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TEXTS ADOPTED

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**P8\_TA(2015)0168**

**Discharge 2013: Joint Undertaking for ITER and the development of fusion energy**

**1. European Parliament decision of 29 April 2015 on discharge in respect of the implementation of the budget of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013 (2014/2129(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013,
- having regard to the Court of Auditors' report on the annual accounts of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013, 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 2013, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 17 February 2015 on discharge to be given to the joint undertaking in respect of the implementation of the budget for the financial year 2013 (05306/2015 – C8-0049/2015),
- 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 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>3</sup>,
- 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

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<sup>1</sup> OJ C 452, 16.12.2014, p. 44

<sup>2</sup> OJ C 452, 16.12.2014, p. 45

<sup>3</sup> OJ L 248, 16.9.2002, p. 1.

of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>1</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>2</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>3</sup>,
  - having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 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>4</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 (A8-0108/2015),
1. Grants the Director of the 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 2013;
  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 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 298, 26.10.2012, p. 1.

<sup>2</sup> OJ L 90, 30.3.2007, p. 58.

<sup>3</sup> OJ L 357, 31.12.2002, p. 72.

<sup>4</sup> OJ L 328, 7.12.2013, p. 42.

## **2. European Parliament decision of 29 April 2015 on the closure of the accounts of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013 (2014/2129(DEC))**

*The European Parliament,*

- having regard to the final annual accounts of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013,
- having regard to the Court of Auditors' report on the annual accounts of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013, 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 2013, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 17 February 2015 on discharge to be given to the joint undertaking in respect of the implementation of the budget for the financial year 2013 (05306/2015 – C8-0049/2015),
- 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 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>3</sup>,
- 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>4</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>5</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>6</sup>,

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<sup>1</sup> OJ C 452, 16.12.2014, p. 44.

<sup>2</sup> OJ C 452, 16.12.2014, p. 45.

<sup>3</sup> OJ L 248, 16.9.2002, p. 1.

<sup>4</sup> OJ L 298, 26.10.2012, p. 1.

<sup>5</sup> OJ L 90, 30.3.2007, p. 58.

<sup>6</sup> OJ L 357, 31.12.2002, p. 72.

- having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 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 (A8-0108/2015),
1. Approves the closure of the accounts of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013;
  2. Instructs its President to forward this decision to the Director of the 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. European Parliament resolution of 29 April 2015 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget for the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013 (2014/2129(DEC))**

*The European Parliament,*

- having regard to its decision on discharge in respect of the implementation of the budget of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013,
  - 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 (A8-0108/2015),
- 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 other countries which have concluded cooperation agreements with Euratom in the field of controlled nuclear fusion,
- C. whereas the Joint Undertaking started to work autonomously in March 2008,
- D. whereas on 9 October 2008 the Court of Auditors ("the Court") delivered Opinion No 4/2008 on the Joint Undertaking's Financial Regulation,

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

1. Notes that the Court stated that the 2013 annual accounts of the Joint Undertaking present fairly, in all material respects, its financial position as of 31 December 2013 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Rules;
2. Notes with concern that the Court's report contains an emphasis of matter as a part of its statement of assurance, which indicates a significant risk of increase to which the amount of the Joint Undertaking's contribution to the construction phase of the ITER project is exposed; notes furthermore that the risk of increase of the amount of the contribution results mainly from changes in the scope of the project deliverables as well as from the current schedule which is not considered as realistic and is currently under revision; believes in the importance of a realistic approach for an effective budget and financial management ; notes that the Joint Undertaking is contributing to the ITER-wide exercise of providing an overall realistic schedule for the whole project; calls on the Joint Undertaking to submit it urgently to the ITER Council;
3. Observes that the Council's conclusions adopted on 7 July 2010<sup>1</sup> approved EUR 6,6 billion in 2008 values, in order for the Joint Undertaking to contribute to the ITER construction phase of the project; points out with concern from the Court's emphasis of matter that this amount is double compared to the initial budgeted costs and did not

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

include an amount of EUR 663 000 000 proposed by the Commission and intended to cover potential contingencies; considers that the significant increase of the project may put into danger other programmes which are also financed by the Union's budget and may be contradictory to the "value for money" principle;

4. Is deeply concerned that in November 2013 the Joint Undertaking estimated the budget shortfall until the finalisation of the construction phase of the project to be EUR 290 000 000, representing a deviation of 4,39 % over the figure approved by the Council in 2010 and representing an increase of 10,7 % compared to the initial budget of the project;
5. Is concerned that in relation to these risks, the Joint Undertaking has not yet implemented a system at contract level to regularly monitor the cost deviations and has not updated the valuation of the Joint Undertaking to the ITER project beyond the finalisation of the construction phase;
6. Notes with concern the continuous revisions of time and cost schedule due to on-going delays in the signing of important contracts, which does not allow for the execution of planned pre-financing postponements related to the Joint Undertaking's operational procurement procedures;
7. Points out with concern that the Joint Undertaking has not detailed in its financial statements the degree of advancement of the work in-progress; acknowledges from the Court that this information is essential in reflecting the status of the activities carried out so far by the Joint Undertaking, as regards the procurement arrangements signed with the ITER International Organisation; points out that from the Joint Undertaking that information regarding overall progress was provided through its Annual Progress Report and Annual Activity report but limited to a raw preliminary estimation of the percentage of works completed, based on the amount of expenses related to procurement arrangements incurred up to date and comparing them to the estimated value of the contribution in kind to the project; acknowledges furthermore that a raw preliminary estimation of works completed is included in the 2013 Annual Accounts; emphasises the need for information and indicators for proper performance measurement, which applies both to output and internal management;
8. Takes note that the Joint Undertaking's final 2013 budget available for implementation included commitment appropriations of EUR 1 297 000 000 and payment appropriations of EUR 432 400 000; notes furthermore that the utilisation rates for commitment and payment appropriations were 100 % and 89,8 % respectively; underlines that the implementation rate for the payment appropriations with respect to the 2013 initial budget before reductions was 57,8 %; acknowledges from the Joint Undertaking that this has been caused by delays and mismanagement in the provision of data by the ITER International Organisation as well as longer than planned negotiations with companies in order to decrease costs; expresses its concern on possible future delays or overcosts and their impact on the budget of the ITER project;
9. Asks the Commission and the Director of the Joint Undertaking for ITER to present a report to the discharge authority on the official position of all stakeholders concerning their future commitments on the ITER project;
10. Notes in regard to the Joint Undertaking's commitment appropriations that, out of EUR 1 254 000 000 which were available for operational activities, 61,7 % were implemented

through direct individual commitments while the remaining 38,3 % were implemented through global commitments;

11. Notes with concern that seven members have paid their 2013 annual membership contribution late, amounting to EUR 2 200 000; considers that any delay on the payment of the annual contribution might have an impact on the way the project is run; stresses that the delays range from three to 48 days; acknowledges from the Joint Undertaking that 77 % of delayed payments corresponded to the contribution of two members and were received one working day late;
12. Calls on the Joint Undertaking to submit a report to the discharge authority concerning the contributions of all members other than the Commission, including the application of the evaluation rules for in-kind contributions, together with an assessment by the Commission;
13. Is concerned that the Chair of the Governing Board of the Joint Undertaking refers in the 2013 annual activity report to the project delays, as well as to the need to seek cost savings; notes furthermore that the Director refers to the risks associated to a potential budget shortfall by 2020, mainly related to the increased scope in relation to the ITER buildings and to the current schedule; acknowledges from the Joint Undertaking that the budget allocated for the current MFF until 2020 will be respected by continuing to develop and implement a broad range of cost containment measures;
14. Calls on the Joint Undertaking to submit in a due term a report to the discharge authority concerning the actual level of project implementation, potential risks and future development of the project, together with an assessment by the Commission;

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

15. Reiterates the need to make the CVs of the Management Board members, the Director and senior management members of the Joint Undertaking publicly available; calls on the Joint Undertaking to remedy this situation as a matter of urgency; acknowledges that the Rules on Management of Conflict of Interest regarding staff members has entered into force and calls for a solid track record of cases;

#### ***Host State Agreement***

16. Acknowledges from the Joint Undertaking that according to the Host State Agreement, signed with the Kingdom of Spain on 28 June 2007, permanent premises should have been made available to the Joint Undertaking by June 2010; notes with concern that at the time of the audit in April 2014, this was still not the case; acknowledges the Joint Undertaking's efforts to remedy this matter as well as the lack of results in the dialogue with the host country;

#### ***Working conditions***

17. Is deeply concerned that the Joint Undertaking has not yet adopted all the rules implementing the Staff Regulations; notes with concern that the working space currently made available is insufficient and impedes its staff from operating in reasonable conditions; is deeply concerned that the working space conditions are having a negative impact on the Joint Undertaking's efforts to fill all the available posts and reduce the vacancy rate; observes with concern that the working space conditions were cited by its employees as one of the major difficulties and concerns in a recent survey amongst the

Joint Undertaking's staff; asks the Commission and the Director of the Joint Undertaking to present a report to the discharge authority detailing the reasons of the delay on the implementation of the staff regulations and on the situation concerning the working conditions;

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

18. Notes with concern from the Court's report that, although significant progress was made during 2013 as regards the Joint Undertaking's internal control system, a number of actions still need to be implemented; these actions include further development of the process for managing the cost estimate at contract level, as well as the audit results arising from the implementation of the overall control and monitoring strategy for grants and operational contracts not being made available at the time of the audit; calls on the Joint Undertaking to make the report available as per the request of the Court;
19. Points out with concern that with the exception of the action plan which resulted as a response to the internal audit on management of experts' contracts, the other action plans adopted by the Joint undertaking in response to the internal audits had not been fully implemented;
20. Calls on the Joint Undertaking to provide timely tender specifications in order to eliminate cost uncertainties associated with the possible evolution of ITER project design and planning;
21. Acknowledges from the Court's report that, as regards the actions adopted in response to the previously identified main risks, 12 were implemented, 19 were in progress and 6 had not been started by November 2013; calls on the Joint Undertaking to rectify these issues as a matter of urgency;
22. Notes that the Joint Undertaking adopted specific rules preventing potential conflicts of interest of the members of its Governing Board, Executive Committee, Audit Committee and experts; points out that rules regarding staff members as well as a database for the general declarations of interest have not been set up until the time of the audit; acknowledges from the Joint Undertaking that the Rules on the management of the conflict of interests regarding staff members have been adopted by the Governing Board and entered into force on 1 July 2014; notes furthermore that a dedicated database for general declarations started to be elaborated;

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

23. Notes that out of the 41 operational tendering procedures launched in 2013, negotiated procedures constituted 44 %; points out that this percentage is higher by 4 % in comparison to the number registered in 2012; agrees with the Court's recommendation that an increase of the competitiveness of procurement procedures is needed by reducing the use of negotiated procedures; takes note that the average number of proposals for grants was only one per call; acknowledges from the Joint Undertaking that due to the low average value, the negotiated procedures referred to by the Court only correspond to 15 % of the Joint Undertaking's yearly commitment;
24. Notes with concern the on-going weaknesses related to the Joint Undertaking's operational procurement procedures; calls on the Joint Undertaking to submit to the discharge



authority a detailed report regarding the procurement procedures that took place from 2008 until present, outlining the following:

- In how many procedures has a significant cost increase (more than 5%) taken place with respect to the initial set cost frame of contract and what were the exact reasons for the increases,
- Which procedures suffered from a considerable time delay compared to their initial target date and what have been the financial consequences deriving from such delays,
- How does the Joint Undertaking ensure for the future that the set dates of contract signature are being met,
- Which procurement procedures did not set a specific target date at all when awarding the contracts,
- In which procedures did the Joint Undertaking not advertise the respective contract by means of a pre-information notice, thus failing to increase the competitiveness of the procedure and what were the reasons for this as well as which contractual partners did particularly benefit from the consequently limited competitiveness,
- What procedures (besides the applicable Staff Regulations) are in place to prevent a possible conflict of interest in relation to members of staff involved in tendering procedures and in how many cases were members of staff not formally mandated to be involved in tendering procedures,
- How does the Joint Undertaking ensure that its internal decision making procedure is improved to avoid further time delays in tender procedures, as determined by the Court, in order to guarantee transparent, timely and lawful tenders for the future,

25. Notes with concern from the Court's report that the following weaknesses were identified after auditing five operational procurement procedures:

- the Joint Undertaking failed to advertise one contract by means of a pre-information notice in one procurement procedure; acknowledges from the Joint Undertaking that the contract in discussion was launched before the procedure of pre-information notice was approved in September 2012;
- in one procurement procedure, an increase of 32 % was observed in comparison to the initial cost estimate; notes furthermore that in two other procurement procedures, due to the nature of the information available in the files, the reconciliation of the difference between the final contract value with the initial estimation value was proven as complicated; acknowledges from the Joint Undertaking that the complexity of the reconciliation is due to the re-evaluation of the initial scope of the contract, which led to an increase of time as well as to the nature, complexity and amounts involved in such contracts;
- one procedure was found not to have specific guidelines and procedures to ensure that the deliverables, used as input documents for the tendering procedures from the third parties, were uniformly and systematically reviewed and formally accepted by the Joint Undertaking; takes note that the Joint Undertaking will prepare a formal checklist in order to ensure appropriate use of third-party information; calls on the

Joint Undertaking to implement the checklist as soon as possible in order to avoid such situations in the future;

- amendments to the original contract of one of the procurement procedures increased the contract's value by 15 % compared to the initial amount; points out that the information available was not sufficient to conclude that the assessment of the materiality of the amendments was performed as required by the Joint Undertaking's internal procedures;
- one procedure's dialogue phase was long delayed, resulting in the final contract conditions and the updated technical version of the tender specifications being sent later than planned as well as in signing the contract four months after the target date;

26. Finds it unacceptable that the Joint Undertaking has not developed an internal procedure for the staff involved in tendering procedures; points out that improvement in this area is urgently needed;

27. Notes from the Court's report that in two procurement procedures the Joint Undertaking staff members providing technical advice during the evaluation of the offers, upon request of the evaluation committee, had not been formally nominated by the Appointing Authority, either as members of the evaluation committee or as experts providing technical advice to the committee; points out that in one tendering procedure following the call for expression of interest, the Authorising Officer appointed a team to conduct a dialogue with the candidates selected whilst there was no formal mandate for this team to set out the dialogue strategy, the objectives to be achieved and the technical, financial and contractual parameters for the negotiations;

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

28. Acknowledges that the Joint Undertaking has a system for performing audits at the level of contractors with the aim of checking compliance with the quality assurance requirements; notes that the result of ex-post audits on grants and financial compliance verifications on contract implementation arising from the implementation of the overall monitoring and control strategy were not available at the time of the Court's audit in April 2014;

### ***Legal Framework***

29. Notes that the Joint Undertaking has not amended its financial rules in order to reflect the changes brought by the new Financial Regulation and the framework financial regulation for the bodies<sup>1</sup> referred to in Article 208 of the new Financial Regulation; acknowledges from the Joint Undertaking that it assessed the changes and proposed the amendments to its Governing Board; notes that in accordance with Article 5 of Council Decision 2007/198/Euratom, the Commission is to issue an opinion prior to submission of the final version of the financial rules to the Joint Undertaking's Governing Board; calls on the Commission and the Joint Undertaking to remedy this issue without delay;

30. Notes the Joint Statement by the Parliament, the Council and the Commission<sup>2</sup> and the subsequent political agreement reached on the separate discharge for Joint Undertakings;

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

<sup>2</sup> OJ L 163, 29.5.2014, p. 21.

### *Intellectual property rights and industrial policy*

31. Takes note that the Decision on the implementation of the Fusion for Energy Industrial Policy and the Policy on Intellectual Property Rights and dissemination of information were adopted by the Joint Undertaking's Governing Board on 27 June 2013; notes that the Joint Undertaking has not yet adopted and implemented certain measures aimed at mitigating specific risks related to the protection of the intellectual property rights and the dissemination of research results; acknowledges the Joint Undertaking's opinion that the costs of implementation of such measures do not appear proportionate to the size of the residual risk and would be difficult to implement in practice;
32. Notes from the Court's report that the Joint Undertaking's contractors are offered exclusive exploitation rights over intellectual property produced in fields outside fusion, while in the field of fusion the contractors have non-exclusive rights; notes the potential exposure of the Joint Undertaking to the risk regarding its obligations to retain the right to access the full intellectual property rights involved in the European in-kind contributions and in being able to transfer the access right to the ITER Organisation, if needed; agrees with the Court's recommendation that monitoring the application of the clause of the contracts is needed, in order to oblige the contractors to refrain from carrying out any dissemination of research results until a decision about their possible protection is made; calls on the Joint Undertaking to define boundaries of what would be considered as fusion application in order to ensure maximum clarity and transparency in relation to contractors.