts shall be presented in euro. However, for cash-flow purposes, the accounting officer shall be authorised to carry out operations in other currencies.

*Article 9*  
*Principle of universality*

1. Without prejudice to paragraph 2, total revenue shall cover total payment appropriations. All revenue and expenditure shall be entered in full without any adjustment against each other.
2. Revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, shall be used to finance specific items of expenditure.
3. The Executive Director may accept any donation made to the FCH 2 JU, such as foundations, subsidies, gifts and bequest.

Acceptance of donations which may involve a significant financial charge shall be subject to the prior authorisation of the Governing Board, which shall take a decision within two months of the date on which the request is submitted to it. If the Governing Board fails to take a decision within that period, the donation shall be deemed to be accepted.

The amount above which the financial charge involved is considered significant shall be set by a decision of the Governing Board.

*Article 10*  
*Principle of specification*

1. Appropriations shall be earmarked for specific purposes at least by title and chapter.
2. The Executive Director may transfer appropriations from one chapter to another without limit and from one title to another up to a maximum of 10% of the appropriations for the year shown on the line from which the transfer is made.

Beyond the limit referred in the first sub-paragraph, the Executive Director may propose to the Governing Board transfers of appropriations from one title to another. The Governing Board shall have three weeks in which to oppose such transfers. After this time-limit they shall be deemed to be adopted.

The Executive Director shall inform the Governing Board as soon as possible of all transfers carried out under the first sub-paragraph.

*Article 11*  
*Principle of sound financial management*

1. Appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.

2. The principle of economy requires that the resources used by the FCH 2 JU in the pursuit of its activities are made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency concerns the best relationship between resources employed and results achieved.

The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget of FCH 2 JU. The achievement of those objectives shall be monitored by performance indicators for each activity, and the information shall be provided to the Governing Board by the Executive Director annually and at the latest in the documents accompanying the draft budget of the FCH 2 JU.

#### *Article 12*

##### *Internal control of budget implementation*

1. The budget of achieving the following objectives: the FCH 2 JU shall be implemented in compliance with effective and efficient internal control.

2. For the purposes of the implementation of the budget of the FCH 2 JU, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance

(a) effectiveness, efficiency and economy of operations;

(b) reliability of reporting;

(c) safeguarding of assets and information;

(d) prevention, detection, correction and follow-up of fraud and irregularities;

(e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multi-annual character of programmes as well as the nature of the payments concerned.

3. Effective and efficient internal control shall be based on best international practices and include, in particular, the elements laid down in Article 32(3) and (4) of Regulation (EU, Euratom) No 966/2012, taking into account the structure and size of the FCH 2 JU, the nature of the tasks entrusted to it and the amounts and financial and operational risks involved.

#### *Article 13*

##### *Principle of transparency*

1. The budget of the FCH 2 JU shall be established and implemented and the accounts presented in accordance with the principle of transparency.

2. The budget of the FCH 2 JU including the establishment plan and the amending budgets, as adopted, including any adaptations as provided in Article 15(1), shall be published on the internet site of the FCH 2 JU within four weeks of their adoption and shall be transmitted to the Commission and the Court of Auditors.

3. The FCH 2 JU shall make available on its internet site no later than 30 June of the following financial year information on the recipients of funds deriving from its budget, in accordance with paragraph 2, 3 and 4 of Article 21 of Delegated Regulation (EU) No 1268/2012, following a standard presentation.

The published information shall be easily accessible, transparent and comprehensive. The information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>6</sup>.

4. The experts contracted pursuant to Article 34 of this Decision shall be published on the internet site of FCH 2 JU.

### **Chapter 3**

#### **Financial planning**

##### *Article 14*

##### *Estimate of revenue and expenditure*

1. The FCH 2 JU shall send to the Commission and to the other members no later than 31 January of the year preceding that in which the budget of the FCH 2 JU is to be implemented an estimate of its revenue and expenditure and the general guidelines underlying that estimate, together with its draft work plan referred to in Article 31(4).

2. The estimate of revenue and expenditure of the FCH 2 JU shall include:

(a) an estimate of the number of permanent and temporary posts, by function group and by grade, as well as of the contract staff and seconded national experts expressed in full-time equivalents, within the limits of the budget appropriations;

(b) where there is a change in the number of persons in post, a statement justifying the request for new posts;

(c) a quarterly estimate of cash payments and receipts;

(d) information on the achievement of all previously set objectives for the various activities;

(e) the targets set for the financial year to which the estimate relates, indicating any specific budgetary needs dedicated to achieving these targets;

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<sup>6</sup> 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 Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (f) the administrative costs and the implemented budget of the FCH 2 JU in the preceding financial year;
- (g) the amount of financial contributions made by the Members and the value of contributions in kind made by the Members other than the Union or their constituent entities and affiliated entities;
- (h) information on the unused appropriations that are entered in the estimate of revenue and expenditure per year in accordance with Article 6(5).

*Article 15*  
*Establishment of the budget*

1. The budget of the FCH 2 JU and the staff establishment plan, including the number of permanent and temporary posts by function group and by grade and complemented with the number of contract staff and of seconded national experts expressed in full-time equivalents, shall be adopted by the Governing Board by the end of the previous year. Any amendment to the budget of the FCH 2 JU, including the establishment plan, shall be the subject of an amending budget of the FCH 2 JU adopted by the same procedure as the initial budget of the FCH 2 JU. The budget of the FCH 2 JU and, where appropriate, the amending budgets of the FCH 2 JU shall be adapted in order to take into account the amount of the Union contribution as laid down in the budget of the Union.
2. The budget of the FCH 2 JU shall consist of a statement of revenue and a statement of expenditure.
3. The budget of the FCH 2 JU shall show:
  - (a) in the statement of revenue:
    - i) the estimated revenue of the FCH 2 JU for the financial year concerned ('year n');
    - ii) the estimated revenue for the preceding financial year and the revenue for year n-2;
    - iii) appropriate remarks on each revenue line;
  - (b) in the statement of expenditure:
    - i) the commitment and payment appropriations for year n;
    - ii) the commitment and payment appropriations for the preceding financial year and the expenditure committed and the expenditure paid in year n-2, the latter also expressed as a percentage of the budget of the FCH 2 JU of year n;
    - iii) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;
    - iv) appropriate remarks on each subdivision.
4. The establishment plan shall show next to the number of posts authorised for the financial year, the number authorised for the preceding year and the number of posts actually filled. The same information shall be shown for the contract staff and seconded national experts.

**Chapter 4**  
**Financial Actors**

*Article 16*

*Budget implementation in accordance with the principle of sound financial management*

1. The Executive Director shall perform the duties of authorising officer. The Executive Director shall implement the revenue and expenditure of the budget of the FCH 2 JU in accordance with these financial rules and the principle of sound financial management under his or her own responsibility and within the limits of the appropriations authorised. The Executive Director shall be responsible for ensuring compliance with the requirements of legality and regularity.

Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the FCH 2 JU shall participate in fraud prevention activities of the European Anti-fraud Office (OLAF).

2. The Executive Director may delegate the powers of budget implementation to staff of the FCH 2 JU covered by the Staff Regulations, where those apply to the staff of the FCH 2 JU, in accordance with the conditions laid down in these financial rules. Those so empowered may act only within the limits of the powers expressly conferred upon them.

*Article 17*

*Powers and duties of the authorising officer*

1. The budget of the FCH 2 JU shall be implemented by the Executive Director in the departments placed under his or her authority.

2. Technical expertise tasks and administrative, preparatory or ancillary tasks not involving the exercise of public authority or the use of discretionary powers of judgment may be entrusted by contract to external private-sector entities or bodies, where this proves to be indispensable.

3. The Executive Director shall, in accordance with the minimum standards adopted by the Governing Board, and having due regard to the risks associated with the management environment and the nature of the action financed, put in place the organisational structure and the internal control systems suited to the performance of duties of the Executive Director. The establishment of such structure and systems shall be supported by a risk analysis which takes into account their cost-effectiveness.

The Executive Director may establish within his or her departments an expertise and advice function designed to help him or her control the risks involved in his or her activities.

4. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget of the FCH 2 JU. Personal data contained in supporting document shall be deleted where possible when those data are not necessary for control and audit purposes. In any event, as regards the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply.

*Article 18*

*Ex ante controls*

1. Each operation shall be subject at least to an *ex ante* control based on a desk review of documents and on the available results of controls already carried out relating to the operational and financial aspects of the operation.

*Ex ante* controls shall comprise the initiation and the verification of an operation.

Initiation and verification of an operation shall be separate functions.

2. Initiation of an operation shall be understood as all the operations which are preparatory to the adoption of the acts implementing the budget of the FCH 2 JU by the authorising officer responsible.

3. *Ex ante* verification of an operation shall be understood as all the *ex ante* checks put in place by the authorising officer responsible in order to verify the operational and financial aspects.

4. *Ex ante* controls shall verify the coherence among supporting documents requested and any other information available.

The extent in terms of frequency and intensity of the *ex ante* controls shall be determined by the authorising officer responsible taking into account risk-based and cost-effectiveness considerations. In case of doubt, the authorising officer responsible for validating the relevant payment shall request complementary information or perform an on-the-spot control in order to obtain reasonable assurance as part of the *ex ante* control.

The purpose of the *ex ante* controls shall be to ascertain that:

(a) the expenditure is in order and complies with the provisions applicable;

(b) the principle of sound financial management set out in Article 11 has been applied.

For the purpose of controls, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.

#### *Article 19* *Ex post controls*

1. The authorising officer responsible may put in place *ex post* controls to verify operations already approved following *ex ante* controls. Such controls may be organised on a sample basis according to risk.

The *ex post* controls may be carried out on the basis of documents and, where appropriate, on the spot.

2. The *ex post* controls shall be carried out by staff other than that responsible for the *ex ante* controls. The staff responsible for the *ex post* controls shall not be subordinate to the members of the staff responsible for the *ex ante* controls.

Staff responsible for controlling the management of financial operations shall have the necessary professional skills.

*Article 20*  
*Annual reporting*

The authorising officer shall report annually to the Governing Board on the performance of his or her duties in the form of a consolidated annual activity report containing:

(a) information on:

- the implementation of the FCH 2 JU's annual work plan, budget and staff resources referred to in Article 15;
- management and internal control systems including the summary of number and type of internal audits carried out by the internal auditor, the internal audit capability, the recommendations made and the action taken on these recommendations and on the recommendations of previous years, as referred to in Articles 26 and 28;
- any observations of the Court of Auditors and the actions taken on these observations;
- the accounts and the report on budgetary and financial management without prejudice to Articles 39, 41 and 42.

(b) a declaration of the authorising officer stating whether he has a reasonable assurance that unless otherwise specified in any reservations related to defined areas of revenue and expenditure:

- the information contained in the report presents a true and fair view;
- the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;
- the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The consolidated annual activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with the operations, the use made of the resources provided and the efficiency and effectiveness of the internal control systems, including an overall assessment of the costs and benefits of controls.

The consolidated annual report shall be submitted to the Governing Board for assessment and approval.

2. No later than 1 July each year the consolidated annual activity report together with its assessment shall be sent by the Executive Director to the Court of Auditors, to the Commission, to the European Parliament and the Council.

*Article 21*  
*Protection of the financial interests of the Union*

1. If a member of staff involved in the financial management and control of transactions considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform the Executive Director in writing who shall reply in writing. If the Executive Director fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the relevant panel referred to in Article 23(3) in writing. The panel referred to in Article 23(3) shall immediately inform the Governing Board.

2. In the event of any illegal activity, fraud or corruption which may harm the interests of the FCH 2 JU or of its members, the member of staff shall inform the authorities and bodies designated by the applicable legislation. Contracts with external auditors carrying out audits of the financial management of the FCH 2 JU shall provide for an obligation of the external auditor to inform the authorising officer of any suspected illegal activity, fraud or corruption which may harm the interests of the FCH 2 JU or of its members.

*Article 22*  
*Accounting officer*

1. The Governing Board shall appoint an accounting officer covered by the Staff Regulations, where those apply to the staff of the FCH 2 JU, who shall be totally independent in the performance of his or her duties. The accounting officer shall be responsible in the FCH 2 JU for:
  - (a) properly implementing payments, collecting revenue and recovering amounts established as being receivable;
  - (b) keeping, preparing and presenting the accounts in accordance with Chapter 8;
  - (c) implementing, in accordance with Chapter 8, the accounting rules and the chart of accounts;
  - (d) laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information; in this respect, the accounting officer shall be empowered to verify at any time compliance with validation criteria;
  - (e) treasury management.
2. The FCH 2 JU together with one or more PPP bodies may appoint the same accounting officer.

FCH 2 JU may also agree with the Commission that the accounting officer of the Commission shall also act as accounting officer of the FCH 2 JU.

They may also entrust the accounting officer of the Commission with part of the tasks of the accounting officer of the FCH 2 JU taking into account cost-benefit considerations.

In the case referred to in this paragraph, they shall make necessary arrangements in order to avoid any conflict of interests.

3. The accounting officer shall obtain from the authorising officer all the information necessary for the production of accounts which give a true and fair view of the FCH 2 JU's financial situation and of budgetary implementation. The authorising officer shall guarantee the reliability of that information.
4. Before the submission of the accounts by the Executive Director, the accounting officer shall sign them off, thereby certifying that he or she has a reasonable assurance that the accounts present a true and fair view of the financial situation of the FCH 2 JU.

For the purpose of the first subparagraph, the accounting officer shall verify that the accounts have been prepared in accordance with the accounting rules referred to in Article 38 and that all revenue and expenditure is entered in the accounts.

The accounting officer shall be empowered to check the information received as well as to carry out any further checks he or she deems necessary in order to sign off the accounts.

The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.

Subject to paragraph 5, only the accounting officer shall be empowered to manage cash and cash equivalents. The accounting officer shall be responsible for their safekeeping.

5. The accounting officer may, in the performance of his or her duties, delegate certain tasks to staff members subject to the Staff Regulations, where this is indispensable for the performance of his or her duties.
6. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his or her duties by the Governing Board. In such a case, the Governing Board shall appoint an interim accounting officer.

### *Article 23* *Liability of financial actors*

1. Articles 16 to 25 are without prejudice to any liability under criminal law which the financial actors may incur as provided for in the applicable national law and in the provisions in force concerning the protection of the Union's financial interests and the fight against corruption involving Union officials or officials of Member States.
2. Each authorising officer and accounting officer shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations. In the event of illegal activity, fraud or corruption which may harm the interests of the FCH 2 JU or of its members, the matter shall be submitted to the authorities and bodies designated by the applicable legislation, in particular to OLAF.
3. The specialised financial irregularities panel set up by the Commission or in which the Commission participates in accordance with Article 73(6) of Regulation (EU, Euratom) No 966/2012, shall exercise the same powers in respect of the FCH 2 JU as it does in respect of Commission departments, unless the Governing Board decides to set up a functionally independent panel, or to participate in a joint panel established by several bodies. For cases

submitted by FCH 2 JU, the specialised financial irregularities panel set up by the Commission or in which the Commission participates shall include one staff member of the FCH 2 JU.

On the basis of the opinion of the panel referred to in the first subparagraph, the Executive Director shall decide whether to initiate proceedings for disciplinary action or for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer. If the opinion implicates the Executive Director, the panel shall send it to the Governing board and to the Commission's internal auditor. The Executive Director shall refer, in anonymous form, to opinions of the panel in his or her report under Article 20 and indicate the follow-up measures taken.

4. Any member of the staff may be required to compensate, in whole or in part, any damage suffered by the FCH 2 JU as a result of a serious misconduct on his or her part in the course of or in connection with the performance of his or her duties. The appointing authority shall take a reasoned decision after completing the formalities laid down by the applicable legislation with regard to disciplinary matters.

#### *Article 24* *Conflict of interests*

1. Financial actors within the meaning of Articles 16 to 25 and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the FCH 2 JU.

Where such a risk exists, the person in question shall refrain from such actions and shall refer the matter to the Executive Director who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his or her immediate supervisor. If the actor is the Executive Director, he or she must refer the matter to the Governing Board.

Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter. The Executive Director or the Governing Board, in the case of the Executive Director, shall take any further appropriate action.

2. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.

#### *Article 25* *Segregation of duties*

The duties of authorising officer and accounting officer shall be segregated and mutually exclusive.

## **Chapter 5** **Internal Audit**

#### *Article 26*

### *Appointment, powers and duties of the internal auditor*

1. The FCH 2 JU shall have an internal audit function which shall be performed in compliance with the relevant international standards.
2. The internal audit function shall be performed by the Commission's internal auditor. The internal auditor may be neither authorising officer nor accounting officer.
3. The internal auditor shall advise the FCH 2 JU on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The internal auditor shall be responsible in particular for:

- (a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them;
- (b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each budget implementation operation.

4. The internal auditor shall perform his or her duties in relation to all the FCH 2 JU's activities and departments. The internal auditor shall enjoy full and unlimited access to all information required to perform his or her duties.

5. The internal auditor shall take note of the report of the authorising officer under Article 20 and of any other pieces of information identified.

6. The internal auditor shall report to the Governing Board and the Executive Director on his or her findings and recommendations.

The internal auditor shall also report in any of the following cases:

- critical risks and recommendations have not been addressed;
- there are significant delays in the implementation of the recommendations made in the previous years.

The Governing Board and the Executive Director shall ensure the regular monitoring of the implementation of audit recommendations. The Governing Board shall examine the information referred to in Article 20 and whether the recommendations have been fully and timely implemented.

7. The FCH 2 JU shall make available the contact details of the internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.

8. The reports and findings of the internal auditor shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

### *Article 27*

### *Independence of the internal auditor*

The independence of the internal auditor, the liability of the internal auditor for action taken in the performance of his or her duties and the right for the internal auditor to bring an action before the Court of Justice of the European Union shall be determined in accordance with Article 100 of Regulation (EU, Euratom) No 966/2012.

### *Article 28 Establishment of an internal audit capability*

1. The Governing Board may establish with due regard to cost effectiveness and added value, an internal audit capability which shall perform its duties in compliance with the relevant international standards.

The purpose, authority and responsibility of the internal audit capability shall be provided for in the internal audit charter and shall be subject to the approval of the Governing Board.

The annual audit plan of an internal audit capability shall be drawn up by the internal audit capability taking into consideration inter alia the Executive Director's assessment of risk in the FCH 2 JU.

It shall be reviewed and approved by the Governing Board.

The internal audit capability shall report to the Governing Board and the Executive Director on his or her findings and recommendations.

If the internal audit capability of FCH 2 JU is not cost-effective or is not able to meet international standards, the FCH 2 JU may decide to share an internal audit capability with other PPP bodies functioning in the same policy area.

In such cases the Governing Board of the FCH 2 JU shall agree on the practical modalities of the shared internal audit capabilities.

The internal audit actors shall cooperate efficiently through exchanging information and audit reports and, when appropriate, establishing joint risk assessments and carrying out joint audits.

2. The Governing Board and the Executive Director shall ensure the regular monitoring of the implementation of internal audit capability's recommendation.

## **Chapter 6 Revenue and expenditure of operations**

### *Article 29 Implementation of revenue*

1. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and recovering undue amounts.  
It shall also include the possibility of waiving established entitlements, where appropriate.

2. Amounts wrongly paid shall be recovered.

If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.

Where the authorising officer responsible plans to waive or partially waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and is in accordance with the principles of sound financial management and proportionality. The waiver decision shall be substantiated. The waiver decision shall state that action has been taken to secure recovery and the points of law and fact on which it is based.

The accounting officer shall keep a list of amounts due to be recovered. The FCH 2 JU's entitlements shall be grouped in the list according to the date of issue of the recovery order. The accounting officer shall also indicate decisions to waive or partially waive recovery of established amounts. The list shall be added to the FCH 2 JU's report on budgetary and financial management.

3. Any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Delegated Regulation (EU) No 1268/2012.

4. Entitlements of the FCH 2 JU in respect of third parties and entitlements of third parties in respect of the FCH 2 JU shall be subject to a limitation period of five years.

*Article 30*  
*Members' contribution*

1. The FCH 2 JU shall present to its Members requests for payment of all or part of their contribution under terms and at intervals set out in the constituent instrument or agreed with them.

2. The funds paid to the FCH 2 JU by its Members by way of a contribution shall bear interest for the benefit of the budget of the FCH 2 JU.

*Article 31*  
*Implementation of expenditure*

1. To implement expenditure, the authorising officer shall make budgetary commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminary steps for the implementation of appropriations.

2. Every item of expenditure shall be committed, validated, authorised and paid.

Validation of expenditure is the act whereby the authorising officer responsible confirms a financial operation.

Authorisation of expenditure is the act by which the authorising officer responsible, having verified that the appropriations are available, instructs the accounting officer to pay the validated expenditure.

3. In respect of any measure which may give rise to expenditure chargeable to the budget of the FCH 2 JU, the authorising officer responsible shall make a budgetary commitment before entering into a legal commitment with third parties.

4. The annual work plan of the FCH 2 JU shall provide the authorisation by the Governing Board for the operational expenditure of the FCH 2 JU on the activities it covers, provided that the elements set out in this paragraph are clearly identified.

The annual work plan shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the action(s) to be financed and an indication of the amount allocated to each action.

Any substantial amendment to the annual work plan shall be adopted by the same procedure as the initial work plan, in accordance with the provisions of the constituent instrument.

The Governing Board may delegate the power to make non-substantial amendments to the work plan to the authorising officer of the FCH 2 JU.

*Article 32*  
*Time limits*

The payment of expenditure must be carried out within the time limits specified in and in accordance Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012.

## **Chapter 7**

### **Implementation of the budget of the FCH 2 JU**

*Article 33*  
*Procurement*

1. As regards procurement, Title V of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraphs 3 to 6 of this Article and any specific provisions of the constituent instrument.

2. The FCH 2 JU shall participate in the central exclusion database set up and operated by the Commission pursuant to Article 108 of the general Financial Regulation.

3. For contracts with a value between EUR 60,000 and the thresholds laid down in Article 118 of Regulation (EU, Euratom) No 966/2012 the procedure set out Delegated Regulation (EU) No 1268/2012 for contracts with a low value not exceeding EUR 60,000 may be used.

4. The FCH 2 JU may be associated, at its request, as contracting authority, in the award of Commission or interinstitutional contracts and with the award of contracts of other Union or PPP bodies.

5. The FCH 2 JU may conclude a contract, without having recourse to a public procurement procedure, with the Commission, the interinstitutional offices, the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94 and other PPP bodies for the supply of goods, provision of services or performance of work that the latter provide.

The FCH 2 JU may conclude a contract, without having recourse to a public procurement procedure, with its members other than the Union for the supply of goods, provision of services or performance of work that those members directly provide without having recourse to third parties.

The goods, services or work provided under the first and second subparagraph shall not be considered part of the contribution of the members to the budget of the FCH 2 JU.

6. The FCH 2 JU may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs or with contracting authorities of Member States, the European Free Trade Association States or Union candidate countries which participate in it as members. In such cases, Article 133 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis*.

The FCH 2 JU may use joint procurement procedures with its private Members or with contracting authorities of countries participating in Union programmes which participate in it as Members. In such cases, the first paragraph of Article 133 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis*.

#### *Article 34*

##### *Experts*

Article 287 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis* for the selection of experts subject to any specific procedure laid down in the basic act of the programme the implementation of which is entrusted to the FCH 2 JU. Such experts shall be paid on the basis of a fixed amount announced in advance and shall be chosen on the basis of their professional capacity.

The FCH 2 JU may use the lists drawn up by the Commission or by other Union bodies.

The FCH 2 JU may, if deemed appropriate and in duly justified cases, select any individual with the appropriate skills from outside the lists.

External experts shall be selected on the basis of skills, experience and knowledge appropriate to carry out the tasks assigned to them and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.

#### *Article 35*

##### *Grants*

As regards grants, Title VI of Regulation (EU, Euratom) No 966/2012, the Delegated Regulation (EU) No 1268/2012 shall apply subject to any specific provisions of the constituent instrument.

### *Article 36*

#### *Prizes*

1. As regards prizes, Title VII of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraph 2 of this Article and any specific provisions of the constituent instrument.
2. Contests for prizes with a unit value of EUR 1 000 000 or more may only be published if they are provided for in the draft work plan referred to in Article 14(1).

### *Article 37*

#### *Indication of means of redress*

1. Where a procedural act of an authorising officer adversely affects the rights of an applicant or tenderer, beneficiary or contractor, it shall contain an indication of the available means of administrative and/or judicial redress for challenging this act.
2. In particular, the nature of the redress, the body or bodies before which it can be brought, as well as time limits for their exercise shall be indicated.
3. Paragraphs 1 and 2 shall be subject to any specific procedure laid down in the basic acts of the programme the implementation of which is entrusted to the FCH 2 JU.

## **Chapter 8**

### **Accounting**

### *Article 38*

#### *Rules governing the accounts*

The FCH 2 JU shall set up an accounting system providing accurate, complete and reliable information in a timely manner.

The accounting of the FCH 2 JU shall conform to the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012.

### *Article 39*

#### *Structure of the accounts*

The accounts of the FCH 2 JU shall comprise:

- (a) the financial statements of the FCH 2 JU;
- (b) the reports on implementation of the budget of the FCH 2 JU.

The FCH 2 JU shall prepare a report on budgetary and financial management for the financial year. This report shall give an account, both in absolute terms and expressed as a percentage, at least, of the rate of implementation of appropriations together with summary information on the transfers of appropriations among the various budget items.

The FCH 2 JU shall send the report on budgetary and financial management to the European Parliament, the Council, the Commission and the Court of Auditors by 31 March of the following financial year.

*Article 40*  
*Accounting principles*

The financial statements shall present information, including information on accounting policies, in a manner that ensures it is relevant, reliable, comparable and understandable. The financial statements shall be drawn in accordance with generally accepted accounting principles as outlined in the accounting rules according to Article 143 of Regulation (EU, Euratom) No 966/2012 or the accrual based International Public Sector Accounting Standards (hereafter "IPSAS").

*Article 41*  
*Financial Statements*

1. The financial statements shall be presented in euro and shall comprise:

- (a) the balance sheet and the statement of financial performance, which represent all assets and liabilities, the financial situation and the economic result at 31 December of the preceding financial year; they shall be presented in accordance with the accounting rules to in Article 143 of Regulation (EU, Euratom) No 966/2012 or the accrual based IPSAS;
- (b) the cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;
- (c) the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.

2. The notes to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the FCH 2 JU's activities.

*Article 42*  
*Budgetary implementation reports*

The budgetary implementation reports shall be presented in euro. They shall consist of:

- (a) reports which aggregate all budgetary operations for the year in terms of revenue and expenditure;
- (b) explanatory notes, which shall supplement and comment on the information given in the reports.

The structure of the budgetary implementation reports shall be the same as that of the budget itself.

*Article 43*  
*Provisional accounts and approval of the final accounts*

1. The accounting officer of the FCH 2 JU shall send the provisional accounts to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year.

The accounting officer of the FCH 2 JU shall also send by 1 March of the following year a reporting package to the accounting officer of the Commission, in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

2. The Court of Auditors shall, by 1 June of the following year at the latest, make its observations on the provisional accounts of the FCH 2 JU. On receipt the Court of Auditor's observations on the provisional accounts, the accounting officer shall draw up the final accounts of the FCH 2 JU. The Executive Director shall send them to the Governing Board which shall give an opinion on these accounts.

The accounting officer shall send the final accounts and the opinion of the Governing Board to the Court of Auditors, the European Parliament, the Council and the Commission by 1 July of the following financial year. In such case the accounting officer of the FCH 2 JU shall also send by 1 July a reporting package to the accounting officer of the Commission in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

The accounting officer of the FCH 2 JU shall also send to the Court of Auditors, with a copy to the accounting officer of the Commission, at the same date as the transmission of the final accounts, a representation letter covering those final accounts.

The final accounts shall be accompanied by a note drawn up by the accounting officer in which the latter declares that the final accounts were prepared in accordance with this chapter and with the applicable accounting principles, rules and methods.

The final approved accounts of the FCH 2 JU shall be published in the Official Journal of the European Union by 15 November of the following year.

*Article 44*  
*Accounting system*

1. The harmonised chart of accounts to be applied by the FCH 2 JU shall be adopted by the Commission's accounting officer in accordance with Article 152 of Regulation (EU, Euratom) No 966/2012.

2. The accounts shall consist of general accounts and budget accounts. These accounts shall be kept in euro on the basis of the calendar year.

3. The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the FCH 2 JU.

4. The budgetary accounts shall provide a detailed record of the implementation of the budget of the FCH 2 JU. They shall record all budgetary revenue and expenditure operations.

*Article 45*  
*Inventories*

The FCH 2 JU shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting its or Union property. Where the accounts of the FCH 2 JU are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the FCH 2 JU shall keep those inventories in accordance with a model drawn up by the accounting officer of the Commission. The FCH 2 JU shall check that entries in the inventory correspond to the actual situation.

**Chapter 9**  
**External audit, discharge and combatting fraud**

*Article 46*  
*Examination of the accounts by the Court of Auditors*

1. The Court of Auditors shall prepare a specific annual report on the FCH 2 JU in line with the requirements of Article 287(1) of the Treaty on the Functioning of the European Union.
2. The scrutiny carried out by the Court of Auditors shall be governed by Articles 158 to 163 of Regulation (EU, Euratom) No 966/2012.

*Article 47*  
*Timetable of the discharge procedure*

1. The European Parliament, upon a recommendation from the Council, shall, before 15 May of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N. The Executive Director shall inform the Governing Board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.
2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Executive Director of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the Executive Director, in cooperation with the Governing Board, shall make every effort to take measures as soon as possible to remove or facilitate removal of the obstacles to that decision.

*Article 48*  
*The discharge procedure*

1. The discharge decision shall cover the accounts of all the revenue and expenditure of the FCH 2 JU, the budget result and the assets and liabilities of the FCH 2 JU shown in the financial statement.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements of the FCH 2 JU. It shall also examine the annual report made by the Court of Auditors, together with the replies of the Executive Director of the FCH 2 JU, any relevant special reports by the Court of Auditors in respect of the financial year concerned and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
3. The Executive Director shall submit to the European Parliament, at its request, in the same manner as provided for in Article 165(3) of Regulation (EU, Euratom) No 966/2012 any information required for the smooth application of the discharge procedure for the financial year concerned.

*Article 49*  
Follow-up measures

1. The Executive Director shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.
2. At the request of the European Parliament or the Council, the Executive Director shall report on the measures taken in the light of those observations and comments. The Executive Director shall send a copy thereof to the Commission and the Court of Auditors.

*Article 50*  
*On-the-spot checks by the Commission, the Court of Auditors and OLAF*

1. The FCH 2 JU shall grant Commission staff and other persons authorised by the FCH 2 JU or the Commission, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.
2. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulation (Euratom, EC) No 2185/96 with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with an agreement or decision or a contract funded by the FCH 2 JU.
3. Without prejudice to paragraphs 1 and 2, contracts, agreements and decisions of the FCH 2 JU shall contain provisions expressly empowering the Commission, the FCH 2 JU, the Court Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

**Chapter 10**  
**Final and transitional provisions**

*Article 51*  
*Information requests*

The Commission and the Members of the FCH 2 JU other than the Union may request any necessary information or explanations from the FCH 2 JU regarding budgetary matters within their fields of competence.

*Article 52*  
*Adoption of the FCH 2 JU financial rules*

The Governing Board will adopt the present Financial Rules.

*Article 53*  
*Entry into force*

This Decision shall enter into force on the day following its adoption by the Governing Board of the FCH 2 JU.

It can be amended following the same procedure as for its adoption.