

Brussels, 15 December 2009

Mr. Janez Potočnik
Commissioner for Science and Research
Ms. Viviane Reding
Commissioner for Information Society
and Media

European Commission
B-1049 Brussels

Dear Commissioners,

On behalf of the industrial leaders of the JTIs and Recovery Plan PPPs, whom you met on 16 July 2009, we, the high-level representatives nominated by the industrial leaders to the JTI Sherpas' Group, would like to thank you for the opportunity to contribute to your deliberations on the future development of JTIs as PPPs in European research.

We have met on four occasions since mid-September and have also consulted extensively throughout the last three months to address fully the range of questions on which you invited the reflections of the industrial partners.


At our last meeting today, we have reached a consensus on our report. We will now proceed to the finalisation of this and will submit it to you before the end of January.


As requested, we have focussed on the future development of JTIs. At the same time, we would point to the need for some quick gains for the existing JTIs.

In the meantime, we have pleasure in now presenting to you our Conclusions and Recommendations.

Yours sincerely,



Eric Dautriat
Clean Sky Initiative

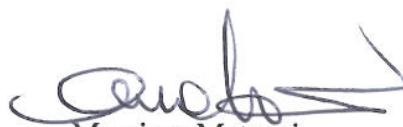

Jonathan Lewis
Fuel Cells and Hydrogen Initiative


Eva Lindgren
Innovative Medicines Initiative


Jan van den Biesen
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Fred van Roosmalen
ENIAC Initiative


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PPP on Energy-Efficient Buildings


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5. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

1. The importance of PPPs for the long-term, sustainable development of the EU is recognised in the Commission's recent Communication on "Mobilising private and public investment for recovery and long-term structural change: developing Public Private Partnerships". This recognises that PPPs can be a valuable instrument, and that PPPs in research differ from PPPs in services, infrastructures, etc. While the latter aim at producing concrete outputs, the outcome of PPPs in research is less predictable and quantifiable, given the uncertainties inherent in research.
2. PPPs in research are a powerful instrument for addressing major issues that impact on Europe's competitiveness and the ability to respond effectively to major socio-economic challenges such as promoting alternative energy sources, supporting sustainable transport and combating climate change. In this regard, there is a clear trend towards increasing use of PPPs in research at national level in Europe and other parts of the world.
3. JTIs represent the first experience with setting up public-private partnerships in research at European level. JTIs bring together EU, national and private resources, know-how and research capabilities, for a period of several years, with the aim of sharing pre-competitive knowledge, achieving critical mass, scale and scope in areas where global competitiveness is at stake, thus ensuring that the EU can lead the world in innovation and developing breakthrough technologies.
4. JTIs define a common vision and implement a common Research Agenda, which details the research and development challenges to be addressed. They each carry out a detailed work programme, directly managing all aspects of the implementation of the JTI programme while respecting the Framework Programme's principles of competition and excellence. The activities of the JTIs are co-funded under the Seventh Framework Programme for Research. Such funding is a novel and major element of the Seventh Framework Programme, as it aims at overcoming fragmentation and tapping Europe's capabilities in highly competitive markets.
5. So far, JTIs have been set up in five areas:
 - public health (the Innovative Medicines Initiative)
 - aeronautics and air transport (the Clean Sky Initiative)
 - embedded computing systems (the ARTEMIS Initiative)
 - nanoelectronics (the ENIAC Initiative)
 - fuel cells and hydrogen (the FCH Initiative)

Moreover, three major PPPs in research have also been launched under the European Economic Recovery Plan. These are in the areas of Factories of the Future, Energy Efficient Buildings and Green Cars.

6. The process of setting up the JTIs has been a novel experience. The first three JTIs are now autonomous and this is, in itself, a major achievement. The fact that it has taken almost two years to reach this point since their formal establishment, in addition to

several years of preparation, shows that considerable energy and work on all sides was required to make it happen.

7. JTIs respond to an important need in relation to industry-driven research that should continue to be pursued in future. Accordingly, it is now essential to draw lessons from the initial experience with setting-up the JTIs, complemented by evidence from national experiences with PPPs in research, as a basis for developing the "ideal house" for JTIs in the long run. Future JTIs should be based on these recommendations.
8. JTIs have been set up under the current financial and administrative rules and regulations of the EU. This has had consequences for:
 - Governance and legal structure: The "Community body" structure implies the application of rules that private partners have experienced as burdensome and disproportionate.

The participation of Member States in some JTIs has also had consequences for:

- Funding: In ARTEMIS and ENIAC where national authorities participate, they have not always delivered as envisaged at the time of adoption of the Council Regulation. Furthermore. In these two JTIs national funding arrangements and different time-to-contract periods complicate participation of industry.
9. The success of the JTIs depends on their ability to respond to developments in the market, in technology and in new knowledge. The JTIs are in fact participating in a tight global race to be first in developing and commercialising the new technologies of the future. Therefore speed, effectiveness and efficiency are of the essence. Within the current framework for public bodies, this has proved to be difficult due to the many checks and balances imposed on JTIs. The current regulations applicable to Community bodies are designed for public bodies, not for partnerships involving private actors. Industry is accustomed to working in a faster-moving, flexible environment, driven by market forces. When confronted by unfamiliar administrative procedures, the risk is that the private partners feel discouraged and lose motivation, thereby putting at risk the capacity of the JTIs to fulfil their missions.
 10. It is therefore necessary to define for the future a stable and reliable framework appropriate for a long-term common endeavour between the public and private partners based on mutual interests. It is essential to draw lessons from the initial experience with setting-up the JTIs and to find short and medium-term solutions so that JTIs can operate in a suitable framework that draws fully on the best of what the public and the private players can provide. Their capacity to deliver is not only essential for EU competitiveness, but also for tackling major societal challenges such as combating climate change or promoting health.

Recommendations

The Group is of the opinion that the future JTIs must be built on a genuine partnership between the public and private players, the cornerstone of which should be mutual trust. This has implications in relation to:

- legal structure and governance arrangements
- operational modalities
- funding
- Member States' participation (in cases where Member States are also partners)

1. Legal Structure and Governance Arrangements

Form should follow function. Several options for the legal structure of the future JTIs can be considered, recognising that each poses potential limitations and risks. A key consideration should be the need for flexibility to adapt to the specific needs of the different industrial sectors.

Private law entity

Establish the JTI as a private law entity in one of the Member States. The JTI would have the same tasks and where possible the same actors as in the current JTIs.

Pros: - more flexibility

- operating in an environment that is more familiar to the private sector
- can allow for better balanced partnership between the EU and industry in setting up JTIs
- operate under rules that have been tested in practice, so providing legal certainty on the consequences of the legal structure

Cons: - no immunities and privileges (such as VAT exemption) and national taxation of wages, leading to increased costs

- the rules applying to the JTIs would vary from one JTI to another depending on the seat; as such the JTIs would be subject to applicable legislation in place in the particular Member State which is hosting the JTI.
- participation of EU in private law entities will bring a number of limitations and substantial delays in the set up process.

Contractual partnerships

Agreements would be concluded between the Commission and a legal entity grouping of R&D actors to carry out programmes within the Framework Programme.

Pros: - flexible agreements

- faster launch path

Cons: - full application of the (sometimes heavy) FP rules and procedures

- no long term commitment of the partners
- less stability

- no real partnership
- no creation of a legal entity underpinning the public-private partnership and therefore less visibility.

Community body under the current Financial and Staff Regulations

The current set-up for JTIs, established as Community bodies located in Brussels.

- Pros:*
- clear commitment of the EU towards the programme
 - harmonised status for all JTIs independent of their location
 - immunities and privileges (such as VAT exemption)
- Cons:*
- burdensome, slow and expensive administrative procedures, which are not geared to small entities
 - no explicit recognition of the concept of PPPs and thus JTIs in the Regulations

Recognition of the PPP as a special body under the revised Financial Regulation

JTIs would be recognised as bodies to which implementation tasks can be delegated.

Under the current Financial Regulation, there are no specific provisions applicable to PPPs. As a consequence, the JTIs had to adapt to the general rules or request derogations from these rules. Rules designed for the public sector cannot be assumed to work for a public-private partnership.

A more positive approach would be to revise the Financial Regulation so that it recognises PPPs explicitly as bodies to which implementation tasks can be delegated and permits the development of tailor-made provisions (e.g. in the staff rules) which can be justified by the specific nature of the (research) activities and the size of the PPP. This should lead to a version of the Framework Financial Regulation adapted to the needs of PPPs.

The Financial Regulation is revised once every three years. Proposals for the next revision are to be brought forward by the Commission by May 2010. The proposal will then be subject to an inter-institutional decision-making procedure before the new Regulation can enter into force, normally in 2012.

- Pros:*
- clear commitment of the EU towards the programme
 - harmonised status for all JTIs independent of their location
 - immunities and privileges (VAT exemption)
 - tailor-made provisions for PPPs, including JTIs
- Cons:*
- work and time needed to set up the new framework

Following on from the above the Sherpas propose the following recommendations regarding the legal structure and governance of the future JTIs.

Recommendation 1.1

JTIs are designed to address major issues that impact on Europe's competitiveness. Recognition of PPPs as special bodies under the revised Framework Financial Regulation would make them fit for purpose and allow them to deliver in an efficient and effective way.

Recommendation 1.2

Seize the opportunity of the current Triennial Review of the Financial Regulation to recognise PPPs, including JTIs, as special bodies and permit the development of tailor-made provisions for them. In this context the opportunity to develop a framework regulation for PPPs under EU law should be explored.

Recommendation 1.3

Move towards a more risk-tolerant and trust-based approach, which would be in line with the Conclusions of the Competitiveness Council of 3 December 2009. This would be an essential pre-condition for effectiveness and efficiency and for the division of responsibilities as proposed in the following section.

Recommendation 1.4

To maintain momentum the European Commission should continue and strengthen its cooperation with the legal entities representing the private sector within the research PPPs under the European Economic Recovery Plan. This should allow for visibility of the cooperation activities and ensure long-term commitment from the public and private sectors, keeping in mind the need for long-term sustainability of these PPPs.

2. Operational Modalities

Recommendation 2.1

Each partner should have its own specifically defined role. In this context, the private partner should be responsible for the operational management, respecting the principles of openness, transparency and sound financial management. The public partner should be responsible for oversight and protection of the public interest and should ensure the necessary long-term stability of the programme. The development of objectives and strategy is a shared area of responsibility.

Recommendation 2.2

Ensure that the staff recruitment process is transparent, but also sufficiently flexible to allow the JTIs to respond rapidly to changing needs. It should be the role of the private partner to select the staff and the role of the public partner to ensure that the principles of open competition and transparency are respected so that the best possible staff can be recruited.

Recommendation 2.3:

Put in place clear and simplified reporting requirements, including proportionate audit and related procedures. These requirements must be defined at the outset so that the JTIs know exactly what is expected and that this is fixed so that they can take the necessary measures to meet these requirements.

Recommendation 2.4:

Develop and implement a sound and transparent proposal evaluation system based on both scientific/technological excellence and industrial relevance.

Recommendation 2.5:

To increase the efficiency and effectiveness of operations, the JTIs need to have access to investment in high-performance information technology tools.

Recommendations 2.6

JTIs should implement measures to more effectively engage the SME community.

3. Funding

JTIs should only be set up in areas where there is a strong commitment of all the parties and on the basis of sufficient levels of funding ('critical mass').

Recommendation 3.1

Define the necessary framework in which Community funding would be made more effective due to better leverage of private investment and national public funding.

Recommendation 3.2:

Ensure funding rates are comparable to those of the Framework Programme.

Recommendation 3.3:

Special consideration should be given to issues such as private-public funds matching and the sustainability of JTI running costs.

4. Involvement of Member States (in cases where Member States are also partners)

Recommendation 4.1:

Member States can be valuable partners in a JTI since they facilitate synergies with national programmes. However, only those countries that can bring added value to a particular JTI should be invited to participate. As all partners, they should honour their initial financial commitments without delays, which has not always been the case. Set the necessary rules so that the interests of all partners are taken into account, allowing them to live up to their commitments.

Recommendation 4.2:

Member States should harmonise time-to-contract periods and timing of funding so as not to delay or jeopardise the start or execution of projects.