

Fuel Cells and Hydrogen Joint Undertaking (FCH JU)

Final Report

Annual Assessment of the level of in-kind contributions

(Cut-off date 31/12/2014)

12/03/2015

This report is addressed to:

Mr Bert De Colvenaer, Executive Director, FCH JU

with copies to:

Mr. Jean Luc Delplancke, Head of Operations, FCH JU

Ms. Mirela ANATASIU, Project Manager, FCH JU

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1. BACKGROUND

According to Article 12.7 of the FCH JU Statutes annexed to the Council Regulation setting up the Joint Undertaking² (the ‘Council Regulation’), the level of the in-kind contributions, calculated on a yearly basis, shall be assessed once a year by an ‘independent auditor’ and the results presented to the Commission within four months of the end of each financial year.

In order to address the requirement above and all the other provisions in the Council Regulation related to in-kind contributions, the ‘FCH JU methodology for in-kind contributions’ (the ‘methodology’) was defined by the Joint Undertaking and approved by its Governing Board on 10 February 2012 (Annex 1).

According to the approved methodology (section 4.1):

“Each financial year (upon approval of this methodology), a report on the aggregated level of in-kind contribution will be prepared by the Programme Office. This report will show, per call and project, the level of in-kind contribution taking into consideration the latest available information following the three stages above. The cut-off date in each financial year for the preparation of the report will be the same as for the preparation of the provisional accounts (20 days before the deadline for submission of provisional accounts according to section 6). This report will be validated by the Authorising Officer and submitted to the independent auditor for the assessment requested in article 12.7 of the FCH JU Statutes (section 5)”.

As stipulated in the Council Regulation, the assessment shall be performed by an ‘independent auditor’. With the specific contract dated 5 January 2015 we have been engaged by FCH JU to perform the assessment. As such, the assessment has been conducted in accordance with the FCH JU Methodology (see section 2 of this report) and the provision set out in the Framework contract No IMI-2011-SC-100 signed on 8 July 2011 between KPMG AG, Germany and IMI JU.

² Council regulation (EC) No 521/2008 of 30 May 2008 amended by Council Regulation (EU) No 1183/2011 of 14 November 2011.

2. OBJECTIVES, SCOPE AND PROCEDURE

The **objective** of this assignment is, according to FCH JU methodology, to assess the aggregated level of in-kind contributions as of 31 December 2014 (i.e. cut-off date used for the preparation of the 2014 provisional accounts)

The **scope** of the assessment is to verify that the report validated by the Authorising Officer on the aggregated level of in-kind contributions (Annex 2) has been correctly prepared according to the methodology.

The **procedures** used to verify the correctness of the Authorising Officer's report consisted in performing the following checks as stated in the methodology (section 5.1):

- (1) The completeness of the report (i.e. all projects from all relevant calls are considered).
- (2) The quality of data (i.e. correctness of amounts) on a sample basis.
- (3) The exclusion of in-kind contribution from the Joint Research Centre (JRC).
- (4) The adequacy of the internal procedures of the Programme Office to update the relevant data.
- (5) The accuracy of the calculation of the aggregated level of in kind contributions.

The assessment **does not include** the audit of the individual cost statements making up the aggregated level of the in-kind contributions. Indeed, in-kind contributions are the participants' project eligible costs not reimbursed by the FCH JU. As stated in the FCH JU methodology (section 5.1) "*...the large majority of those costs will be checked by auditors through 'Certificates on Financial Statements'³ (ex-ante control before validation of cost claim, if above pre-defined thresholds) and/or financial audits⁴ (ex-post control after validation of cost claims, on a sample basis). Therefore, it is not necessary neither cost efficient to check again the level of in-kind contribution of each individual cost claim in the context of the assessment requested by article 12.7*".

³ FCH JU Model Grant Agreement – Annex II , point II.4.4: "*A certificate on the financial statements shall be submitted by each beneficiary whose total FCH JU financial contribution, claimed in the form of reimbursement of costs, exceeds 50.000 EUR and for claims of interim payments when the amount of the FCH JU financial contribution claimed by a beneficiary under the form of reimbursement of costs is equal or superior to EUR 325.000, when cumulated with all previous payments for which a certificate on the financial statements has not been submitted.*"

⁴ FCH JU ex-post audit strategy addresses through 'risk-based audits' those cost claims not subject to 'Certificates on Financial Statements' (CFS) either because costs are below thresholds or in cases of participants not receiving FCH JU funds but providing in-kind contributions only. In addition, cost claims subject to CFS may be also selected for either 'representative' or 'risk-based' ex-post audits.

3. RESULTS OF THE ASSESSMENT

In accordance with the objective, scope and procedures of this assignment as described in section 2, we have assessed the aggregated level of in-kind contributions as of 31 December 2014.

As a result of the work performed, we have identified a difference in the aggregated level of in-kind contributions amounting to -155,374.84 € as detailed in the table below:

Call	Total in kind (validated by Authorising Officer) in EUR	Total in kind (according to Independent auditor) in EUR	Difference in EUR
2008	30,639,454.31	30,485,079.47	-155,374.84
2009	104,286,426.45	104,286,426.45	
2010	95,663,534.24	95,663,534.24	
2011	113,926,660.67	113,926,660.67	
2012	55,729,650.99	55,729,650.99	
2013	85,643,049.06	85,643,049.06	
TOTAL	485,888,775.72	485,733,400.88	-155,374.84

The difference stems from one project of the Call for proposals 2008. This project is already finalized and the final payment has been made. As such, following the FCH JU Methodology, the in-kind contribution should be calculated based on the actual cost claimed instead of the budgeted amounts. The project was mistakenly flagged as being not yet finalized and the in-kind contribution was calculated based on the budgeted amounts.

In the annual assessment on the level of in-kind contributions of last year, two **actions for improvement** were proposed to the FCH JU. They concerned the need (1) to streamline the internal procedure to update the relevant data being the basis for the calculation of the in-kind contribution (mainly with regard to finalized projects); (2) to ensure that all key final and signed documents are uploaded in the document management system (i.e. M files).



Annual Assessment of the level of in-kind contributions – Final report

The FCH JU addressed last year's recommendations. We confirm the appropriateness of the action plan and the implementation of the related actions.

Nevertheless, as a result of our work and without affecting the above amount of in-kind contribution according to the independent auditor, we recommend to FCH to strengthen the procedure to update the status of projects in case they are finalized by adding a verification to ensure that the correct query is carried in the list of all closed projects that is updated on a regular basis by the FCH JU financial department. This list serves as the basis for the note to the files with regard to the confirmation of the final amount of in-kind contribution and therefore contains all projects, that are closed and for which final payments are approved.

Conclusion

Based on the procedures performed as described in Section 2 of this report, the aggregated level of in-kind contributions as of 31 December 2014 should be corrected and decreased by 155,374.84 €.

Hamburg, 12 March 2015

KPMG AG
Wirtschaftsprüfungsgesellschaft



Olaf Buske
Wirtschaftsprüfer



Frank Zander
Wirtschaftsprüfer

Enclosures:

Annex 1: 'FCH JU Methodology for in kind contributions'

Annex 2: Report on the aggregated level of in-kind contributions as of 31 December 2014 validated by the Authorising Officer and accompanying 'Note to the file'.

Annex 3: Executive Director's comments on draft report.

Annex 4: General Engagement Terms



FCH JU Methodology for 'In-Kind Contributions'



1. INTRODUCTION

The Fuel Cells and Hydrogen Joint Undertaking (FCH JU) is a public-private partnership.

The JU members are the European Union represented by the European Commission (EC), the Industry Grouping (IG) and the Research Grouping (RG).

Council regulation 521/2008¹ setting up the FCH JU sets the EU contribution to EUR 470 million including running costs (max. 20 million). The Industry Grouping and Research Grouping shall contribute in cash to the running costs, and in-kind through the legal entities participating in FCH projects.

This document is required following the provisions in Article 12.7 of the statutes of the FCH JU (*'The methodology for evaluating contributions in kind shall be defined by the FCH Joint Undertaking'*) and Article 5 (*'The Governing Board... shall approve the methodology for assessing the in-kind contributions'*).

This document provides an overview of the legal background (section 2), defines some key concepts to ensure common understanding (section 3), describes the methodology followed by the FCH JU for monitoring and calculating the level of in-kind contributions (section 4), explains the principles (i.e. 'what', 'who' and 'when') for the assessment by an independent auditor of the level of in-kind contributions (section 5) and describes the accounting treatment applicable to contributions in-kind (section 6).

2. LEGAL BACKGROUND

2.1 Council regulation 521/2008 of 30 May 2008 states the following:

Article 12.3 of the statutes of the FCH JU:

The operational costs of the FCH Joint Undertaking shall be covered through the financial contribution of the Community, and through in-kind contributions from the legal entities participating in the activities. The industry contribution shall at least match the Community's contribution. Other contributions to co-funding of activities will be considered as receipts in accordance with the Rules of Participation of the Seventh Framework Programme.

Article 12.7 of the statutes of the FCH JU:

The level of the in-kind contributions, calculated on a yearly basis, shall be assessed once a year. The methodology for evaluating contributions in kind shall be defined by the FCH Joint Undertaking in compliance with its financial rules and based on the Rules for Participation of

¹ Council Regulation (EC) No 521/2008 of 30 May 2008 setting up the Fuel Cells and Hydrogen Joint Undertaking – OJ L153, 12.06.2008, p. 1, as amended by Council Regulation (EU) No 1183/2011 of 14 November 2011 – OJ L 302, 19.11.2011, p. 3



the Seventh Framework Programme. The first assessment shall be initiated at the end of the second financial year after the start of the FCH Joint Undertaking. The assessment shall thereafter be performed each financial year by an independent auditor. The results of the assessment shall be presented to the Commission within four months of the end of each financial year.

If the assessment establishes that the in-kind contribution from industry does not reach the required level, the Commission shall reduce its contribution the following year.

If it is established that the in-kind contribution from industry does not reach the required level for two consecutive years, the Commission may propose to the Council to terminate the FCH Joint Undertaking.

Article 5.2 (l) of the statutes of the FCH JU:

The Governing board shall ... Approve the methodology for assessing the in-kind contributions in accordance with the principles referred to in Article 12.

Article 15.3 of the statutes of the FCH JU:

The upper funding limits of the Community financial contribution in projects shall be aligned to comply with those laid down by the Rules for Participation of the Seventh Framework Programme. In case lower levels of funding will be necessary to comply with the matching principles referred to in Article 12(3), the decreases shall be fair and balanced proportionally with the above mentioned upper funding limits of the Rules of Participation of the Seventh Framework Programme for all categories of participants in each individual project.

2.2 Council regulation 1183/2011 of 14 November 2011²

The following articles of the Council Regulation with an impact on the in-kind contribution and the matching requirement are added and/or amended:

Article 12.3 is amended as follows:

The operational costs of the FCH Joint Undertaking shall be covered through the financial contribution of the Union, and through in-kind contributions from the legal entities participating in the activities. The contribution from the participating legal entities shall at least match the financial contribution of the Union.

Receipts shall be dealt with in accordance with the Rules of Participation set out in the Decision No 1982/2006/EC.

This paragraph shall apply from the date on which the Research grouping became member of the FCH Joint Undertaking³.

² Council Regulation (EC) No 1183/2011 of 14 November 2011 amending Council Regulation (EC) No 521/2008 – OJ L302, 19.11.2011, p. 3



Article 12.7 is amended as follows:

The second and third subparagraphs are replaced by the following:

“If the assessment determines that the in-kind contribution from the participant legal entities does not reach the required level, the Commission may reduce its contribution the following year.

If it is determined that, for 2 consecutive years, the in-kind contribution from the participant legal entities does not reach the required level the Commission may propose to the Council to terminate the FCH Joint Undertaking”.

Article 15, the following paragraph is added:

“The Governing Board may decide to specify a minimum level of funding for each category of participant for a particular Call for proposals”

3. DEFINITIONS

Industry participants for this purpose are those legal entities pursuing an economic activity with a profit objective, or an affiliated entity to such a legal entity (Grant Agreement Article II.1).

Research participants for this purpose are those legal entities established as a non-profit organisation which carries out research or technological development as one of its main objectives and which does not fall under the definition of *industry* (Grant Agreement Article II.1).

Eligible costs are direct and indirect costs incurred during the project according to Annex II of the FCH JU Grant Agreement.

In particular, eligible costs should be actual and incurred during the duration of the project (with some exceptions), determined in accordance with the usual accounting principles and practices of the participant, respecting the accounting rules of the State in which the participant is established, used for the sole purpose of achieving the objectives of the project and its expected results, consistent with the principles of economy, efficiency and effectiveness, recorded in the accounts of the participant, and must be indicated in the estimated overall budget in Annex I of the Grant Agreement.

In-kind contributions are the eligible costs of the legal entities participating in the activities and not reimbursed by the FCH JU.

³ 14th of July 2008



4. MONITORING AND CALCULATION METHOD OF THE LEVEL OF IN-KIND CONTRIBUTION

4.1 The key stages for the monitoring of the level of in-kind contribution at operational level

The calculation of the level of in-kind contribution, including matching requirement, is carried out at call level.

Three stages are taken into consideration at operational level to evaluate the level of in-kind contribution. These stages aim at improving the 'quality' of in-kind contribution data by replacing the initial budget figures with the best available information. In particular:

- (1) **First stage:** after evaluation of proposals received for a specific call, the level of in-kind contribution for this call is calculated based on the **budget** figures from the participants' proposals passing the thresholds.
- (2) **Second stage:** at the signature of Grant Agreements for a specific call, the level of in-kind contribution for this call is updated with the **contractual budget** figures.
- (3) **Third stage (Follow-up)** for the running projects, the level of in-kind contribution is updated in case of Grant Agreement amendments affecting the budget figures. For finished projects, the budget figures are updated with **actual** costs and the results of ex-post **audits**, if applicable. In addition, in case of procurement for operational activities, the individually committed amount will be considered.

Each financial year (upon approval of this methodology), a **report on the aggregated level of in-kind contribution** will be prepared by the Programme Office. This report will show, per call and project, the level of in-kind contribution taking into consideration the latest available information following the three stages above. The cut-off date in each financial year for the preparation of the report will be the same as for the preparation of the provisional accounts (20 days before the deadline for submission of provisional accounts according to section 6). This report will be validated by the Authorising Officer and submitted to the independent auditor for the assessment requested in article 12.7 of the FCH JU Statutes (section 5).

4.2 Calculation method of the level of in-kind contribution (including requirement for matching)

A more detailed explanation of the calculation method for each stage is below.

(1) First stage.

Calculations are based on the budget data (forms A3.1) as coming from all the proposals above thresholds (to be considered for funding), and if necessary, clarifications might be requested from the applicants. The calculation is done in an Excel-based tool with different sheets per project, each type of participant and each type of funding scheme/activities.



'Entitled to receive' contribution is calculated initially with the maximum funding rates for direct costs as published in the Call for proposals. The resulting amount is compared with 'Total eligible costs' and 'Requested contribution' as stated in the proposal. The biggest difference ('Total eligible costs' – 'Requested contribution' OR 'Total eligible costs' – 'Entitled to receive') is considered in-kind contribution, as it might create supplementary in-kind contribution, due to applicants requesting less funds than they are entitled to receive. The final result is a compilation sheet of budget data at call level.

For the treatment of receipts declared by participants (i.e. inclusion or not in the calculation of the in-kind contribution) reference is made in section 4.3.

In order to comply with the matching requirement, 'Total requested contribution' per call is then compared with 'Total in-kind contribution' of all industry participants, including SMEs for the calculations made before the Amendment to the Council regulation entered into force (OR 'Total in-kind contribution of all legal entities participating in the activities' since the Amendment to the Council Regulation is in force). In-kind contribution from the Joint Research Centre (JRC) is not considered.

In case of negative mismatch, a reduction is applied fair and proportionally to the requested financial contribution of all participants into the call, by multiplying each of the funding rates of direct costs by a 'correction factor' to be approved by the Governing Board. Therefore, revised maximum funding rates are taken into consideration for calculating the 'Recommended contribution' for each project. These revised maximum funding rates are the basis for the Negotiation Mandate (later on reflected in the Grant Agreement).

If a negative mismatch or a surplus has been carried-over from the previous call/s, the Governing Board shall take this fact into consideration when deciding on the revised maximum funding rates for the current call.

(2) Second stage

After a decision is taken by the GB on the revised maximum funding rates (as a result of application of the 'correction factor'), the negotiation process starts. During negotiations, the budget undergoes modifications in terms of distribution per participant and cost categories. Therefore, after negotiations a new assessment of the in-kind contributions is carried out taking into consideration the contractual budget figures from all signed Grant Agreements for the current call. The calculation method is the same as to the one carried out in the first stage but using the data from signed Grant Agreements. The revised in-kind contribution figures (including situation of the 'matching') will be then taken into consideration, if timely possible, before any decision is taken for the future calls.

(3) Third stage (Follow-up)

During the life-time of a project, changes in the total budget may occur (e.g. amendments to the Grant Agreement which affect budget). Moreover, at the end of the project, budget figures will be replaced by actual cost figures (once the final cost claimed is approved) including the results of ex-post audits, if applicable. The in-kind contribution level of each running/finalised project is



considered every year before taking any decision on the correction factor in the new call. It is therefore necessary to use the best available data when taking such decision. Any final change in total (budget/actual) costs for a specific project should be then recorded and new calculation of in-kind contribution produced. Intermediary cost claims cannot be considered in the in-kind calculation update, as total costs will not be affected.

In addition, in case of procurement for operational activities, the individually committed amount will be considered.

4.3 Treatment of other contributions (e.g. national or regional contributions to FCH-JU projects)

Several questions were raised concerning the interpretation and application of the provisions of Article 12.3 of the Statutes of the Council Regulation No. 521/2008 related to other contributions to co-funding of activities⁴ of the FCH JU and their consideration for the calculation of the in-kind contribution. The Governing Board adopted a cautious approach for the calculation of the in-kind contributions, in particular concerning the matching requirement and the correction factor to the funding rates:

- For the 2008 and 2009 Calls, it decided to deduct the estimated receipts from the calculation of in-kind contributions of participants.
- In June 2010, it requested the Commission to consider the clarification of the text related to the treatment of other contributions to co-funding of activities, in the framework of a legislative proposal amending the Council Regulation No. 521/2008.
- For the 2010 Call, as the Council Regulation No. 521/2008 was in the process to be amended, it decided henceforth to consider other contributions for the calculation of the in-kind contributions from the participants.

The amended version of the Council Regulation clarifies the issue. Other contributions to co-funding of activities will be considered as receipts in accordance with the Rules of Participation of the Seventh Framework Programme. Therefore, receipts can indeed be included in the calculation of the in-kind contribution, as additional support to participants from national and regional programmes.

5. ASSESSMENT BY INDEPENDENT AUDITOR

According to article 12.7 of the FCH Statues, the level of the in-kind contributions, calculated on a yearly basis, shall be assessed once a year by an independent auditor and the results presented to the Commission within four months of the end of each financial year.

⁴ "Other contributions to co-funding of activities will be considered as receipts in accordance with the Rules of Participation of the Seventh Framework Programme"

5.1 The scope of the assessment (i.e. 'what')

The assessment requested by article 12.7 will consist in verifying that the FCH JU has prepared a correct report on the aggregated level of the in-kind contributions based on the approved methodology (*section 4*).

In particular, the assessment will comprise checks on:

- (1) The completeness of the report (i.e. all projects from the calls considered in section 4).
- (2) The quality of data on a sample basis (i.e. correctness of amounts)
- (3) The exclusion of in-kind contribution from the Joint Research Centre (JRC) as indicated in section 4.2 of the methodology.
- (4) The adequacy of the internal procedures of the Programme Office to update the relevant data (i.e. for finalised projects, update from budget to actual costs, including audit results if available and for on-going projects, update of the impact that amendments of Grant Agreements may have on the project costs)
- (5) The accuracy of the calculation of the aggregated level of in kind contributions.

The assessment will not include the audit of the eligibility of the costs of each individual project making up the aggregated level of the in-kind contributions. Indeed, in-kind contributions are the participants' project eligible costs not reimbursed by the FCH JU. As stipulated in the FCH JU model grant agreement and the Ex-post audit strategy, the large majority of those costs will be checked by auditors through 'Certificates on Financial Statements'⁵ (ex-ante control before validation of cost claim, if above pre-defined thresholds) and/or financial audits⁶ (ex-post control after validation of cost claims, on a sample basis). Therefore, it is not necessary neither cost efficient to check again the level of in-kind contribution of each individual cost claim in the context of the assessment requested by article 12.7.

5.2 The independent auditor (i.e. 'who')

As stipulated in article 12.7, the assessment shall be performed by an independent auditor. Taking into consideration the scope of the assessment as well as the need to be independent from the aspects to be assessed, the Governing Board decided in its meeting on 22 of November that the assessment would be jointly carried out by the FCH JU Internal Audit Capability (IAC) and the Commission's Internal Audit Service (IAS).

⁵ FCH JU Model Grant Agreement – Annex II , point II.4.4: "A certificate on the financial statements shall be submitted by each beneficiary whose total FCH JU financial contribution , claimed in the form of reimbursement of costs ,exceeds 50.000 EUR and for claims of interim payments when the amount of the FCH JU financial contribution claimed by a beneficiary under the form of reimbursement of costs is equal or superior to EUR 325.000, when cumulated with all previous payments for which a certificate on the financial statements has not been submitted."

⁶ FCH JU ex-post audit strategy addresses through 'risk-based audits' those cost claims not subject to 'Certificates on Financial Statements' (CFS) either because costs are below thresholds or in cases of participants not receiving FCH JU funds but providing in-kind contributions only. In addition, cost claims subject to CFS may be also selected for either 'representative' or 'risk-based' ex-post audits.



The Director General of the IAS accepted on 22 December 2011⁷ to carry out the first assessment jointly with the IAC of the FCH JU. After this first experience, the Board will explore with the IAS and the IAC the most efficient way of complying with article 12.7 of the Statutes in future years taking into consideration the size of the FCH JU and the existent audit layers.

The IAS and the IAC are independent auditors. The Audit Charters of the IAC and the IAS were approved by the Executive Director and the Governing Board, respectively. They are based on 'International Standards for the Professional Practice of Internal Auditing' (IIA Standards⁸) and take due account of independence and objectivity issues.

In particular, according to section 3 (Independence and Objectivity⁹) of the Audit Charters, *'No authority may interfere in the conduct of IAC/IAS work or ask the IAC/IAS to make any alterations to the content of audit reports.... In order to ensure objectivity in their opinions and avoid conflict of interest, the IAC/IAS must preserve their independence in relation to the activities and operations they review'*¹⁰.

To preserve the independence of the IAC and the IAS, section 5 (Authority) of the Audit Charters state that *'The IAC/IAS is not authorised to perform any operational duties of/for the JU, initiate or approve financial transactions (external to the IAC function) or Direct the activities of any staff member not employed by the internal auditing capability/IAS, except to the extent such staff members have been appropriately assigned to auditing teams or to otherwise assist the IAC/IAS'*.

In terms of organizational independence, the IAS is under the authority of the Governing Board. The IAS shall be accountable to the Governing Board and report to the Executive Director. The IAC is under the authority of the Executive Director and according to the IAC Audit Charter (section 3), *'In exceptional circumstances, when, on the basis of his/her formal assurance and consultancy work, the IAC concludes that the Executive Director has accepted an unreasonable high risk, he/she may, after informing the Executive Director, report his/her concerns to the JU's Governing Board'*.

5.3 The timing to present the results of the assessment (i.e. 'when')

According to Article 12.7 of the Statutes of the FCH JU, *"...The results of the assessment shall be presented to the Commission within four months of the end of each financial year"*. Therefore, upon approval by the GB of this methodology (expected before March 2012), the first assessment will refer to the financial year 2011 and will be presented to the Commission by April 2012.

Following the same logic, yearly assessments will be performed by the independent auditor and the results presented to the Commission by April of N+1.

⁷ Note of DG IAS (Mr Brian Gray) Ref. Ares (2011) 1398644 of 22 December 2011

⁸ <http://www.theiia.org/guidance/standards-and-guidance/ippf/standards/>

⁹ IIA Standards on Independence and Objectivity 1100, 1110, 1110.A1 and 1111

¹⁰ IIA Standards 1120 on Individual Objectivity and 1130 on Impairments to Independence or Objectivity.

6. ACCOUNTING TREATMENT

6.1 Accounting rules

EC Accounting rule no. 1 on group accounting dated 15 December 2009 applies to FCH JU and lays down the level of consolidation into the EU accounts as well as it clarifies the level of control by the EU. In accounting terms FCH JU is therefore considered a joint venture and is to use the equity method to account for the contributions from members.

In addition the Accounting officer of the European Commission has issued a recommendation dated 3 June 2010 on how to present the members contributions in the annual accounts¹¹. This recommendation includes in point 1.2 the concept of validation of in-kind contributions by the Governing Board. The Statutes of FCH JU do not require the Governing Board to validate the in-kind contributions. In practice it is the Authorising Officer who formally accepts the submitted costs in a cost statement. As FCH JU has defined that in-kind contributions are the accepted eligible project costs that are not reimbursed to the participants it is in fact the AO who validates the in-kind contribution.

6.2 Accounting of in-kind contributions

For each financial year the FCH JU Annual accounts will identify the in-kind contribution of legal entities participating in the funded projects.

The in-kind contribution will at the early stage of the projects be recorded based on the budgeted eligible costs (as reflected in the signed Grant Agreements) minus FCH funding. After acceptance of cost statements these estimates will be replaced by accepted eligible costs minus FCH funding.

The notes to the FCH JU annual accounts will include each year a table clearly specifying the "quality" of in-kind contributions per FCH member.

Year 20XX	Accumulated in-kind contributions At 1/01/20xx (A)	Received in-kind contributions (B)	Validated in-kind contributions (C)	Adjustments (D)	Total (A)+(B)+(C)+(D)
Industry Grouping					
Research Grouping					

¹¹ ARES(2010)303380 – 03/06/2010 for the attention of the accounting officers of ARTEMIS, CLEAN SKY, IMI and SESAR



Received in-kind contributions are contributions based on budgeted eligible costs (best available estimate). If a cost statement is received (but not validated) and is formally correct the data from the cost statement will replace the pro-rata temporis estimate from the programme office.

Validated in-kind contributions are actual contributions based on declared and accepted eligible costs minus FCH funding. The authorising officer will send upon each validation a copy of the validated in-kind contributions to the accountant.

Adjustments (after validation) can be done upwards or downwards based on accepted requests submitted by participants, audit results or clerical mistakes.

Presentation in FCH Balance sheet: Validated in-kind contributions from the legal entities participating in projects will be systematically recorded on the FCH Balance sheet under the heading of Net assets for the FCH JU members (the Industry Grouping and the Research Grouping). Received but not validated in-kind contributions will be recorded as Liabilities on the FCH Balance sheet.

Timing

All changes to the in-kind contributions will be taken into account and shown in the Provisional and Final Accounts for a given year if received 20 days before the deadline for submission of Provisional and Final Accounts, respectively. Later changes can only be shown the year after.

Audit

Following article 124 of the FCH JU Financial Rules, *“The Court of Auditors shall scrutinize the accounts of the FCH Joint Undertaking in accordance with Article 248 of the EC Treaty”*.



23 JAN. 2015
Brussels,
FCH JU 2015 D2983

NOTE FOR THE ATTENTION OF

Mr Frank Zander (KPMG manager responsible to carry out the assessment)

Subject: Report on the aggregated level of in-kind contributions

I, the undersigned Bert De Colvenaer, hereby certify that the aggregated level of in-kind contributions at 31/12/2014 (i.e. cut-off date used for the preparation of the 2014 provisional accounts) amounts to **485,888,775.72 €** as detailed in the attached report.

This amount corresponds to the aggregated level of in-kind contributions taking into consideration the latest available information in accordance with the 'FCH JU Methodology for in-kind contributions' approved by the Governing Board on 10 February 2012.

Bert DE COLVENAER
Executive Director FCH JU

Enclosures:

- Note to the file
- Report on the aggregated level of in-kind contributions as of 31/12/2014

Cc: Mr Olaf Buske (KPMG partner)
Ms Elena CLIMENT (FCH JU Internal Audit Capability - IAC)
Jean Luc DELPLANCKE (Head of Operations, FCH JU)
Mirela ATANASIU (Project Manager, FCH JU)



23 JAN. 2015
Brussels,
FCH JU 2015 INT594

NOTE TO THE FILE

Report on the aggregated level of in-kind contributions at 31/12/2014

According to the FCH JU Methodology for in-kind contributions, a report on the aggregated level of in-kind contributions has to be prepared by the Programme Office for the same cut-off date as the preparation of the provisional accounts (e.g. 31/12/2014 or 20 days before the deadline of submission of provisional accounts).

The report should follow the methodology of calculation of the in-kind contributions as adopted by the Governing Board and has to show the level of in-kind contributions per call and project, taking into account the latest available information at the cut-off date (categorising the projects in one of the 3 stages defined by the methodology). The procurement studies are not covered by this report, as they don't have any associated costs as in-kind contributions.

All call for proposals under FP7 legacy have been published and grants awarded accordingly; therefore no negotiations are currently opened, meaning that there are no projects in 1st stage.

For all projects (from calls for proposals published under AIPs 2008-2013) the figures presented are the budget data estimated per project in the latest Grant Preparation Forms (GPFs) and related Annex 1 (Description of Work) as uploaded in the grant monitoring IT tool CPM (Contract and Project Management tool). These figures reflect either the status at the signature of the grant agreement (2nd stage projects, according to the above mentioned methodology) or after the amendments which imply modifications of budget and final payment letters for finished projects (3rd stage respectively). Same figures are reflected in the paper version of the documents (signed grant agreements, amendments or payment letters).

The data have been obtained from CORDA database (dump of data at 08/01/2015). For finished projects, these data have been cross-checked with final payments database from ABAC system, provided to us by the financial department; therefore, the final figures reported here represent the final payments data which replace the budget data from CORDA. It should be mentioned that CORDA database is not synchronised with ABAC and it doesn't contain cost figures, but only estimated budget figures from the grants.

In addition, adjustments following ex-post audits have been taken into account were implemented (i.e. recovery orders and consequent update of validated in-kind contributions)

in the finished projects by the cut-off date (based on the information provided by the EPA team on 19/01/2015).

This report is the fourth prepared by the Programme Office/Operational Unit and it addresses also the main recommendations of the last year findings for mitigating the risk errors. Accordingly, we confirm that the proposed adjustments on the level of in-kind contributions from 2014 assessment were automatically implemented during call 2013 negotiations, but also by using the most accurate data from CORDA database and stopping to use the 'manual' excel tool developed in-house for previous exercises; it should be mentioned that this tool was only necessary in previous exercises, due to projects in different stages and difficulty to get the accurate data in a single document, which now is not the case anymore.

In conclusion, the aggregated level of the in-kind contributions at the 31/12/2014 amounts to 485,888,775.72 €, as detailed for the different calls below (the further details per project are presented in the aggregated annexed table):

Calls	Total costs (€)	FCH contribution (€)	In-kind contribution, excl JRC (€)	JRC contribution (€)
2008-1	55,563,758.98	24,661,887.84	30,639,454.31	262,416.83
2009-1	175,737,162.10	69,427,083.03	104,286,426.45	2,023,652.64
2010-1	175,795,787.20	79,259,353.80	95,663,534.24	872,899.20
2011-1	233,296,120.60	117,432,723.80	113,926,660.67	1,936,736.20
2012-1	124,846,527.00	68,002,176.60	55,729,650.99	1,114,699.40
2013-1	125,881,730.60	66,842,972.60	58,632,366.79	406,391.20
2013-2	42,443,187.80	15,432,505.53	27,010,682.27	0.00
TOTAL	933,564,274.40	441,058,703.20	485,888,775.72	6,616,795.47



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General Engagement Terms

for
Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften
[German Public Auditors and Public Audit Firms]
as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

(1) *The liability limitation of § ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.*

(2) *Liability for negligence; An individual case of damages*

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) *Preclusive deadlines*

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence.

The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

- (1) A subsequent amendment or abridgment of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.
- (2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.
- (3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

- (1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.
- (2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.
- (3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:
 - a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
 - b) examination of tax assessments in relation to the taxes mentioned in (a)
 - c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
 - d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
 - e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

- a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
- c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

- (1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.
- (2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.
- (3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

- (1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.
- (2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

- (1) The Wirtschaftsprüfer retains, for ten years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.
- (2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.