



Adopted on 10/11/2017

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

DECISION

Of (date)

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

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

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

Having regard to the Staff Regulations of Officials ("Staff Regulations") and the Conditions of Employment of Other Servants of the European Union ("CEOS"), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Title II and Article 110(2) of the Staff Regulations and Articles 11 and 81 of the CEOS²,

Having regard to Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the Fuel Cells and Hydrogen 2 Joint Undertaking ("FCH 2 JU") and in particular Article 6 thereof,

Having regard to Article 20 of the Statutes annexed to Council Regulation (EU) No. 559/2014 establishing the FCH 2 JU ("Statutes"),

Having regard to the Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies dated 10 December 2013,

Having regard to the Decision of the Governing Board on the rules for the Secondment of National Experts to the FCH 2 JU of 25 October 2016,

Having regard to the agreement of the European Commission pursuant to Article 110 (2) of the Staff Regulations by Commission Decision C(2017) 5509 of 1 August 2017,

After consulting the Staff Committee,

¹ OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15.

² Articles 11 to 26a of the Staff Regulations are applicable by analogy to temporary agents and contract agents, pursuant to Articles 11 and 81 of the CEOS, respectively.

Whereas:

- (1) FCH 2 JU is public-private partnership and as a consequence public and private interests are intertwined;
- (2) It is understood that all staff have a professional interest to work for the FCH 2 JU and to act for the good of the FCH 2 JU, notably pursuing its objectives, observing the applicable rules and protecting its general interest;
- (3) Provisions on conflict of interests are already included in various documents, such as the Staff Regulations, the CEOS, Financial Rules and the Rules of Procedure of Governing Board, the Rules of Procedure of the Scientific Committee, the Rules of Procedure of the States Representatives Group and the appointment letters of the Scientific Committee Members;
- (4) In order to implement the mentioned rules, it is necessary to adopt two separate decisions applying respectively to the staff members and to the bodies of the FCH 2 JU, aiming to provide a comprehensive overview and complement the existing rules on the prevention and management of conflicts of interest, which would serve as a reference for all persons working for the FCH 2 JU, regardless of the employment tie, and ensure a comprehensive and coherent approach on conflicts of interest and the highest standards of administration, professional ethics, integrity and independence;
- (5) This Decision shall apply only to the staff members of the FCH 2 JU and should be adopted without prejudice to the existing rules and provisions on prevention and management of conflicts of interest as provided in any other applicable document as mentioned above under paragraph 3.

HAS ADOPTED THE FOLLOWING DECISION:

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CHAPTER I- SCOPE, GENERAL OBLIGATIONS AND DEFINITION

Article 1 — Subject

The present Decision lays down rules for the prevention and management of conflicts of interest of FCH JU 2 staff, in order to ensure the handling in a transparent and consistent manner of situations where conflicts of interest may arise.

Article 2 — Scope and persons concerned

2.1 This Decision shall apply to the following categories of actors involved in the work and activities of the FCH 2 JU:

- a) contract staff,
- b) temporary staff³,
- c) seconded national experts,

collectively referred hereinafter as "staff members", unless otherwise specified.

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

³ According to Article 8(2) of the Statutes of FCH 2 JU, this category shall include also the Executive Director of the FCH 2 JU.

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 FCH 2 JU is or might be perceived as being compromised by a personal interest held by or entrusted to a staff member.
- 3.2 All staff members should 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 notably be of a financial or non-financial nature. It may also concern a personal or family relationship, any representation of any other interests of third parties, or any community of interests with any third parties, any professional or economic affiliation as well as any other outside activities leading to the situation described under point 3.1.
- 3.4 The appearance of a conflict of interest can constitute a reputational risk to the FCH 2 JU, 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 should be treated as if it were an actual conflict of interest.
- 3.5 It is the responsibility of all staff 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 FCH 2 JU shall assume an individual responsibility by declaring in good faith his/her interests and information to the FCH 2 JU in compliance with the provisions herein.
- 3.6 Any staff member, who becomes aware of a potential conflict inform in writing the relevant competent authority.

Article 3a – specific provisions regarding the Executive Director

- 3.a.1 The Executive Director shall act impartially, avoiding any situation liable to give rise to potential conflicts of interest. Taking into account the public character of his/her function when acting under the tasks and roles laid down in the Statutes, Annex to Council Regulation (EC) No 559/2014, the Executive Director shall perform his/her tasks objectively, impartially and with independence keeping with his/her duty of loyalty to the FCH 2 JU.
- 3.a.2 When questions which are not explicitly covered by these rules arise, adherence to the generally accepted principles of probity shall determine the behaviour of the Executive Director.
- 3.a.3 The Executive Director shall:
- (1) Act independently in the general interest of the FCH 2 JU and in the common interest of the sound management of the Programme and its objectives without allowing himself/herself to be influenced by personal interests or relationships;
 - (2) Guarantee that under its role of authorising officer, the FCH 2 JU operates within the limits of its statutory remit and rules;

(3) When communicating on a matter on which the FCH2 JU has taken a view, the Executive Director 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 FCH 2 JU has not taken a view so far, the Executive Director may give his/her own personal view, but should make clear that this does not necessarily represent the official opinion of the FCH 2 JU. Executive Director should always refrain from any unauthorised disclosure of information or documents received in the line of duty that have not already been made public or are accessible to the public;

(4) Not exploit his/her position in order to affect the expected impartiality of the FCH 2 JU staff, external experts, reviewers, consultants and any third parties participating at any title in the bodies or activities of the FCH 2 JU.

CHAPTER II – PROVISIONS APPLICABLE TO STAFF MEMBERS⁴

Article 4—Obligation to make declarations on conflicts of interest

- 4.1 Before recruitment or taking up duties in the FCH 2 JU or returning from unpaid leave, the Appointing Authority shall examine whether the candidate/staff member has any personal interest such as to impair his/her independence.

To that end, staff members shall submit the Declaration on conflict of interest, using a relevant form.

The members of a Selection Board shall submit before taking up their duties the Declaration on conflict of interest and confidentiality using a relevant form.

In cases where the Declaration shows a potential or apparent conflict of interests, it must be managed and solved before the staff member takes up/resumes his/her duties.

- 4.2 Staff 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/her duties a staff member becomes aware of any potential conflict of interest or any appearance of a conflict of interest, the staff member is obliged to inform the relevant authority in the FCH 2 JU by spontaneously submitting the ad-hoc Declaration on conflict of interest, using a relevant form.

Article 5—Obligation of confidentiality

- 5.1 Staff members shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.

- 5.2 All staff members shall continue to be bound by this obligation after leaving the FCH 2 JU.

Article 6—Obligations related to honours, decorations, favours and gifts

⁴ Without prejudice to the Article 3a of this Decision, these provisions are also applicable to the Executive Director.

- 6.1 Staff members shall not accept, directly or indirectly, without the prior permission of the Appointing Authority, any honour, decoration, favour, gift or payment of any kind whatsoever from any source outside the FCH 2 JU.

This rule applies to any honour, decoration, gift and favour. A gift is understood to mean:

- a sum of money or any physical object, or
- the possibility to participate for free in events which are either open to the public or private in nature, only accessible in return for payment and represent a certain value (such as complimentary tickets for sports events, concerts, theatre, conferences, etc.), or
- any other advantage with a pecuniary value such as transport costs.

- 6.2 Hospitality offers are considered to be one particular type of favour. Hospitality is defined as an offer of food, drink, accommodation and/or entertainment from any source outside the FCH 2 JU.

- 6.3 Acceptance of gifts or hospitality may exceptionally be authorised (within the limits indicated in Article 6.4 and 6.6 below) when it is clear that this will not compromise or reasonably be perceived to compromise the staff member's objectivity and independence and will not damage the FCH 2 JU 's public image. A gift or hospitality may be accepted only if such acceptance would be in accordance with diplomatic and courtesy usage.

- 6.4 Subject to the general principles set out herein, the following apply:

- (1) Prior permission by the Appointing Authority is presumed to be granted for accepting a gift worth up to €50;
- (2) Explicit prior permission by the Appointing Authority is required for accepting a gift worth between 50 and 150 €, by submitting a Declaration using a relevant form.
- (3) Authorisation to accept gifts with a value higher than €150 or any sum of money will be refused by the Appointing Authority.

- 6.5 If the Appointing Authority refuses to authorise the acceptance or if a gift is unwanted, it can be returned to the source, if this is feasible. Alternatively, the gift can be donated by the FCH 2 JU to an appropriate charitable organisation.

As a courtesy, the staff member should inform the sender of the gift that the gift cannot be accepted and will be transmitted to charity, unless this would be diplomatically inappropriate.

- 6.6 As a general rule the staff member should not accept any hospitality and should make use of sound judgement in order to assess, in the given circumstances, if acceptance could be envisaged.

Subject to the general principles set out herein, the following apply:

- (1) Prior permission by the Appointing Authority is presumed to be granted for:
 - hospitality in the form of lunches or dinners strictly linked to the function of the staff member and as such not prejudicial to the interests and public image of the FCH 2 JU, and in which the staff member participates in agreement with his/her hierarchy and in the interest of the service;

- occasional offers of simple meals, refreshments, snacks.

(2) Explicit prior permission by the Appointing Authority is required in cases not covered by the previous heading, by submitting a Declaration, using a relevant form.

6.7 The mission order will as a rule cover all predictable offers of hospitality, based on the mission programme - notably meals, accommodation and transport. These will not be considered as hospitality offers if the programme of the mission and the participation of the staff member has been authorised - as they form part of the performance of his/her duties in the interest of the FCH 2 JU. The acceptance of these offers will then be declared in the mission expense statement.

Particular prudence is necessary in sensitive situations. For instance staff members participating in inspections and similar missions should whenever possible inform their immediate superior or team leader on an ad hoc basis, and in accordance with any other specific provisions, when hospitality is offered in the course of such missions. If this is impossible, they should exercise their individual judgement and act according to the principles set out in these guidelines. Any hospitality thus accepted should be declared in the mission expense statement.

6.8 Accumulation of gifts and hospitality for which prior permission of the Appointing Authority is presumed may be seen to compromise the staff's objectivity and independence, or may damage the FCH 2 JU's public image. Therefore, it requires the prior permission by the Appointing Authority.

Article 7 — Obligations related to outside activities

7.1 Staff members in active employment

7.1.1. Staff members, wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the FCH 2 JU, shall obtain the prior permission of the Appointing Authority.

Outside activity means any activity, paid or unpaid, that is of an occupational character or goes otherwise beyond what can be reasonably considered as a leisure activity. Assignment means the taking-on of a defined, time-limited task.

In case of seconded national experts, the Appointing Authority shall consult the employer of the seconded national experts before issuing the authorization to perform the outside activities.

7.1.2. Staff members shall submit a declaration on outside activities, using a relevant form, accompanied by the necessary supporting documents, two months before the beginning of the activity or assignment.

7.1.3. Permission shall in principle be granted for outside activities, whether paid or unpaid, unless the activity is such as to interfere with the performance of staff member's duties or is incompatible with the FCH 2 JU's interests.

Permission shall not be granted for assignments or outside activities which are pursued

in a professional or similar capacity (e.g. architect, lawyer, economist, accountant, computer expert, engineer, interpreter, doctor, translator, consultant etc.).

Permission shall not be granted for assignments or activities for firms and companies whose objects are commercial, even if the official's relationship with the company or firm in question entails no remuneration or purely nominal remuneration.

- 7.1.4. The maximum annual ceiling for net remuneration, including any fees received, which a staff member may receive in connection with all his/her assignments or outside activities combined shall be €4500. The reimbursement of costs (e.g. transportation etc.) shall not be taken into account for this purpose. The staff shall hand over to the Appointing Authority amounts exceeding the sum of € 4500.

By way of exception, royalties received for publications, as well as any payment received in connection with the work in public office⁵ shall be excluded from the calculation of the above net remuneration.

7.2 Staff on unpaid leave on compelling personal grounds

- 7.2.1. Contract staff and temporary staff on unpaid leave on compelling personal grounds shall continue to be bound by the obligations of Article 12b of the Staff Regulations, i.e. shall obtain permission to undertake an assignment or an outside activity at any time during the period of leave.

To this end this contract staff and temporary staff shall fill in and file with the Appointing Authority an application using a relevant form. The application, accompanied by the necessary supporting documents, must be submitted at least two months before the beginning of the activity or assignment. The Appointing Authority shall respond to this request within one month of receipt of the application.

- 7.2.2. The permission shall in principle be granted by the Appointing Authority except where the assignment or the activity could give rise to a conflict of interest or be detrimental to the interest of the FCH 2 JU.

The permission shall not be granted to a staff member for the purpose of engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis the FCH 2 JU and which could lead to the existence or possibility of a conflict with the legitimate interests of the FCH 2 JU.

7.3 Staff having left the Joint Undertaking

- 7.3.1. Contract staff and temporary staff leaving the FCH 2 JU shall sign a declaration using a relevant form, so as to acknowledge that he/she is aware of his/her continuing obligations to the FCH 2 JU, in particular under Articles 16, 17 (2) and 19 of the Staff Regulations.

- 7.3.2. Pursuant to Article 16(2) of Staff Regulations, for a period of two years after leaving the FCH 2 JU, a former contract staff and temporary staff wishing to take up an assignment or

⁵ As referred to in Article 15 of the Staff Regulations, applicable by analogy to temporary agents and contract agents pursuant to Articles 11 and 81 of the CEOS, respectively.

outside activity shall request the prior permission of the Appointing Authority by submitting a declaration, using a relevant form.

Regarding contract staff, only those who have had access to sensitive information shall be subject to the obligations to submit a declaration regarding their assignment or outside activity. Contract staff shall be informed by the FCH 2 JU whether that obligation is applicable on leaving the FCH 2 JU.

Article 8 — Obligations related to publications and speeches

8.1 Staff members wishing to publish or to have published, either on their own or with other parties, a document, such as an article or a book, on anything dealing with their work or EU matters generally, shall inform the Appointing Authority in advance.

The staff member above shall submit the Declarations using the relevant forms, as the case may be, and provide the Appointing Authority with any information, in particular a copy, in electronic form, of the document he/she intends to publish. This must be accompanied by a summary of the document to be published, in electronic form, in one of the FCH 2 JU's working languages.

8.2 When publishing on EU or FCH 2 JU related matter, the staff member shall indicate in the document he/she wants to publish that he/she is writing under his/her own name, engaging himself/herself and not the responsibility of the any EU institution or body. The staff member is obliged to observe the rules concerning non-disclosure of information and the confidentiality requirement on EU matters or related to his/her work in the FCH 2 JU.

Article 9 — Obligations related to election or appointment for public office

9.1 Pursuant to Article 15(1) of Staff Regulations, contract staff and temporary staff who intend to stand for public office shall notify the Appointing Authority by submitting a Declaration using a relevant form.

9.2 Pursuant to Article 15(2) of Staff Regulations, contract staff and temporary staff who are elected or appointed to public office must immediately inform the Appointing Authority by submitting a Declaration using a relevant form.

Article 10 — Obligation to declare the professional activities of the spouse or partner

10.1 Pursuant to Article 13 of Staff Regulations, staff members have the obligation to inform the Appointing Authority if their spouse/partner is in gainful employment, i.e. doing paid work. In this respect, unmarried, legally recognised partners are regarded in the same way as spouses pursuant to Article 1(2) (c) of Annex VII to Staff Regulations.

10.2 Staff members shall submit a Declaration using a relevant form. If there is any change in the spouse's situation, the staff member is obliged to submit a new Declaration.

Article 11 — Procedures to manage a conflict of interest

- 11.1. With regard to staff members, the Appointing Authority is responsible for adopting formal decisions to prevent and manage conflicts of interest, when informed of a situation which may be detrimental to the FCH 2 JU.
- 11.2. The Appointing Authority shall carry out an internal assessment involving the legal department, the human resources department, the line manager of the staff member concerned or any other persons, as deemed necessary by either the Appointing Authority or by the staff member concerned. Based on the findings of the assessment, the Appointing Authority shall decide in writing the necessary measures in accordance with the applicable rules. Before the decision of the Appointing Authority is taken, the person concerned shall be heard.

Without prejudice to the FCH 2 JU decision delegating the powers conferred by the Staff Regulations on the appointing authority and by the Conditions of Employment of Other Servants of the European Union on the authority empowered to conclude contracts of employment to the Executive Director of the FCH 2 JU, the Appointing Authority powers shall be exercised by:

- the Governing Board of the FCH 2 JU in matters concerning the Executive Director, or
- the Executive Director for staff members, working for the FCH 2 JU.

Article 12 — Ex-post treatment of situations of non-compliance with the obligations under the present rules

- 12.1 In accordance with Article 86(1) of the Staff Regulations⁶, any failure by staff members of the FCH 2 JU to comply with his/her obligations under the rules of conflict of interests, whether intentionally or through negligence on his/her part, shall make him/her liable to disciplinary measures, in accordance with the provisions of the Staff Regulations and the CEOS.
- 12.2 Seconded national experts shall comply with the relevant obligations imposed by the present Decision on conflict of interests. Failure to observe the obligations provided herein entitles the FCH 2 JU to terminate the collaboration, subject to respecting the procedural safeguards of the staff member concerned notably including the right to be informed in advance of the reasons underlying the Appointing Authority's intention to terminate the collaboration and giving him/her the opportunity to be heard.
- 12.3 If the concerned person was involved in a decision-making procedure without having declared an interest, the Appointing Authority or the respective body or group may undertake remedial actions, in particular to review or cancel the decision if seriously

⁶ Applicable by analogy to temporary agents and contract agents pursuant to Articles 50a and 119 of the CEOS, respectively.

affected by the conflict of interest. This implies carrying out an ex post review of the person's activities and contributions to the FCH 2 JU's output.

CHAPTER III – GENERAL AND FINAL PROVISIONS

Article 13—Register

- 13.1 All the declarations made by staff members shall be recorded in a Register by the FCH 2 JU. This will enable the FCH 2 JU to demonstrate, if necessary, that a specific conflict of interest has been appropriately identified and managed.⁷
- 13.2 The register referred to in paragraph 13.1 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 data.

Article 14—Transparency

- 14.1 The FCH 2 JU shall publish on its website the policies and rules for the prevention of conflict of interest in a clear and easily identifiable manner.
- 14.2 The declarations of interest submitted by the Executive Director, 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 15 - Final provisions

- 15.1 The Executive Director of the FCH 2 JU may adopt subsequent explanatory guidelines to facilitate the implementation of the present Decision.
- 15.2 Any permission granted by the Appointing Authority or by the related body/group of the FCH 2 JU pursuant to a Declaration submitted by staff 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

⁷ Measures adopted to manage the conflicts of interest are filed in the personal file of each staff member.

Appointing Authority or the respective body or group shall be considered as a new situation and must be brought to the attention of the Appointing Authority.

15.3 These rules shall come into force on the date of their adoption by the Governing Board and shall be published on the website of the FCH 2 JU.

Done at Brussels on

For the Governing Board of the FCH 2 JU

Raphael Schoentgen
Chair of the Governing Board

A handwritten signature in blue ink, appearing to read 'R. Schoentgen', with a large, sweeping flourish underneath.