



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 (1) 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”*.