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*Plenary sitting*

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**A8-0097/2016**

7.4.2016

# REPORT

on discharge in respect of the implementation of the budget of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014  
(2015/2196(DEC))

Committee on Budgetary Control

Rapporteur: Marian-Jean Marinescu

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## 1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### **on discharge in respect of the implementation of the budget of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014 (2015/2196(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014,
- having regard to the Court of Auditors' report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014 together with the Joint Undertaking's replies<sup>1</sup>,
- having regard to the statement of assurance<sup>2</sup> as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2014, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 12 February 2016 on discharge to be given to the Joint Undertaking in respect of the implementation of the budget for the financial year 2014 (05587/2016 – C8-0052/2016),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Article 106a of the Treaty establishing the European Atomic Energy Community,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>3</sup>, and in particular Article 208 thereof,
- having regard to Council Decision 2007/198/Euratom of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it<sup>4</sup>, and in particular Article 5(3) thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>5</sup>,
- having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 September

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<sup>1</sup> OJ C 422, 17.12.2015, p. 33.

<sup>2</sup> OJ C 422, 17.12.2015, p. 34.

<sup>3</sup> OJ L 298, 26.10.2012, p. 1.

<sup>4</sup> OJ L 90, 30.3.2007, p. 58.

<sup>5</sup> OJ L 357, 31.12.2002, p. 72.

2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>1</sup>,

- having regard to Rule 94 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A8-0097/2016),
1. Postpones its decision on granting the Director of the European Joint Undertaking for ITER and the Development of Fusion Energy discharge in respect of the implementation of the Joint Undertaking's budget for the financial year 2014;
  2. Sets out its observations in the resolution below;
  3. Instructs its President to forward this decision and the resolution forming an integral part of it to the Director of the European Joint Undertaking for ITER and the Development of Fusion Energy, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the *Official Journal of the European Union* (L series).

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<sup>1</sup> OJ L 328, 7.12.2013, p. 42.

## 2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### **on the closure of the accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014 (2015/2196(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014,
- having regard to the Court of Auditors' report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014, together with the Joint Undertaking's replies<sup>1</sup>,
- having regard to the statement of assurance<sup>2</sup> as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2014, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 12 February 2016 on discharge to be given to the Joint Undertaking in respect of the implementation of the budget for the financial year 2014 (05587/2016 – C8-0052/2016),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Article 106a of the Treaty establishing the European Atomic Energy Community,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>3</sup>, and in particular Article 208 thereof,
- having regard to Council Decision 2007/198/Euratom of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it<sup>4</sup>, and in particular Article 5(3) thereof,
- having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>5</sup>,
- having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30

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<sup>1</sup> OJ C 422, 17.12.2015, p. 33.

<sup>2</sup> OJ C 422, 17.12.2015, p. 34.

<sup>3</sup> OJ L 298, 26.10.2012, p. 1.

<sup>4</sup> OJ L 90, 30.3.2007, p. 58.

<sup>5</sup> OJ L 357, 31.12.2002, p. 72.

September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>1</sup>,

- having regard to Rule 94 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A8-0097/2016),
1. Postpones the closure of the accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014;
  2. Instructs its President to forward this decision to the Director of the European Joint Undertaking for ITER and the Development of Fusion Energy, the Council, the Commission and the Court of Auditors, and to arrange for its publication in the *Official Journal of the European Union* (L series).

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<sup>1</sup> OJ L 328, 7.12.2013, p. 42.

### 3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014 (2015/2196(DEC))**

*The European Parliament,*

- having regard to its decision on discharge in respect of the implementation of the budget of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014,
  - having regard to Rule 94 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A8-0097/2016),
- A. whereas the European Joint Undertaking for ITER and the Development of Fusion Energy ("the Joint Undertaking") was set up in March 2007 for a period of 35 years,
- B. whereas the members of the Joint Undertaking are Euratom, represented by the Commission, the Member States of Euratom and third countries which have concluded cooperation agreements with Euratom in the field of controlled nuclear fusion,
- C. whereas the Joint Undertaking started to work autonomously on March 2008,

#### ***Budgetary and financial management***

1. Notes that the Court of Auditors ("the Court"), in its report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014 ("the Court's report"), stated that the 2014 annual accounts of the Joint Undertaking present fairly, in all material respects, its financial position as of 31 December 2014 and that the results of its operations and cash flows for the year then ended, in accordance with the provisions of its financial rules;
2. Notes that the institutions and bodies are required to produce each year a report on budgetary and financial management and that the information provided by the Joint Undertaking in that report lacked harmonisation and was often incomplete; notes that guidance is required from the Commission as to the nature and content of that report;
3. Notes that the Court's report emphasised the fact that the Council conclusions adopted on 7 July 2010<sup>1</sup> approved EUR 6 600 000 000 (in 2008 values) for the Joint Undertaking contribution to the ITER construction phase of the project; notes that that figure, which doubled the initial budgeted costs for this phase of the project, did not include EUR 663 000 000 proposed by the Commission in 2010 to cover potential contingencies; acknowledges that the ITER Organization set up a Reserve Fund with the aim of providing a clearer mechanism that compensates the domestic agencies for design changes and provides incentives for the internal organisation to adopt solutions that minimise costs

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<sup>1</sup> Council conclusions on ITER status of 7 July 2010 (ref. 11902/10).

in an attempt to rectify the weakness identified by 2013 ITER Management Assessment<sup>1</sup>; considers that the significant increase of the project costs may put in danger other programmes which are also financed by the Union budget and may be contradictory to the "value-for-money" principle;

4. Notes with concern that the complexity of the Joint Undertaking's activities implies that the amount of the contribution to the construction phase of the project by the Joint Undertaking is exposed to significant risks of increase; observes that those risks mainly result from changes in the scope of the project deliverables and delays in the current schedule which was considered to be unrealistic and that the release of a new ITER Organization action plan, including scope, schedule and costs ("the new ITER action plan"), by the Council of the ITER Organization ("ITER Council"), planned for June 2015, was postponed until November 2015 and is now scheduled for mid-2016; notes, furthermore, that the delay for the construction phase of the project was estimated by the Joint Undertaking at the time of the audit to be at least 43 months; acknowledges that the Joint Undertaking is already adopting a stringent policy regarding the above and is refraining from proceeding with procurement actions until the specifications for contracts are sufficiently stable; notes, moreover, that the Joint Undertaking has reviewed the procurement schedules for all systems to ensure that the activity durations are correct and that the planned work is achievable given the available resources within the organisation<sup>2</sup>;
5. Takes note that the latest estimate of the shortfall (negative contingency) until the finalisation of the construction phase, calculated by the Joint Undertaking in November 2014, was EUR 428 000 000 (2008 values); acknowledges that the Joint Undertaking is currently working on a more accurate and updated estimate through cost-containment measures and that cost control will continue to be a priority at global project management level under the leadership of the new Director General of the ITER Organization; points out that during the meeting of the Committee on Budgetary Control held on 22 February 2016 the Commission publically stated that it "rejected" the proposal of the action plan made by the new Director General of the ITER Organization; notes, furthermore, that the Joint Undertaking has implemented a central system to manage costing data in order to maintain close control of the evolution of the budget and to monitor cost deviations on a regular basis<sup>3</sup>;
6. Urges the new Director General of the ITER Organization to present publically the new ITER action plan; expects the new ITER action plan to avoid clearly any further delay or additional costs to the ITER Project;
7. Calls on the Joint Undertaking to participate actively in the new ITER action plan, which should include the schedule and scope of the project; expects the new ITER action plan to additionally include measures to tackle all observations acknowledged by the Court;
8. Acknowledges that the Joint Undertaking is still developing a central and uniform system to integrate all the operational data and to allow regular monitoring and controlling of estimates, costs and deviations; underlines the importance of having such a system in place; notes, moreover, that the Joint Undertaking has not updated the valuation of the

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<sup>1</sup> Follow-up report 2013 Discharge.

<sup>2</sup> Follow-up report 2013 Discharge

<sup>3</sup> Follow-up report 2013 Discharge



contribution by the Joint Undertaking to the ITER Project beyond the finalisation of the construction phase; acknowledges that the Joint Undertaking has a fully operational system to control and monitor costs at the level of the procurement arrangement and at the level of the system, although it did not yet have in place at the time of the audit all the data at level 6 (contracts); acknowledges that the Joint Undertaking estimated costs concerning projects in the individual project teams rather than in a centralised and uniform manner; notes that the Joint Undertaking employs a number of data management tools to maintain and manage its operational and financial data integrated by a core integrated reporting system and that work is progressing to improve its system to manage cost data and deviations;

9. Ascertains that, due to the challenges currently faced by the ITER Project, the new Director General of the ITER Organization presented to the ITER Council an action plan including specific measures to address the main constraints that are currently affecting the development of the project; notes, furthermore, that, as regards the Joint Undertaking, its new acting director prepared an action plan for the Joint Undertaking which largely supports the ITER Organization action plan; acknowledges that the Joint Undertaking's acting director presented the action plan to the Joint Undertaking's Governing Board in March 2015, when it was fully endorsed, and that the Joint Undertaking's action plan complements the ITER Organization action plan in a number of respects and identifies further improvements in the Joint Undertaking's own operations; observes that at the time of the audit, the practical measures for the implementation of both action plans were still being established; notes, moreover, that since March 2015, those action plans have been implemented and closely followed by the ITER Organization and the Joint Undertaking and that they are expected to bring improvements;
10. Notes that the ITER Council also approved a working schedule for the ITER Organization for the years 2016 and 2017, together with a set of milestones to be reached in those years; requests the Joint Undertaking to present those milestones in a greater detail to the discharge authority;
11. Takes note that the final 2014 budget available for implementation included commitment appropriations of EUR 1 168 800 000 and payment appropriations of EUR 576 600 000; the utilisation rates for commitment and payment appropriations were 100 % and 88,5 % respectively; notes, however, that the implementation rate for payment appropriations with respect to the 2014 initial budget was 73 %;
12. Observes that regarding commitment appropriations, 23 % were implemented through direct individual commitments while the remaining 77 % were implemented through global commitments; observes that the low rate of implementation by individual commitment is explained by the overall slippage of the ITER Project and the multiple requests for change made by the ITER Organization;

#### ***Prevention and management of conflicts of interest and transparency***

13. Takes note that significant progress has been made and the majority of the CVs of the Governing Board and its subsidiary bodies members have been published on the Joint Undertaking's website; notes, moreover, that, in accordance with the rules of procedure of the Governing Board, those members who fail to publish their CVs are not able to access the Joint Undertaking's document management system containing the Governing Board

documentation<sup>1</sup>;

### ***Host Agreement***

14. Acknowledges that the Joint Undertaking welcomed the offer made by the Kingdom of Spain, which proposed new premises shared with a Spanish institution; observes, however, that an agreement was not reached because, after an analysis carried out by an independent external architect, the space available was found to be unsuitable<sup>2</sup>; urges the Joint Undertaking to inform the discharge authority about the outcome of recent negotiations regarding a new contract in the existing host building;

### ***Working conditions***

15. Is deeply concerned that the Joint Undertaking has not yet adopted all rules implementing the Staff Regulations; notes with concern that the Joint Undertaking relied on two transitional measures in order to avoid a legal vacuum pending the formal adoption of outstanding implementing rules to the Staff Regulations; notes however that progress has been made in this regard; urges the Joint Undertaking to remediate to the situation urgently; calls on the Joint Undertaking to inform the discharge authority on further advancements and state of implementation<sup>3</sup>;

### ***Internal control systems***

16. Notes that in 2014 the Joint Undertaking Internal Audit Capability (“IAC”) performed a review of the monitoring of contract implementation and outlined the existence of important risk factors such as the immature design of some of the ITER activities, the large number of project change requests, the unrealistic project schedule and the delay in the implementation of activities; observes that it is difficult for the Joint Undertaking to mitigate some of those risks effectively, as they are attributable to the ITER Organization; notes, furthermore, that the review also identified that stronger controls and changes to processes are needed, in particular in management and change control, financial management of contracts and the management of non-conformities;
17. Notes with concern from the Court’s report that the Joint Undertaking’s internal corporate risk management system identified ten new risks in 2014; notes that out of the 32 actions identified to address the six very high risks, 13 were implemented, nine were in progress, one was cancelled as obsolete, and nine had not been commenced at the time of the audit;
18. Ascertains that the Commission’s Internal Audit Service (IAS) carried out a limited review of the contract management and pointed out that the Joint Undertaking is changing from an organisation which is mainly procurement-oriented to an organisation which mainly manages contracts; observes that the review concluded that the Joint Undertaking is progressing in establishing entity-wide controls to address the risks related to the implementation of the contracts; observes, however, that it also identified a certain number of areas where the controls in place are not mature enough yet, in particular as regards the management of contract amendments and contingencies;

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<sup>1</sup> Follow-up report 2013 Discharge

<sup>2</sup> Follow-up report 2013 Discharge

<sup>3</sup> ITER AAR - p. 104 & Follow-up report 2013 Discharge

### ***Operational procurement contracts and grants***

19. Acknowledges from the Court's report that negotiated procedures constituted 58 % of the 67 operational tendering procedures launched in 2014, and that there is room for improvement of the procurement procedures;
20. Expresses concerns about the findings in the Court's report that, with one exception, the Joint Undertaking failed to provide the amount allocated to the different contracts from the EUR 6 600 000 000 capped budget at the time of launching the procedure and did not provide the value for the estimate at completion (EAC) of those activities; reminds the Joint Undertaking that such information is essential to calculate the cost deviations from the capped budget; notes, furthermore, that in one case, the deviation of the awarded value of the contract over the cost baseline was 29 % and that that deviation was not reported in the evaluation committee report; urges the Joint Undertaking to be transparent and to strictly respect the sound financial management principles;
21. Notes with concern that the Court's report refers to deficiencies having been found in the assessment of the financial offers by the evaluation committee; observes that, in one case, neither the contract options, amounting to EUR 32 000 000, nor the additional costs to be incurred were taken into consideration in the assessment; notes that, in another case, the offers were not compared against the allocated value from the capped budget or against the cost baseline; points out that the evaluation committee reports did not state the EAC for those contracts in any of the procedures reviewed;
22. Notes that the performance of certain procurement procedures was affected by delays, and that in one procurement procedure, the Joint Undertaking had to include an unforeseen and unbudgeted activity in the 2014 work programme resulting in an additional contract of EUR 2 880 000; observes, that in one procurement procedure, the assessment of the technical award criteria provided by the evaluation committee in the evaluation committee report was too generic and the comments recorded were not sufficiently detailed to support the scores awarded; notes, furthermore, that in three procurement procedures, although it published the corresponding contract notices and carried out a number of pre-procurement activities, the Joint Undertaking did not advertise the contracts by means of a pre-information notice in order to increase visibility and competition, as advised by the Commission Vademecum on public procurement;

### ***Overall control and monitoring of operational procurement contracts and grants***

23. Acknowledges that the action plans adopted by the Joint Undertaking, in response to the internal audits on the financial circuits, grant management and expert contracts, were fully or mostly implemented by March 2015; notes, furthermore, that, out of 46 recommendations still in progress, the deadline for implementation of 29 recommendations was overdue concerning the actions plans adopted by the Joint Undertaking in response to the internal audits carried out;
24. Observes that *ex-post* audits on grants were not concluded at the time of the Court's audit;

### ***Legal framework***

25. Notes from the Court's report that the Joint Undertaking has not yet amended its financial

rules in order to reflect the changes brought by the new Financial Regulation<sup>1</sup> and the framework financial regulation for the bodies referred to in Article 208 of the new Financial Regulation<sup>2</sup>; acknowledges that the Joint Undertaking has taken measures and started a dialogue with the Commission in order to resolve this issue<sup>3</sup>; asks the Joint Undertaking to inform the discharge authority of the progress made in this regard;

***Intellectual property rights and industrial policy***

26. Acknowledges that the Joint Undertaking considers the measures in place to be efficient to mitigate risks and to increase competition; notes that, regarding industrial policy, the Joint Undertaking implemented 24 out of the 32 actions foreseen by the end of the financial year 2014<sup>4</sup>;
27. Ascertains that the Joint Undertaking has taken measures regarding exclusive exploitation rights over intellectual property produced in fields outside fusion; notes, furthermore, that it was intended for the Joint Undertaking to develop definitions and methodologies to identify fusion applications; recalls the high importance of this matter; asks the Joint Undertaking to inform the discharge authority on the advancements achieved in this regard<sup>5</sup>.

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<sup>1</sup> OJ L 298, 26.10.2012, p. 1.

<sup>2</sup> OJ L 328, 7.12.2013, p.42

<sup>3</sup> Follow-up report 2013 Discharge

<sup>4</sup> Follow-up report 2013 Discharge

<sup>5</sup> Follow-up report 2013 Discharge

## RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	4.4.2016
<b>Result of final vote</b>	+: 21 -: 0 0: 0
<b>Members present for the final vote</b>	Louis Aliot, Inés Ayala Sender, Dennis de Jong, Martina Dlabajová, Ingeborg Gräßle, Verónica Lope Fontagné, Monica Macovei, Dan Nica, Gilles Pargneaux, Georgi Pirinski, Petri Sarvamaa, Claudia Schmidt, Bart Staes, Marco Valli, Derek Vaughan, Anders Primdahl Vistisen, Tomáš Zdechovský
<b>Substitutes present for the final vote</b>	Marian-Jean Marinescu, Miroslav Poche
<b>Substitutes under Rule 200(2) present for the final vote</b>	Birgit Collin-Langen, Bodil Valero