

**BY-LAWS OF THE EUROPEAN INDUSTRY GROUPING  
FOR A HYDROGEN AND FUEL CELL JOINT TECHNOLOGY  
INITIATIVE**

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**STATUTES OF “THE GROUPING”**

**FORMATION**

**Article 1 - Designation**

As a result of the activities of the Hydrogen and Fuel Cell Technology Platform, an international not-for-profit association is hereby formed under the name of “the European Industry Grouping for a Hydrogen and Fuel Cell Joint Technology Initiative”, in accordance with Art. 3 of the statutes hereinafter referred to as “the Grouping”. This association is governed by the Belgian law of May 2, 2002.

**Article 2 - Location**

The head office of “the Grouping” is located at Avenue Marcel Thiry, 204, Brussels, Belgium. The head office may be transferred to other premises in Belgium pursuant to a decision of the majority of the Board.

**Article 3 - Objectives**

The establishment of “the Grouping” relates to the creation of a European public private partnership called Joint Technology Initiative (JTI) according to Art. 171 of the EC Treaty. The scope of the JTI is to accelerate the hydrogen and fuel cell technology deployment process with benefits for energy security, the environment and European competitiveness in the framework of funded research and development under the Seventh Framework Program.

“The Grouping” will, *inter alia*:

- Represent the interests of the industry within the JTI
- Ensure coordinated industry position on the JTI process and activities
- Establish application oriented industry Committees to support specific industry needs
- Elect and nominate industry representatives for the JTI governing board
- Regularly review JTI progress and make proposals for improvement if and when needed

The activities which will be performed by the association in order to achieve its objective are the holding of Board meetings, the organization of Committee meetings, the yearly General Assembly and the production of documents/minutes for internal communication

The services of the Grouping are provided to all members on an individual basis.

## **MEMBERSHIP**

### **Article 4 – Eligibility Criteria**

Membership of “the Grouping” is open to companies meeting each of the following criteria:

1. (i) Companies established in a Member State of the European Union, according to Art. 48 of the EC Treaty<sup>1</sup> or (ii) companies having their registered office, central or principal state of business within a State (ii) which is a contracting party to the European Economic Area Agreement or (iii) which is an Associated or Candidate Country to the European Union;
2. Companies with relevant activities in research & development, demonstration, industrialization or deployment of hydrogen and fuel cells and/or concrete plans to do so in the near future within the European Union or the European Economic Area;
3. Companies sharing and supporting the objectives of the JTI for Hydrogen and Fuel Cell Technologies

Other types of legal entities set up by a number of companies with the exclusive objective to join “the Grouping” can be eligible for membership if the eligibility criteria described in Art. 4 are satisfied.

### **Article 5 – Application Procedure**

Any company wishing to join “the Grouping” shall comply with any and all guidelines for membership that are in the statutes of “the Grouping”.

Application for membership shall be directed to the Secretariat of “the Grouping”. Upon receipt of the application, the Secretariat of “the Grouping” will submit such application to the Board, which can make a determination to acceptance. In addition to the criteria stipulated in Art. 4, a company will be deemed ineligible for membership only if the Board has material reasons to believe that the

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<sup>1</sup> Treaty Establishing the European Community, as amended by subsequent Treaties, Rome 25 March 1957.

candidate is not a legitimate business or that its membership would damage the reputation on the work of the Grouping.

In case of ineligibility, the General Assembly decides on the rejection of the company membership upon a proposal of the Board, in accordance to Art. 12(d).

The company membership is delayed until the decision of the General Assembly.

## **Article 6 – Resignation and Exclusion**

### **Article 6.1 – Resignation**

Any member wishing to resign from “the Grouping” must provide written notice to the Secretariat thereof at least three months prior to and effective by the association’s financial year-end.

### **Article 6.2 - Exclusion**

A member may be excluded from “the Grouping” on a proposal of the Board which is voted in favour by the General Assembly meeting the presence quorum stated in Art.14, either by reason of non-payment of dues for a period exceeding six months after they become due, or in the event of a member failing to comply with the rules and regulations of “the Grouping” and the criteria for membership (Art.4) or any other criteria conflicting with the legitimate interest of “the Grouping”.

In any case, the Board shall suspend the membership rights of the concerned company until decision of the General Assembly. Prior to any such vote, the member will have the right to explain itself to the General Assembly.

If a company becomes bankrupt or otherwise insolvent, it is automatically excluded from “the Grouping”.

### **Article 6.3 – Access to documentation**

Any member which ceases to be part of “the Grouping” for any reason will no longer have any right or claim of access to “the Grouping” funds or documentation after the membership termination being effective.

## **BUDGET/ DUES**

### **Article 7- Dues**

“The Grouping” members’ dues will consist of:

- (a) A fixed annual amount to cover the running cost of “the Grouping” as proposed by the Board on a yearly basis and approved by the General Assembly.
- (b) A fixed annual amount to contribute to the operational costs of the Joint Technology Initiative Programme Office as proposed by the Board on yearly basis and approved by the General Assembly.

The sum of the annual amounts (a) and (b) is limited to a maximum of 50.000 Euro per member. In accordance with the European Community definition of Small and Micro sized Enterprises<sup>2</sup>, the sum of the annual amounts (a) and (b) for Small and Micro enterprises will be 50% of the fee paid by the Large Corporations and Medium enterprises.

As leverage of this contribution, a member of “the Grouping” will be excluded from the payment of any JTI project fee which is a contribution to the administrative project cost of individual programs under the frame of the JTI<sup>3</sup>.

New members shall pay the full dues for the year in which they are admitted. If a member resigns or is excluded from “the Grouping”, all dues shall remain payable for the year in which the resignation or exclusion is effective.

The total shall be payable by the members within sixty days of the issuance of the invoice thereof.

## **Article 8 – Liability**

Each member is obliged to pay the amount of the dues proposed by the Board and approved annually by the General Assembly in accordance with Art.7, but it is not liable for any other financial or other commitments of “the Grouping”.

## **Article 9 – Financial Year**

The financial year-end of “ the Grouping” is December 31. The first year-end is December 31, 2007.

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<sup>3</sup> Definition: [http://ec.europa.eu/enterprise/enterprise\\_policy/sme\\_definition/index\\_en.htm](http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm), recommendation 2003/361/EC regarding the SME definition which replaced [Recommendation 96/280/EC](#) as from 1 January 2005.

<sup>3</sup> Upon inclusion of this provision in the JTI statutes document by the governing board of the JTI.

## **ORGANIZATION**

### **Article 10 - Structure**

The structure of the organization shall be as follows:

- (a) The General Assembly
- (b) The Board (being elected by the General Assembly)
- (c) The Secretariat (being appointed by the Board)
- (d) The Committees (as approved by the General Assembly)

## **GENERAL ASSEMBLY**

### **Article 11 – Composition**

- a) The General Assembly of “the Grouping” shall be composed of all members of “the Grouping”, each member having one vote.

The General Assembly shall, as a matter of routine, be convened by the Board of “the Grouping” at least once a year within six months after the financial year-end.

An extraordinary General Assembly may be convened whenever necessary, at the discretion of the Board or at the request of not less than 30% of the members.

- b) The notice of the proposed agenda for the General Assembly shall be circulated by the Board to the members at least twenty working days prior to the date of the General Assembly, by ordinary letter or email.
- c) The members shall be free to suggest any other items to be added to the proposed agenda. The final agenda shall be circulated to the members not less than ten working days before the General Assembly.
- d) No decision may be taken by the General Assembly on an item not included in the final agenda unless all members are present and unanimously vote for the inclusion of such an item into the agenda
- e) Members shall be represented at the General Assembly by a duly authorized executive. The person must be indicated by the member company to the Secretariat at the moment of accessing in “the Grouping”. If the member company wants to change its representative, it should notify the Secretariat at least ten days in advance to the upcoming General Assembly.

## **Article 12 – Responsibilities and Powers**

The powers of the General Assembly are to:

- a) Elect the members of the Board, and, should the case arise, dismiss them.
- b) Approve the Board's report on the activities of "the Grouping" and the progress associated to the JTI during the previous year and plans for the coming year.
- c) Approve the annual account of the previous year and the budget for the coming year
- d) Decide on the exclusion of members and rejection of companies upon proposal of the Board.
- e) Decide on amendments of the statutes of "the Grouping" and dissolution of "the Grouping".
- f) Deal with other relevant business.

The General Assembly will adopt decisions according to the presence and decision quorum requirements as stated in Art. 14, except in the following cases when two-third majority decision quorum is required:

- Approving the budget
- Exclusion of members and rejection of companies
- Dissolution of "the Grouping"
- Changes to the Statutes
- Election of the Board members

## **Article 13 – Organization of General Assembly Meetings**

The meeting is presided by the Chairperson, who normally should be the chair of the Board. If the Chairperson is unable to attend, one of the Vice-Chairpersons of the association shall take the chair.

A member unable to attend a General Assembly meeting may give the power of attorney to another member to participate in the meeting and exercise its vote. A member can only represent one other member. Notification of the proxy has to be sent to the Secretariat in advance to the General Assembly.

The Minutes of the meeting are drafted by the Secretariat, sent within 10 days to the members who were present at the meeting for their comments, signed by the Chairperson distributed to all the members as final version within 30 days and the original is kept in a separate register at the head office.

#### **Article 14– Presence and Decision Quorum Requirements**

In general, decisions are taken by the majority of members present or represented, unless provided otherwise in the statutes of “the Grouping”.

In order to represent a quorum and thus being able to take decisions at a General Assembly more than half of the members must be present. In the event that the presence quorum is not met, the General Assembly shall be convened a second time, with not less than two weeks’ notice, stating the time and place for the meeting. In this case the General Assembly will be held without the presence quorum requirements.

### **THE BOARD**

#### **Article 15– Composition and Rotation**

“The Grouping” is administered by a Board composed of the required number of physical persons to represent “the Grouping” in the governing board of the JTI (as defined in Art. 16(b)), who will be elected among the representatives of the members of “the Grouping”.

The Board members are elected by the General Assembly representing all major stakeholders in the hydrogen and fuel cell field and applications as specified in Art. 19. The Board shall to the extent possible reflect a balanced composition with regard to members’ nationalities, gender and industrial sectors.

The Board will designate a Chairperson among its members.

The members of the Board shall be duly authorized executive of their respective companies who are highly committed persons and are prepared to dedicate appropriate amount of effort, time and presence to the activities of “the Grouping”.

The Board members are appointed for a term of 2 years.

Rotation shall be undertaken for a maximum of 2/3 of the Board members, with possibility of re-election of at least 1/3 of the Board members to ensure continuity. The term for any individual shall, however, be limited to a maximum of 4 years.

## **Article 16– Responsibilities & Powers**

The Board has the most extensive powers for the administration and management of “the Grouping”, with the exception of the powers reserved to the General Assembly. More specifically, the Board will, *inter alia*:

- Ensure that upon request, any member of “the Grouping” can have access to relevant documentation
- Prepare the annual accounts of “the Grouping” for approval by the General Assembly
- Prepare the annual budget of “the Grouping” for approval by the General Assembly

### **a) Representation at the level of “the Grouping”**

Representation of “the Grouping” towards any and all third parties is by two members of the Board acting jointly.

### **b) Representation at the level of Governing Board of the JTI**

All Board members of the Grouping shall be members of the governing board of the JTI.

In this capacity, the Board members of the Grouping supervise the activities of the JTI Programme Office in order to ensure that its actions are in accordance with the objectives of the JTI Programme.

The Board members shall, in this respect, *inter alia*:

- Consult with the members of “the Grouping” at least every time before and after the governing board meeting of the JTI and in accordance to Art. 16. This shall be done through communication with the respective Committee.
- Reach agreement within “the Grouping” on issues to be discussed at the governing board of the JTI, and in accordance with Art. 17(d) this shall subsequently act in accordance with this decision when representing the Grouping in the governing board of the JTI. On issues that have not yet been agreed upon in accordance with Art. 17(d), the Board members are allowed to discuss but not to take any official position.

- Report to the members of “the Grouping” on the progress associated to the JTI in accordance with Art. 12(b).

### **Article 17 – Board Meetings**

- a) The Board will be convened by the Chairperson at least four times a year and upon request of any Board member on the basis of thirty days notice.
- b) In the event of a Board members’ absence, the absent member of the Board may nominate another member of the Board to exercise his/her vote before the date of the Board meeting with a written proxy to the Chairperson and the Secretariat with a copy to the designated person. A Board member can only represent one other Board member.
- c) The agenda for the Board meetings shall be circulated to the Board members at least ten working days in advance, through letter or emails.
- d) Decisions of the Board need a majority of two thirds of all Board members.
- e) Meetings of the Board should be held in person. If a Board Member is unable to participate in person he/she may participate by video or telephone allowing simultaneous conversation. A member of the Board taking part in a Board meeting through such means shall be deemed to be present in person at the meeting and shall be entitled to vote.
- f) The minutes of Board meetings shall be drafted by the Secretariat, and within ten days sent for comments to the Board members who were present at the meeting. The minutes shall be signed by the Chairperson distributed in its final version to the members of the Board within thirty days and kept in a separate register at the head office within thirty days after the Board meeting. The outcome of the Board meetings shall be distributed to the members of “the Grouping” for information.

## **THE SECRETARIAT**

### **Article 18**

- a) The Secretariat of “the Grouping”, which may be a legal entity, a management company or individuals, is appointed by the Board for a term of 2 years, renewable each time for terms of 2 years.
- b) The Secretariat shall be responsible, *inter alia*, for the organization of meetings, the execution of the Groupings’ agenda and will support the activity of the Board and the General Assembly, as requested by the Board.

- a) The Secretariat will attend the meetings. The Secretariat will support the meetings as requested by the Board.

## **THE COMMITTEES**

### **Article 19**

The General Assembly will establish the Committees. The purpose of the Committees is coordination of specific industries within “the Grouping” and communication with the members of the Board.

The following Committees shall be established, *inter alia*:

- First group: Automotive and other Transportation
- Second group: Stationary Power Generation, including residential power generation
- Third group: Portable and Micro Power
- Fourth group: Hydrogen Production & Distribution
- Fifth group: Small & Micro Enterprises
- Sixth group: Hydrogen and Fuel Cell Components Supply Industry

In any event, the structure of the Committees shall take into consideration the structure of the Implementation Plan and, once being adopted by the JTI Governing Board, be aligned to the JTI Action Plan.

The Committees shall be composed by representatives of the members of “the Grouping”. Members of “the Grouping” participate to the Committees according their field of hydrogen and fuel cells applications. Each Committee shall be presided over by a member of the Board who will act as leader of the Committee to ensure appropriate representation and communication.

## **AMENDMENT OF THE STATUTES AND DISSOLUTION OF THE ASSOCIATION**

### **Article 20 - Amendment**

Any proposal for the amendment of these statutes shall be submitted in writing to the Board in order to include it in the agenda for the next General Assembly. In order the Board to consider this proposal, such a proposal has to come at least

from 25% of the members. The amendment of the statutes shall be adopted by the General Assembly in accordance with Art. 12.

### **Article 21 – Dissolution**

Any proposal for the dissolution of “the Grouping” shall be sent to the Chairperson who will submit it to the Board in order to include it in the agenda for the next General Assembly. In order the Board to consider this proposal, such a proposal has to come from at least 25% of the members. Dissolution of the JTI Industry Grouping shall be adopted by two-third majority of the members present or represented.

In case of dissolution of “the Grouping”, the Board shall act as liquidator and decide on the distribution of any balance remaining after discharging the Grouping’s liabilities. This distribution will be done in proportion to the contributions paid by the members as far as the remaining balance is concerning the members’ contribution.

If the creation of a European Public Private Partnership together with the European Commission cannot be achieved, or should the JTI not enter into force, the members of “the Grouping” shall initiate the procedure of dissolution of “the Grouping” in accordance with Art. 21. Should the JTI not enter into force, the dissolution procedure of “the Grouping” begins once confirmation that it will not enter into force is received.

### **Article 22 - Language**

The working language of “the Grouping” shall be English.

### **Article 23 – Applicable law**

Everything not provided for in the present statutes must conform to the law of Belgium.

### **Annex 1 - Structure of “the Grouping”**

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