

**AGREEMENT**  
**on the Establishment of the ITER International Fusion Energy Organization for the Joint**  
**Implementation of the ITER Project**

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### Preamble

The European Atomic Energy Community (hereinafter 'Euratom'), the Government of the People's Republic of China, the Government of the Republic of India, the Government of Japan, the Government of the Republic of Korea, the Government of the Russian Federation and the Government of the United States of America,

RECALLING that the successful completion of the ITER Engineering Design Activities under the auspices of the International Atomic Energy Agency (hereinafter 'the IAEA') has placed at the disposal of the Parties a detailed, complete and fully integrated engineering design of a research facility aimed to demonstrate the feasibility of fusion as an energy source;

EMPHASIZING the long term potential of fusion energy as a virtually limitless, environmentally acceptable and economically competitive source of energy;

CONVINCED that ITER is the next important step on the path to develop fusion energy and that now is the appropriate time to initiate the implementation of the ITER Project on the basis of progress of research and development in the field of fusion energy;

HAVING REGARD to the joint declaration by the Representatives of the Parties to the ITER negotiations, on the occasion of the ministerial meeting for ITER on 28 June 2005 in Moscow;

RECOGNIZING that the World Summit on Sustainable Development of 2002 called upon governments to promote increased research and development in the field of various energy technologies, including renewable energy, energy efficiency and advanced energy technologies;

EMPHASIZING the importance of the joint implementation of the ITER Project to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes and to stimulate the interest of young generations in fusion;

DETERMINED that the ITER Project's overall programmatic objective will be pursued by the ITER International Fusion Energy Organization through a common international research programme organized around scientific and technological goals, developed and executed with participation of leading researchers from all Parties;

EMPHASIZING the importance of safe and reliable implementation of construction, operation, exploitation, de-activation and decommissioning of the ITER facilities with a view to demonstrating safety and promoting social acceptability of fusion as an energy source;

AFFIRMING the importance of genuine partnership in implementing this long term and large scale project for the purpose of fusion energy research and development;

RECOGNIZING that while scientific and technological benefits will be shared equally among the Parties for fusion energy research purposes, other benefits associated with the implementation of the Project will be shared on an equitable basis;

DESIRING to continue the fruitful cooperation with the IAEA in this endeavour,

HAVE AGREED AS FOLLOWS:

#### Article 1

#### **Establishment of the ITER International Fusion Energy Organization**

1. The ITER International Fusion Energy Organization (hereinafter 'the ITER Organization') is hereby established.

2. The headquarters of the ITER Organization (hereinafter 'the Headquarters') shall be at St Paul-lez-Durance, Bouches-du-Rhône, France. For the purposes of this Agreement,

Euratom shall be referred to as 'the Host Party' and France as 'the Host State'.

#### Article 2

#### **Purpose of the ITER Organization**

The purpose of the ITER Organization shall be to provide for and to promote cooperation among the Members referred to in Article 4 (hereinafter 'the Members') on the ITER Project, an international project that aims to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes, an essential feature of which would be achieving sustained fusion power generation.

*Article 3***Functions of the ITER Organization**

1. The ITER Organization shall:
  - (a) construct, operate, exploit, and de-activate the ITER facilities in accordance with the technical objectives and the general design presented in the Final Report of the ITER Engineering Design Activities (ITER EDA Documentation Series No. 21) and such supplemental technical documents as may be adopted, as necessary, in accordance with this Agreement, and provide for the decommissioning of the ITER facilities;
  - (b) encourage the exploitation of the ITER facilities by the laboratories, other institutions and personnel participating in the fusion energy research and development programmes of the Members;
  - (c) promote public understanding and acceptance of fusion energy; and
  - (d) undertake, in accordance with this Agreement, any other activities that are necessary to achieve its purpose.
2. In the performance of its functions, the ITER Organization shall give special regard to the maintenance of good relations with local communities.

*Article 4***Members of the ITER Organization**

The Parties to this Agreement shall be the Members of the ITER Organization.

*Article 5***Legal Personality**

1. The ITER Organization shall have international legal personality, including the capacity to conclude agreements with States and/or international organizations.
2. The ITER Organization shall have legal personality and enjoy, in the territories of the Members, the legal capacity it requires, including to:
  - (a) conclude contracts;
  - (b) acquire, hold and dispose of property;
  - (c) obtain licenses; and
  - (d) institute legal proceedings.

*Article 6***Council**

1. The Council shall be the principal organ of the ITER Organization and shall be composed of Representatives of the Members. Each Member shall appoint up to four Representatives to the Council.

2. The Depositary referred to in Article 29 (hereinafter 'the Depositary') shall convene the first session of the Council no later than three months after the entry into force of this Agreement, provided that the notifications referred to in Article 12(5) have been received from all Parties.

3. The Council shall elect from among its Members a Chair and a Vice-Chair who shall each serve for a term of one year and who may be re-elected up to three times for a maximum period of four years.

4. The Council shall adopt its Rules of Procedure by unanimity.

5. The Council shall meet twice a year, unless it decides otherwise. The Council may decide to hold an extraordinary session at the request of a Member or of the Director-General. Sessions of the Council shall take place at the Headquarters, unless the Council decides otherwise.

6. When appropriate, the Council may decide to hold a session at the ministerial level.

7. The Council shall be responsible, in accordance with this Agreement, for the promotion, overall direction and supervision of the activities of the ITER Organization in pursuit of its purpose. The Council may take decisions and make recommendations on any questions, matters or issues in accordance with this Agreement. In particular, the Council shall:

- (a) decide on the appointment, replacement and extension of the term of office of the Director-General;
- (b) adopt and amend where necessary, on the proposal of the Director-General, the Staff Regulations and the Project Resource Management Regulations of the ITER Organization;
- (c) decide, on the proposal of the Director-General, the main management structure of the ITER Organization and complement of the Staff;
- (d) appoint senior Staff on the proposal of the Director-General;
- (e) appoint the Members of the Financial Audit Board as referred to in Article 17;
- (f) decide, in accordance with Article 18, on the terms of reference for the undertaking of an assessment of the management of the ITER Organization and appoint a Management Assessor for that purpose;

- (g) decide, on the proposal of the Director-General, the total budget for the various phases of the ITER Project and allowable ranges for adjustment for the purpose of the annual updates referred to in subparagraph (j), and approve the initial ITER Project Plan and Resource Estimates referred to in Article 9;
  - (h) approve changes to the overall cost sharing;
  - (i) approve, with the consent of the Members concerned, modifications to the procurement allocation without changing the overall cost sharing;
  - (j) approve the annual updates of the ITER Project Plan and Resource Estimates and, correspondingly, approve the annual programme and adopt the annual budget of the ITER Organization;
  - (k) approve the annual accounts of the ITER Organization;
  - (l) adopt the annual reports;
  - (m) adopt, as necessary, the supplemental technical documents referred to in Article 3(1)(a);
  - (n) establish such subsidiary bodies of the Council as may be necessary;
  - (o) approve the conclusion of agreements or arrangements for international cooperation in accordance with Article 19;
  - (p) decide on acquisition, sale and mortgaging of land and other titles of real property;
  - (q) adopt the rules on Intellectual Property management and the dissemination of information in accordance with Article 10 on the proposal of the Director-General;
  - (r) approve, on the proposal of the Director-General, the details of setting up of Field Teams with consent of the Members concerned, in accordance with Article 13. The Council shall review, on a periodic basis, the continuation of any Field Teams established;
  - (s) approve, on the proposal of the Director-General, agreements or arrangements governing relations between the ITER Organization and the Members or States on whose territory the Headquarters and Field Teams of the ITER Organization are located;
  - (t) approve, on the proposal of the Director-General, efforts to promote collaboration among the relevant domestic fusion research programmes of the Members and between such programmes and the ITER Organization;
  - (u) decide on the accession of States or international organizations to this Agreement in accordance with Article 23;
  - (v) recommend to the Parties, in accordance with Article 28, amendments to this Agreement;
  - (w) decide on the taking or granting of loans, provision of assurances and guarantees and furnishing collateral and security in respect thereto;
  - (x) decide whether to propose material, equipment and technology for consideration by international export control for a inclusion on their control lists, and establish a policy supporting peaceful uses and non-proliferation in accordance with Article 20;
  - (y) approve compensation arrangements referred to in Article 15; and
  - (z) decide on waivers of immunity in accordance with Article 12(3) and have such other powers as may be necessary to fulfill the purpose and to carry out the functions of the ITER Organization, consistent with this Agreement.
8. The Council shall decide issues under subparagraphs (a), (b), (c), (g), (h), (o), (u), (v), (w), (x), (y) and (z) of paragraph 7, and on the weighted voting system referred to in paragraph 10, by unanimity.
9. On all issues other than as specified in paragraph 8, the Members shall use their best efforts to achieve consensus. Failing consensus, the Council shall decide the issue in accordance with the weighted voting system referred to in paragraph 10. Decisions on issues related to Article 14 shall require the concurrence of the Host Party.
10. The respective weights of the votes of the Members shall reflect their contributions to the ITER Organization. The weighted voting system, which shall include both the distribution of votes and the decision making rules, shall be set out in the Council Rules of Procedure.

#### Article 7

#### The Director-General and the Staff

1. The Director-General shall be the chief executive officer and the representative of the ITER Organization in the exercise of its legal capacity. The Director-General shall act in a manner consistent with this Agreement and decisions of the Council, and shall be responsible to the Council for the execution of his/her duties.

2. The Director-General shall be assisted by the Staff. The Staff shall consist of direct employees of the ITER Organization and personnel seconded by the Members.

3. The Director-General shall be appointed for a term of five years. The appointment of the Director-General may be extended once for an additional period of up to five years.

4. The Director-General shall take all measures necessary for the management of the ITER Organization, the execution of its activities, the implementation of its policies and the fulfillment of its purpose. In particular, the Director-General shall:

(a) prepare and submit to the Council:

- the total budget for the various phases of the ITER Project and allowable ranges for adjustment;
- the ITER Project Plan and Resource Estimates and their annual updates;
- the annual budget within the agreed total budget, including the annual contributions, and annual accounts;
- proposals on senior Staff appointments and main management structure of the ITER Organization;
- the Staff Regulations;
- the Project Resource Management Regulations; and
- the annual reports;

(b) appoint, direct and supervise the Staff;

(c) be responsible for safety and undertake all organizational measures needed to observe the laws and regulations referred to in Article 14;

(d) undertake, where necessary in conjunction with the Host State, to obtain the permits and licenses required for the construction, operation and exploitation of the ITER facilities;

(e) promote collaboration among the relevant domestic fusion research programmes of the Members and between such programmes and the ITER Organization;

(f) ensure the quality and fitness of components and systems procured for use by the ITER Organization;

(g) submit to the Council, as necessary, the supplemental technical documents referred to in Article 3(1)(a);

(h) conclude, subject to prior approval of the Council, agreements or arrangements for international cooperation in accordance with Article 19 and supervise their implementation;

(i) make arrangements for the sessions of the Council;

(j) as requested by the Council, assist subsidiary bodies of the Council in the performance of their tasks; and

(k) monitor and control the execution of the annual programmes with respect to timing, results and quality, and accept the completion of the tasks.

5. The Director-General shall attend meetings of the Council unless the Council decides otherwise.

6. Without prejudice to Article 14, the responsibilities of the Director-General and the Staff in respect of the ITER Organization shall be exclusively international in character. In the discharge of their duties they shall not seek or receive instructions from any government or from any authority external to the ITER Organization. Each Member shall respect the international character of the responsibilities of the Director-General and the Staff, and shall not seek to influence them in the discharge of their duties.

7. The Staff shall support the Director-General in the performance of his/her duties and shall be under his/her management authority.

8. The Director-General shall appoint the Staff in accordance with the Staff Regulations.

9. The term of the appointment of each Member of the Staff shall be up to five years.

10. The Staff of the ITER Organization shall consist of such qualified scientific, technical and administrative personnel as shall be required for the implementation of the activities of the ITER Organization.

11. The Staff shall be appointed on the basis of their qualifications, taking into account an adequate distribution of posts among the Members in relation to their contributions.

12. In accordance with this Agreement and the relevant regulations, the Members may second personnel and send visiting researchers to the ITER Organization.

## Article 8

**Resources of the ITER Organization**

1. The resources of the ITER Organization shall comprise:

(a) contributions in kind, as referred to in the document 'Value Estimates for ITER Phases of Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions', comprising: (i) specific components, equipment, materials and other goods and services in accordance with the agreed technical specifications and (ii) staff seconded by the Members;

(b) financial contributions to the budget of the ITER Organization by the Members (hereinafter 'contributions in cash'), as referred to in the document 'Value Estimates for ITER Phases of Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions';

(c) additional resources received either in cash or in kind within limits and under terms approved by the Council.

2. The respective Members' contributions over the duration of this Agreement shall be as referred to in the documents 'Value Estimates for ITER Phases of Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions' and 'Cost Sharing for all Phases of the ITER Project' and may be updated by unanimous decision of the Council.

3. The resources of the ITER Organization shall be solely used to promote the purpose and to exercise the functions of the ITER Organization in accordance with Articles 2 and 3.

4. Each Member shall provide its contributions to the ITER Organization through an appropriate legal entity, hereinafter 'the Domestic Agency' of that Member, except where otherwise agreed by the Council. The approval of the Council shall not be required for Members to provide cash contributions directly to the ITER Organization.

## Article 9

**Project Resource Management Regulations**

1. The purpose of the Project Resource Management Regulations is to ensure the sound financial management of the ITER Organization. These Regulations shall include, *inter alia*, the principal rules relating to:

(a) the Financial Year;

(b) the unit of account and the currency that the ITER Organization shall use for accounting, budget and resource evaluation purposes;

(c) the presentation and structure of the ITER Project Plan and Resource Estimates;

(d) the procedure for the preparation and adoption of the annual budget, the implementation of the annual budget and internal financial control;

(e) the contributions by the Members;

(f) the awarding of contracts;

(g) the management of contributions; and

(h) the management of the decommissioning fund.

2. The Director-General shall prepare each year, and submit to the Council, an update of the ITER Project Plan and Resource Estimates.

3. The ITER Project Plan shall specify the plan for the execution of all functions of the ITER Organization and shall cover the duration of this Agreement. It shall:

(a) outline an overall plan including time schedule and major milestones, for the fulfilment of the purpose of the ITER Organization and summarise the progress of the ITER Project in relation to the overall plan;

(b) present specific objectives and schedules of the programme of activities of the ITER Organization for the coming five years or for the period of construction, whichever will last longer; and

(c) provide appropriate commentaries, including assessment of the risks to the ITER Project and descriptions of risk avoidance or mitigation measures.

4. The ITER Resource Estimates shall provide a comprehensive analysis of the resources already expended and required in the future to undertake the ITER Project Plan and of the plans for the provision of the resources.

## Article 10

**Information and Intellectual Property**

1. Subject to this Agreement and the Annex on Information and Intellectual Property, the ITER Organization and the Members shall support the widest appropriate dissemination of information and intellectual property they generate in the execution of this Agreement. The implementation of this Article and the Annex on Information and Intellectual Property shall be equal and non-discriminatory for all Members and the ITER Organization.

2. In carrying out its activities, the ITER Organization shall ensure that any scientific results shall be published or otherwise made widely available after a reasonable period of time to allow for the obtaining of appropriate protection. Any copyright on works based on those results shall be owned by the ITER Organization unless otherwise provided in specific provisions of this Agreement and the Annex on Information and Intellectual Property.

3. When placing contracts for work to be performed pursuant to this Agreement, the ITER Organization and the Members shall include provisions in such contracts on any resulting intellectual property. These provisions shall address, *inter alia*, rights of access to, as well as disclosure and use of, such intellectual property, and shall be consistent with this Agreement and the Annex on Information and Intellectual Property.

4. Intellectual property generated or incorporated pursuant to this Agreement shall be treated in accordance with the provisions of the Annex on Information and Intellectual Property.

#### Article 11

##### Site Support

1. The Host Party shall make available or cause to be made available to the ITER Organization the site support required for the implementation of the ITER Project as summarized and under the terms outlined in the Annex on Site Support. The Host Party may designate an entity to act on its behalf for this purpose. Such designation shall not affect the obligations of the Host Party under this Article.

2. Subject to the approval of the Council, the details of and the procedures for cooperation on site support between the ITER Organization and the Host Party or its designated entity shall be covered by a Site Support Agreement to be concluded between them.

#### Article 12

##### Privileges and Immunities

1. The ITER Organization, its property and assets, shall enjoy in the territory of each Member such privileges and immunities as are necessary for the exercise of its functions.

2. The Director-General and the Staff of the ITER Organization and the representatives of the Members in the Council and subsidiary bodies, together with their alternates and experts, shall enjoy in the territory of each of the Members such privileges and immunities as are necessary for the exercise of their functions in connection with the ITER Organization.

3. The immunities provided for in paragraphs 1 and 2 shall be waived in any case where the authority competent to waive

the immunity considers that such immunity would impede the course of justice and that waiver would not prejudice the purposes for which it was accorded and where, in the case of the ITER Organization, the Director-General, and the Staff, the Council determines that such a waiver would not be contrary to the interests of the ITER Organization and its Members.

4. The privileges and immunities conferred in accordance with this Agreement shall not diminish or affect the duty of the ITER Organization, the Director-General or the Staff to comply with the laws and regulations referred to in Article 14.

5. Each Party shall notify the Depositary in writing upon having given effect to paragraphs 1 and 2.

6. The Depositary shall notify the Parties when notifications have been received from all Parties in accordance with paragraph 5.

7. A Headquarters Agreement shall be concluded between the ITER Organization and the Host State.

#### Article 13

##### Field Teams

Each Member shall host a Field Team established and operated by the ITER Organization as required for the exercise of the ITER Organization's functions and the fulfillment of its purpose. A Field Team Agreement shall be concluded between the ITER Organization and each Member.

#### Article 14

##### Public Health, Safety, Licensing and Environmental Protection

The ITER Organization shall observe applicable national laws and regulations of the Host State in the fields of public and occupational health and safety, nuclear safety, radiation protection, licensing, nuclear substances, environmental protection and protection from acts of malevolence.

#### Article 15

##### Liability

1. The contractual liability of the ITER Organization shall be governed by the relevant contractual provisions, which shall be construed in accordance with the law applicable to the contract.

2. In the case of non-contractual liability, the ITER Organization shall compensate appropriately or provide other remedies for any damage caused by it, to such extent as the ITER Organization is subject to a legal liability under the relevant law, with the details of compensation arrangements to be approved by the Council. This paragraph shall not be construed as a waiver of immunity by the ITER Organization.

3. Any payment by the ITER Organization to compensate for the liability referred to in paragraphs 1 and 2 and any costs and expenses incurred in connection therewith shall be considered as 'operational cost' as defined in the Project Resource Management Regulations.

4. In case the costs of compensation for damage referred to in paragraph 2 exceed funds available to the ITER Organization in the annual budget for operations and/or through insurance, the Members shall consult, through the Council, so that the ITER Organization can compensate, according to paragraph 2 by seeking to increase the overall budget by unanimous decision of the Council in accordance with Article 6(8).

5. Membership in the ITER Organization shall not result in liability for Members for acts, omissions, or obligations of the ITER Organization.

6. Nothing in this Agreement shall impair, or shall be construed as a waiver of, immunity that Members enjoy in the territory of other States or in their territory.

#### Article 16

##### Decommissioning

1. During the period of operation of ITER, the ITER Organization shall generate a Fund (hereinafter 'the Fund') to provide for the decommissioning of the ITER facilities. The modalities for the generation of the Fund, its estimation and updating, the conditions for changes and for its transfer to the Host State shall be set out in the Project Resource Management Regulations referred to in Article 9.

2. Following the final phase of experimental operations of ITER, the ITER Organization shall, within a period of five years, or shorter if agreed with the Host State, bring the ITER facilities into such conditions as are to be agreed and updated as necessary between the ITER Organization and the Host State, following which the ITER Organization shall hand over to the Host State the Fund and the ITER facilities for their decommissioning.

3. Following the acceptance by the Host State of the Fund together with the ITER facilities, the ITER Organization shall bear no responsibilities or liabilities for the ITER facilities, except when otherwise agreed between the ITER Organization and the Host State.

4. The respective rights and obligations of the ITER Organization and the Host State and the modalities of their interactions in respect of the decommissioning shall be set out in the Headquarters Agreement referred to in Article 12, under which the ITER Organization and the Host State shall, *inter alia*, agree that:

(a) after the handing over of the ITER facilities, the Host State shall continue to be bound by the provisions of Article 20; and

(b) the Host State shall make regular reports to all Members that have contributed to the Fund on the progress of the decommissioning and on the procedures and technologies that have been used or generated for the decommissioning.

#### Article 17

##### Financial Audit

1. A Financial Audit Board (hereinafter 'the Board') shall be established to undertake the audit of the annual accounts of the ITER Organization in accordance with this Article and the Project Resource Management Regulations.

2. Each Member shall be represented on the Board by one Member. The Members of the Board shall be appointed by the Council on the recommendation of the respective Members for a period of three years. The appointment may be extended once for an additional period of three years. The Council shall appoint from among the members the Chair of the Board, who shall serve for a period of two years.

3. The members of the Board shall be independent and shall not seek or take instructions from any Member or any other person and shall report only to the Council.

4. The purposes of the audit shall be to:

(a) determine whether all income/expenditure has been received/incurred in a lawful and regular manner and has been accounted for;

(b) determine whether the financial management has been sound;

(c) provide a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions;

(d) determine whether expenditures are in conformity with the budget; and

(e) examine any matter having potential financial implications for the ITER Organization.

5. The audit shall be based on recognized international principles and standards for accounting.

#### Article 18

##### Management Assessment

1. Every two years, the Council shall appoint a Management Assessor who shall assess the management of the activities of the ITER Organization. The scope of the assessment shall be decided by the Council.



2. The Director-General may also call for such assessments following consultation with the Council.

3. The Management Assessor shall be independent and shall not seek or take instructions from any Member or any person and shall report only to the Council.

4. The purpose of the assessment shall be to determine whether the management of the ITER Organization has been sound, in particular with respect to management effectiveness and efficiency in terms of scale of staff.

5. The assessment shall be based on records of the ITER Organization. The Management Assessor shall be granted full access to personnel, books and records as he/she may deem appropriate for this purpose.

6. The ITER Organization shall ensure that the Management Assessor shall abide by its requirements relating to the treatment of sensitive and/or business confidential information, in particular its policies concerning Intellectual Property, Peaceful Uses and Non-Proliferation.

#### *Article 19*

### **International Cooperation**

Consistent with this Agreement and upon a unanimous decision of the Council, the ITER Organization may, in furtherance of its purpose, cooperate with other international organizations and institutions, non-Parties, and with organizations and institutions of non-Parties, and conclude agreements or arrangements with them to this effect. The detailed arrangements for such cooperation shall be determined in each case by the Council.

#### *Article 20*

### **Peaceful Uses and Non-Proliferation**

1. The ITER Organization and the Members shall use any material, equipment or technology generated or received pursuant to this Agreement solely for peaceful purposes. Nothing in this paragraph shall be interpreted as affecting the rights of the Members to use material, equipment or technology acquired or developed by them independent of this Agreement for their own purposes.

2. Material, equipment or technology received or generated pursuant to this Agreement by the ITER Organization and the Members shall not be transferred to any third party to be used to manufacture or otherwise to acquire nuclear weapons or other nuclear explosive devices or for any non-peaceful purposes.

3. The ITER Organization and the Members shall take appropriate measures to implement this Article in an efficient and transparent manner. To this end, the Council shall interface

with appropriate international fora and establish a policy supporting peaceful uses and non-proliferation.

4. In order to support the success of the ITER Project and its non-proliferation policy, the Parties agree to consult on any issues associated with the implementation of this Article.

5. Nothing in this Agreement shall require the Members to transfer material, equipment or technology contrary to national export control or related laws and regulations.

6. Nothing in this Agreement shall affect the rights and obligations of the Parties that arise from other international agreements concerning non-proliferation of nuclear weapons or other nuclear explosive devices.

#### *Article 21*

### **Application with regard to Euratom**

In accordance with the Treaty establishing Euratom, this Agreement shall apply to the territories covered by that Treaty. In accordance with that Treaty and other relevant agreements, it shall also apply to the Republic of Bulgaria, Romania and the Swiss Confederation, participating in the Euratom fusion programme as fully associated third States.

#### *Article 22*

### **Entry into Force**

1. This Agreement is subject to ratification, acceptance or approval in accordance with the procedures of each Signatory.

2. This Agreement shall enter into force 30 days after the deposit of instruments of ratification, acceptance or approval of this Agreement by the People's Republic of China, Euratom, the Republic of India, Japan, the Republic of Korea, the Russian Federation and the United States of America.

3. If this Agreement has not entered into force within one year after signature, a meeting of the Signatories shall be convened by the Depositary to decide what course of action shall be undertaken to facilitate its entering into force.

#### *Article 23*

### **Accession**

1. After the entry into force of this Agreement, any State or international organization may accede to and become a Party to this Agreement following a unanimous decision of the Council.

2. Any State or international organization that wishes to accede to this Agreement shall notify the Director-General, who shall inform the Members of this request at least six months before it is submitted to the Council for decision.

3. The Council shall determine the conditions of accession of any State or international organization.

4. Accession to this Agreement by a State or international organization shall take effect 30 days after the Depositary has received both the instrument of accession and the notification referred to in Article 12(5).

#### Article 24

##### Duration and Termination

1. This Agreement shall have an initial duration of 35 years. The last five years of this period, or shorter if agreed with the Host State, shall be dedicated to the de-activation of the ITER facilities.

2. The Council shall, at least eight years before the expiry of this Agreement, establish a Special Committee, chaired by the Director-General, that shall advise it on whether the duration of this Agreement should be extended having regard to the progress of the ITER Project. The Special Committee shall assess the technical and scientific state of the ITER facilities and reasons for the possible extension of this Agreement and, before recommending to extend this Agreement, the financial aspects in terms of required budget and impact on the de-activation and decommissioning costs. The Special Committee shall submit its report to the Council within one year after its establishment.

3. On the basis of the report, the Council shall decide by unanimity at least six years before the expiry whether to extend the duration of this Agreement.

4. The Council may not extend the duration of this Agreement for a period of more than 10 years in total, nor may the Council extend this Agreement if such extension would alter the nature of the activities of the ITER Organization or the framework of financial contribution of the Members.

5. At least six years before the expiry of this Agreement, the Council shall confirm the foreseen end of this Agreement and decide the arrangements for the de-activation phase and the dissolution of the ITER Organization.

6. This Agreement may be terminated by agreement of all Parties, allowing the necessary time for de-activation and ensuring the necessary funds for decommissioning.

#### Article 25

##### Settlement of Disputes

1. Any issue arising among the Parties or between one or more Parties and the ITER Organization out of or in connection

with this Agreement shall be settled by consultation, mediation or other procedures to be agreed, such as arbitration. The parties concerned shall meet to discuss the nature of any such issue with a view to an early resolution.

2. If the parties concerned are unable to resolve their dispute in consultation, either party may request the Chair of the Council (or if the Chair has been elected from a Member that is a party to the dispute, a Member of the Council representing a Member that is not a party to the dispute) to act as a mediator at a meeting to attempt to resolve the dispute. Such meeting shall be convened within 30 days following a request by a party for mediation and concluded within 60 days thereafter, immediately following which the mediator shall provide a report of the mediation, which report shall be prepared in consultation with the Members other than the parties to the dispute with a recommendation for resolution of the dispute.

3. If the parties concerned are unable to resolve their dispute through consultations or mediation, they may agree to submit the dispute to an agreed form of dispute resolution in accordance with procedures to be agreed.

#### Article 26

##### Withdrawal

1. After this Agreement has been in force for ten years, any Party other than the Host Party may notify the Depositary of its intention to withdraw.

2. Withdrawal shall not affect the withdrawing Party's contribution to the construction cost of the ITER facilities. If a Party withdraws during the period of operation of ITER, it shall also contribute its agreed share of the cost of decommissioning the ITER facilities.

3. Withdrawal shall not affect any continuing right, obligation, or legal situation of a Party created through the execution of this Agreement prior to its withdrawal.

4. The withdrawal shall take effect at the end of the Financial Year following the year the notification referred to in paragraph 1 is given.

5. The details of withdrawal shall be documented by the ITER Organization in consultation with the withdrawing Party.

#### Article 27

##### Annexes

The Annex on Information and Intellectual Property and the Annex on Site Support shall form an integral part of this Agreement.

*Article 28***Amendments**

1. Any Party may propose an amendment to this Agreement.
2. Proposed amendments shall be considered by the Council, for recommendation to the Parties by unanimity.
3. Amendments are subject to ratification, acceptance or approval in accordance with the procedures of each Party and shall enter into force 30 days after the deposit of the instruments of ratification, acceptance or approval by all Parties.

*Article 29***Depositary**

1. The Director-General of the IAEA shall be the Depositary of this Agreement.
2. The original of this Agreement shall be deposited with the Depositary, who shall send certified copies thereof to the Signa-

tories, and to the Secretary-General of the United Nations for registration and publication pursuant to Article 102 of the Charter of the United Nations.

3. The Depositary shall notify all Signatory and acceding States and international organizations of:

- (a) the date of deposit of each instrument of ratification, acceptance, approval or accession;
- (b) the date of deposit of each notification received in accordance with Article 12(5);
- (c) the date of entry into force of this Agreement and of amendments as provided for under Article 28;
- (d) any notification by a Party of its intention to withdraw from this Agreement; and
- (e) the termination of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Paris on 21 November 2006, in a single original, in the English language.

*For the European Atomic Energy Community*

*For the Government of the Republic of India*

*For the Government of the Republic of Korea*

*For the Government of the United States of America*

*For the Government of the People's Republic of China*

*For the Government of Japan*

*For the Government of the Russian Federation*

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## ANNEX I

**Annex on Information and Intellectual Property***Article 1***Subject Matter and Definitions**

- 1.1. This Annex covers the dissemination, exchange, use and protection of information and intellectual property pertaining to protectable subject matter, in the execution of this Agreement. Unless otherwise provided, the terms used in this Annex shall have the same meaning as in this Agreement.
- 1.2. **Information** shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in paragraph 1.3 below.
- 1.3. **Intellectual Property** shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. For the purposes of this Annex, Intellectual Property may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and
  - (a) have been held in confidence by their owner,
  - (b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents,
  - (c) have not been made available by their owner to other parties without an obligation concerning confidentiality, and
  - (d) are not available to the receiving party without an obligation concerning confidentiality.
- 1.4. **Background Intellectual Property** shall mean Intellectual Property that has been or is acquired, developed or produced, before the entry into force of this Agreement, or outside of the scope of this Agreement.
- 1.5. **Generated Intellectual Property** shall mean Intellectual Property that is generated or acquired with full ownership by a Member, acting through a Domestic Agency or Entity, or by the ITER Organization or jointly pursuant to and in the course of the performance of this Agreement.
- 1.6. **Improvements** shall mean any technological advancement to existing Intellectual Property, including derivative works.
- 1.7. **Entity** or **Entities** shall mean any entity with which a Domestic Agency or the ITER Organization has entered into a contract for the supply of goods or services for the purposes of this Agreement.

*Article 2***General Provisions**

- 2.1. Subject to the provisions of this Annex, the Members support the widest possible dissemination of Generated Intellectual Property.
- 2.2. Each Member shall ensure that the other Members and the ITER Organization can obtain the rights to Intellectual Property allocated in accordance with this Annex. Contracts placed by each Member or the ITER Organization with any Entity shall be consistent with the provisions of this Annex. In particular, appropriate public procurement procedures must be followed by all Members and the ITER Organization in order to ensure compliance with this Annex.

The ITER Organization shall properly identify in a timely manner the Background Intellectual Property of the contracting Entities with a view to obtaining for the ITER Organization and the Members access to this Background Intellectual Property in conformity with this Annex.

Each Member shall properly identify in a timely manner the Background Intellectual Property of the contracting Entities with a view to obtaining for the ITER Organization and the Members access to this Background Intellectual Property in conformity with this Annex.

Each Member and the ITER Organization shall ensure access for the ITER Organization and the other Members to inventions and other Intellectual Property generated or incorporated in the execution of the contracts provided that inventors' rights are respected, in conformity with this Annex.

- 2.3. This Annex does not alter or prejudice the allocation of rights between a Member and its nationals. Whether the rights concerning Intellectual Property shall be held by a Member or its nationals shall be determined as between themselves in accordance with their applicable laws and regulations.
- 2.4. If a Member generates or acquires full ownership of Intellectual Property in the course of the execution of this Agreement, the Member shall notify all other Members and the ITER Organization in a timely manner and provide details of such Intellectual Property.

#### *Article 3*

##### **Dissemination of Information and Scientific Publications whether or not Copyrighted**

Each Member shall be entitled, for non-commercial uses, to translate, reproduce, and publicly distribute Information directly arising from the execution of this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

#### *Article 4*

##### **Intellectual Property Generated or Incorporated by a Member, a Domestic Agency or Entity**

- 4.1. Generated Intellectual Property:
  - 4.1.1. If protectable subject matter is generated by a Member, a Domestic Agency or Entity in the course of the execution of this Agreement, the Member, the Domestic Agency or Entity shall be entitled to acquire all rights, title and interest in all countries in and to such intellectual property according to applicable laws and regulations.
  - 4.1.2. Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property in the course of the execution of this Agreement shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty-free license to such Generated Intellectual Property to other Members and the ITER Organization, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly sponsored fusion research and development programmes.
  - 4.1.3. Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property in the course of the execution of this Agreement shall make available on an equal and non-discriminatory basis a non-exclusive license to such Generated Intellectual Property to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which such Member licenses such Generated Intellectual Property to third parties within or outside such Member's own territory. As long as such terms have been offered such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.
  - 4.1.4. Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property pursuant to this Agreement is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, Entities and third parties in order to allow use of Generated Intellectual Property in fields other than fusion.
  - 4.1.5. Members, and their Domestic Agencies or Entities, that license or sub-license Generated or Background Intellectual Property pursuant to this Annex, will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.
- 4.2. Background Intellectual Property:
  - 4.2.1. Background Intellectual Property shall remain the property of the party that owns this intellectual property.

4.2.2. Any Member, acting through a Domestic Agency or Entity, which has incorporated Background Intellectual Property, except confidential information such as know-how and trade secrets into the items provided to the ITER Organization which Background Intellectual Property is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement,

shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty-free license to such Background Intellectual Property to other Members and to the ITER Organization, with the right of the ITER Organization to sub-license and the right of Members to sub-license to their research institutes and institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programmes.

4.2.3. (a) Any Member, acting through a Domestic Agency or Entity, which has incorporated background confidential information into the items provided to the ITER Organization which background confidential information is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item,
- when decided necessary by the Council, in advance of any public procurement, or
- for safety, for quality assurance and quality control reasons as required by regulatory authorities,

shall ensure that the ITER Organization has an irrevocable, non-exclusive, royalty-free license available to use such background confidential information including manuals or instructional training materials for the construction, operation, maintenance and repair of the ITER facilities.

(b) When confidential information is made available to the ITER Organization, it must be clearly marked so, and transmitted pursuant to an arrangement for confidentiality. The recipient of such information shall use it only for purposes set forth in 4.2.3 (a) and shall preserve its confidentiality to the extent provided in that arrangement. Compensation for damages arising from the misuse of such background confidential information by the ITER Organization shall be paid by the ITER Organization.

4.2.4. Any Member, acting through a Domestic Agency or Entity, which has incorporated background confidential information such as know how or trade secrets into the items provided to the ITER Organization which background confidential information is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement,

shall use its best efforts to either grant a commercial license to such background confidential information or supply the same items incorporating the background confidential information to the receiving party by means of private contracts with financial compensation for publicly sponsored fusion research and development programmes of a Member on terms no less favorable than the basis upon which such Member licenses such background confidential information or supplies the same items to third parties within or outside such Member's own territory. As long as such terms have been offered, such license or supply of such item shall not be denied. The license, if granted, may be revoked only in case the licensee does not fulfil its contractual obligations.

4.2.5. Any Member, acting through a Domestic Agency or Entity, which has incorporated Background Intellectual Property, including background confidential information, in the execution of this Agreement shall use its best efforts to make sure that the component incorporating the Background Intellectual Property is available on reasonable terms and conditions, or use its best efforts to grant on an equal and non-discriminatory basis a non-exclusive license to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory, on terms no less favorable than the basis upon which such Member licenses such Background Intellectual Property to third parties within or outside such Member's own territory. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

4.2.6. Any Member, acting through a Domestic Agency or Entity, is encouraged to make available for commercial purposes other than those set out in Article 4.2.5 to the other Members, any Background Intellectual Property incorporated into the items provided to the ITER Organization which Background Intellectual Property was required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement.

Such Background Intellectual Property, if licensed by the owners to the Members, shall be licensed on an equal and non-discriminatory basis.

4.3. Licensing to Third Parties of Non-Members:

Any license on Generated Intellectual Property granted by the Members to third parties of non-Members shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

#### Article 5

##### **Intellectual Property Generated or Incorporated by the ITER Organization**

5.1. Generated Intellectual Property:

5.1.1. Where intellectual property is generated by the ITER Organization, in the course of the execution of this Agreement, it shall be owned by the ITER Organization. The ITER Organization shall develop appropriate procedures for the recording, reporting and protection of the Intellectual Property.

5.1.2. Such intellectual property shall be licensed by the ITER Organization to the Members on an equal, non-discriminatory, irrevocable, non-exclusive, royalty-free basis, with the right of the Members to sub-license within their territory for the purpose of fusion research and development.

5.1.3. Generated Intellectual Property that has been developed or acquired by the ITER Organization in the course of the execution of this Agreement shall be licensed to the Members on an equal, non-discriminatory, non-exclusive basis for commercial use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which the ITER Organization licenses such Generated Intellectual Property to third parties. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

5.2. Background Intellectual Property:

5.2.1. Provided that it has the pertinent rights, when the ITER Organization incorporates Background Intellectual Property which is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to create improvements and derivative works,
- to repair and maintain the ITER facilities, or
- when decided necessary by the Council, in advance of any public procurement,

the ITER Organization shall make the necessary arrangements in order to sub-license that Background Intellectual Property on an equal and non-discriminatory basis by an irrevocable, non-exclusive, royalty-free license to the Members, with the right of the Members to sub-license within their respective territory for the purpose of fusion research and development. The ITER Organization shall make its best efforts to acquire the pertinent rights.

- 5.2.2. For Background Intellectual Property, including background confidential information, incorporated by the ITER Organization in the course of the execution of this Agreement, the ITER Organization shall use its best efforts to make available on an equal and non-discriminatory basis a non-exclusive license to the Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which the ITER Organization licenses such Background Intellectual Property to third parties. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.
- 5.2.3. The ITER Organization shall use its best efforts to make available to the Members any Background Intellectual Property, including background confidential information, for purposes other than those set out in Article 5.2.2. Such Background Intellectual Property, if licensed by the ITER Organization to the Members, shall be licensed on an equal and non-discriminatory basis.
- 5.3. Licensing to third parties of a non-Member:

Any license granted by the ITER Organization to third parties of a non-Member shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

#### Article 6

##### **Intellectual Property Generated by the ITER Organization's Staff and other Researchers**

- 6.1. Intellectual Property generated by directly employed and seconded staff of the ITER Organization shall be owned by the ITER Organization and treated in corresponding employment contracts or regulations consistent with the provisions set out herein.
- 6.2. Intellectual Property generated by visiting researchers who are participating in the activities of the ITER Organization through an arrangement with the ITER Organization for undertaking specific activities and who are directly involved in general programmes of the ITER Organization exploitation, shall be owned by the ITER Organization unless otherwise agreed by the Council.
- 6.3. Intellectual Property generated by visiting researchers not involved in general programmes of the ITER Organization exploitation shall be subject to an arrangement with the ITER Organization pursuant to conditions established by the Council.

#### Article 7

##### **Protection of Intellectual Property**

- 7.1. When a Member acquires or seeks protection for Generated Intellectual Property developed or acquired by that Member, such Member shall notify in a timely manner and provide details of such protection to all other Members and to the ITER Organization. If a Member decides not to exercise its right to seek protection for Generated Intellectual Property in any country or region, it shall notify the ITER Organization in a timely manner of its decision, and the ITER Organization may then seek to obtain such protection either directly or via the Members.
- 7.2. For Generated Intellectual Property developed or acquired by the ITER Organization, the Council shall adopt, as soon as practicable, appropriate procedures for the reporting, protection and recording of such Intellectual Property for example through the creation of a database to which the Members may have access.
- 7.3. In the event of a joint creation, the participating Members and/or the ITER Organization shall have the right to seek to obtain in co-ownership Intellectual Property in any State they choose.
- 7.4. There shall be co-ownership of Intellectual Property when created by two or more Members or by one or more Members together with the ITER Organization and when the features of such intellectual property are not capable of being separated for the purpose of applying for, obtaining and/or maintaining in force the protection of the relevant intellectual property right. In such a case the joint creators shall agree among themselves by means of a co-ownership arrangement on the allocation of and the terms of exercising the ownership of the said Intellectual Property.



*Article 8***Decommissioning**

- 8.1. For the decommissioning phase after the transfer of the facilities to the Host State, the Host Party shall provide to the other Members all relevant information, whether published or not, generated or used during the decommissioning of the ITER facilities.
- 8.2. Intellectual Property generated by the Host State during the decommissioning phase shall not be affected by this Annex.

*Article 9***Termination and Withdrawal**

- 9.1. The Council shall, as necessary, address any issues relating to the termination of this Agreement or the withdrawal of a Party in so far as they relate to Intellectual Property, that are not fully addressed in this Agreement.
- 9.2. The Intellectual Property rights conferred and obligations imposed upon the Members and the ITER Organization by the provisions of this Annex, in particular all granted licenses, shall subsist after the termination of this Agreement, or after the withdrawal of a Party.

*Article 10***Royalties**

Royalties received from the licensing of Intellectual Property by the ITER Organization shall be a resource of the ITER Organization.

*Article 11***Settlement of Disputes**

Any dispute arising out of or in connection with this Annex shall be settled in accordance with Article 25 of this Agreement.

*Article 12***Awards to Inventors**

The Council shall determine appropriate terms and conditions for the remuneration of the Staff when such Staff generates Intellectual Property.

*Article 13***Liability**

When negotiating license arrangements, the ITER Organization and the Members shall, as appropriate, include suitable provisions governing their respective liabilities, rights and obligations arising from the execution of those license arrangements.

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## ANNEX II

**Annex on Site Support***Article 1***Site Support Agreement**

1. The Host Party shall make or cause to be made available to the ITER Organization land, facilities, buildings, goods and services in support of the site as summarized in this Annex. The Host Party may designate an entity to act on its behalf for this purpose.
2. The details of such support, as well as the procedures for cooperation between the ITER Organization and the Host Party or its designated entity (hereinafter 'the Host'), shall be covered by an agreement (hereinafter 'the Site Support Agreement') to be concluded between them.

*Article 2***Duration of the Agreement**

The Host shall provide the site support to the ITER Organization throughout the period from the establishment of the ITER Organization to the expiry or termination of this Agreement.

*Article 3***Liaison Committee**

The ITER Organization and the Host shall establish a liaison committee to ensure the effective provision of the support covered by this Annex under the terms of the Site Support Agreement.

*Article 4***Land, Buildings, Facilities and Access**

The Host shall at its own expense provide the ITER site under the conditions set out in the ITER Site Requirements and Site Design Assumptions as adopted in 2000 (hereinafter the 'Reference Conditions') by the Council established under the Agreement among the European Atomic Energy Community, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America on Cooperation in the Engineering Design Activities for the International Thermonuclear Experimental Reactor (hereinafter 'the ITER EDA') and other specific facilities and services as set out below:

- (a) *Land* to be put at the disposal free of charge to the ITER Organization allowing for the construction, use and possible extension of all the ITER buildings and auxiliary services which are referred to in the Final Report of the ITER EDA;
- (b) *Main services* to be supplied to the site boundary:- water, electricity, sewage and drainage, alarm systems;
- (c) *Roads, Paths and Bridges*, including adaptations, as necessary, to the route between the Port Autonome de Marseille and the ITER site to provide access to the site boundary for the maximum size and weights of equipment to be delivered for the ITER Project and for Staff and visitors;
- (d) *Transportation services* from the Port Autonome de Marseille or in case of air transport the Marignane airport to the ITER site of components contributed by the Parties;
- (e) *Temporary accommodation* as required for the ITER Organization at or near the ITER site until the final buildings and facilities of the ITER Organization are ready for occupation;
- (f) *Power supplies*: installation and maintenance up to the site boundary of power supplies able to provide up to 500 MW for pulsed loads as well as a capability to draw from the grid 120 MW continuous electrical power without interruption because of connection maintenance;
- (g) *Water cooling supply* to dissipate on average 450 MW (thermal) energy to the environment; and
- (h) *Connection to computer network and telecommunication lines* with large capacity.

*Article 5***Services**

In addition to the items referred to in Article 4 of this Annex, the Host shall supply at its own expense or charged at proven cost, in accordance with the Site Support Agreement, such technical, administrative and general services as are required by the ITER Organization. Such services shall include, but are not limited to:

- (a) support staff, in addition to Staff assigned from the Host to the ITER Organization under Article 8 of this Agreement;
- (b) medical services facilities;
- (c) emergency services;
- (d) security-alarm system and its facilities;
- (e) cafeteria;
- (f) support to licensing process;
- (g) support to safety management;
- (h) support to language courses;
- (i) services for the management and disposal of radioactive wastes arising from ITER operations;
- (j) relocation and settlement support;
- (k) bus service to and from work;
- (l) recreation, social and welfare facilities;
- (m) utility services and supplies;
- (n) library and multi-media services;
- (o) environmental monitoring, including radiation monitoring; and
- (p) site services (waste disposal, cleaning and gardening).

*Article 6***Education**

The Host shall, at its own expense, establish an international school for the education of the children of Staff and provide pre-university education according to an international core curriculum to be developed in consultation with the educational authorities of the non-Host Parties, and shall facilitate the implementation of additional curricular elements specific to and supported by non-Host Parties. The non-Host Parties shall use their best efforts to assist the development of the school and the accreditation of its curriculum by their respective authorities.

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**Arrangement on Provisional Application of the Agreement on the Establishment of the ITER  
International Fusion Energy Organization for the Joint Implementation of the ITER Project**

*Article 1*

The Parties to this Arrangement are all signatories to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (hereinafter referred to as 'the ITER Agreement') among the European Atomic Energy Community (hereinafter referred to as 'Euratom'), the Government of the People's Republic of China, the Government of the Republic of India, the Government of Japan, the Government of the Republic of Korea, the Government of the Russian Federation and the Government of the United States of America.

*Article 2*

In accordance with its terms, the ITER Agreement will enter into force thirty days after its deposit of instruments of ratification, acceptance or approval by the People's Republic of China, Euratom, Republic of India, Japan, the Republic of Korea, the Russian Federation and the United States of America.

*Article 3*

The Parties to this Arrangement desire to pursue co-operation as provided in the ITER Agreement to the fullest possible extent, pending completion by each of them of all domestic actions required prior to ratification, acceptance or approval of the ITER Agreement.

*Article 4*

The Parties to this Arrangement therefore undertake, to the fullest extent possible consistent with their domestic laws and regulations, to abide by the terms of the ITER Agreement until it enters into force.

*Article 5*

A Party may withdraw from this Arrangement upon 120 days' written notice to the other Parties.

*Article 6*

This Arrangement will be effective upon signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Arrangement.

Done at Paris on 21 November 2006, in a single original, in the English language.

*for the European Atomic Energy Community*

*for the Government of the People's Republic of China*

*for the Government of the Republic of India*

*for the Government of Japan*

*for the Government of the Republic of Korea*

*for the Government of the Russian Federation*

*for the Government of the United States of America*

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## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COUNCIL

## COUNCIL DECISION

of 27 March 2007

**establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it**

(2007/198/Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the third and fourth subparagraph of Article 47 and Article 48 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Community, through strong, continuous and coordinated Community support from the European Atomic Energy Community (Euratom) research and training programmes, together with the development of knowledge and human resources in the national fusion laboratories, working together notably in the framework of the European Fusion Development Agreement (EFDA), has created a single and fully integrated fusion research programme that has taken a leading international role in the development of fusion as a potentially limitless, safe, sustainable, environmentally responsible and economically competitive source of energy.
- (2) The establishment of the Joint European Torus (JET) fusion research project in 1978<sup>(1)</sup>, which has met or exceeded all of its design objectives including demonstrating the release of significant amounts of fusion energy in a controlled manner and going on to hold

world records for both fusion power and energy, has demonstrated the added value of pooling resources and expertise at Community level in the form of a Joint Undertaking.

- (3) The Community has played a key role in the development of a next step international fusion project, the ITER, starting in 1988 with Conceptual Design Activities<sup>(2)</sup>, continuing in 1992 with Engineering Design Activities<sup>(3)</sup> which were extended by three years in 1998<sup>(4)</sup> and followed by a second agreement in 1994<sup>(5)</sup> which, in 2001, produced a detailed, complete and fully integrated engineering design for a research facility aimed at demonstrating the feasibility of fusion as an energy source from which the Community could derive significant benefit, in particular in the context of ensuring the security and diversity of its long-term energy supply.
- (4) The seven parties to the ITER negotiations (Euratom, People's Republic of China, India, Japan, Republic of Korea, Russia and the United States), representing over one half of the world's population, have concluded the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project<sup>(6)</sup> (the ITER Agreement) which establishes the ITER International Fusion Energy Organisation (the ITER Organisation) with headquarters in St Paul-lès-Durance (Bouches-du-Rhône) (France). The ITER Organisation has full responsibility for constructing, operating, exploiting and de-activating the ITER facilities.

<sup>(1)</sup> Council Decision 78/471/Euratom of 30 May 1978 on the establishment of the Joint European Torus (JET), Joint Undertaking (OJ L 151, 7.6.1978, p. 10). Decision as last amended by Decision 98/585/Euratom (OJ L 282, 20.10.1998, p. 65).

<sup>(2)</sup> Commission Decision 88/229/Euratom (OJ L 102, 21.4.1988, p. 31).

<sup>(3)</sup> Commission Decision 92/439/Euratom (OJ L 244, 26.8.1992, p. 13).

<sup>(4)</sup> Council Decision 98/704/Euratom (OJ L 335, 10.12.1998, p. 61).

<sup>(5)</sup> Commission Decision 94/267/Euratom (OJ L 114, 5.5.1994, p. 25).

<sup>(6)</sup> OJ L 358, 16.12.2006, p. 62.

- (5) The ITER Agreement requires all parties to provide contributions to the ITER Organisation through appropriate legal entities referred to as 'Domestic Agencies'. To enable ITER construction to commence without delay and given that Euratom, as host party, will have special responsibilities as a member of the ITER Organisation including bearing the largest share of the contributions and the responsibility for the preparation of the site, the Domestic Agency of Euratom should be established as soon as possible.
- (6) Euratom and Japan have concluded a bilateral Agreement for the Joint Implementation of the Broader Approach Activities (the 'Broader Approach Agreement with Japan') setting out complementary joint fusion research activities as part of a 'Broader Approach' to the rapid realisation of fusion energy agreed during negotiations on the ITER Agreement. The Broader Approach Agreement with Japan foresees that such Broader Approach Activities should be carried out by Euratom through the Domestic Agency of Euratom as the implementing Agency.
- (7) To achieve maximum synergy and economies of scale, the Domestic Agency of Euratom, in the context of the 'fast track' approach to fusion examined by a group of independent experts at the request of the research ministers during the Belgian Presidency, should also implement a long-term programme of activities to prepare the construction of demonstration fusion reactors and related facilities to reinforce European industrial competitiveness in this respect.
- (8) In its Conclusions of 26-27 November 2003, the European Council, by unanimous decision, authorised the Commission to put forward France as the ITER host State and Cadarache as the ITER site and decided that the Domestic Agency for Euratom should be located in Spain.
- (9) The fundamental importance of the ITER Project and Broader Approach Activities for harnessing fusion as a potentially limitless, safe, sustainable, environmentally responsible and economically competitive source of energy makes it necessary to establish the Domestic Agency of Euratom in the form of a Joint Undertaking as provided for in Chapter 5 of the Euratom Treaty.
- (10) The Joint Undertaking, which should be responsible for public research activities of European and international interest, and discharge commitments pursuant to international agreements, should be considered as an international body within the meaning of Article 151(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(1)</sup>, and as an international organisation within the meaning of the second indent of Article 23(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products <sup>(2)</sup>, Article 22 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors <sup>(3)</sup>, and Article 15 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts <sup>(4)</sup>.
- (11) This Decision establishes, for the duration foreseen for the Joint Undertaking, a financial reference amount which illustrates the will of the legislative authority and which will not affect the powers of the budgetary authority as defined in the Treaty.
- (12) The Joint Undertaking should have, subject to prior consultation with the Commission, its own financial regulation based on the principles of 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> (the Framework Financial Regulation) taking into account its specific operating needs arising, in particular, from its international obligations.
- (13) To strengthen international research cooperation, the Joint Undertaking should be open to the participation of countries that have concluded cooperation agreements with Euratom in the field of nuclear fusion that associate their respective programmes with the Euratom programmes.
- (14) The proposal for the Council Decision for the seventh framework programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011), and the specific programme implementing that framework programme (FP7) put ITER at the heart of the European strategy for fusion and make provision for the Euratom contribution, through the Joint Undertaking to the ITER Organisation, Broader Approach Activities and other related activities with a view to preparing for demonstration fusion reactors.

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92).

<sup>(2)</sup> OJ L 76, 23.3.1992, p. 1. Directive as last amended by Directive 2004/106/EC (OJ L 359, 4.12.2004, p. 30).

<sup>(3)</sup> OJ L 134, 30.4.2004, p. 1. Directive as last amended by Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).

<sup>(4)</sup> OJ L 134, 30.4.2004, p. 114. Directive as last amended by Directive 2006/97/EC.

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

- (15) The need to ensure stable employment conditions and equal treatment of staff, taking into account the experience gained from the JET Joint Undertaking, in order to attract specialised scientific and technical staff of the highest calibre, requires the application of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, laid down by Regulation (EEC, Euratom, ECSC) No 259/68 <sup>(1)</sup> (the Staff Regulations) to all the staff recruited by the Joint Undertaking.
- (16) Taking into account that the Joint Undertaking is not designed to fulfill an economic purpose and is responsible for managing Euratom participation in an international research project of public interest, it is necessary for the performance of its tasks that the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 <sup>(2)</sup> apply to the Joint Undertaking, its Director and staff.
- (17) In view of the particular nature of the activities of the Joint Undertaking and its importance for the development of fusion research and in order to promote a sound and economic management of the public funding to be provided to the Joint Undertaking, all the advantages provided for in Annex III to the Treaty should be conferred on the Joint Undertaking.
- (18) As a body possessing legal personality, the Joint Undertaking should be accountable for its actions. As regards the resolution of disputes in contractual matters, it should be possible that the contracts concluded by the Joint Undertaking provide that the Court of Justice have jurisdiction.
- (19) Taking into account the rights and obligations of the Community under Title II, Chapter 2 of the Treaty concerning the dissemination of information, the Joint Undertaking should make appropriate arrangements in that regard with the Commission.
- (20) A host agreement should be concluded between the Joint Undertaking and Spain concerning office accommodation, privileges and immunities and other support to be provided by Spain to the Joint Undertaking.
- (21) This Decision takes into account the outcome of the enquiry conducted by the Commission and, in particular, the positive opinion of the Consultative Committee for the Euratom Specific Research and Training Programme in the Field of Nuclear Energy (Fusion) on the proposals,

HAS ADOPTED THIS DECISION:

#### Article 1

##### Establishment of a Joint Undertaking

1. A European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy) (the Joint Undertaking) is hereby established for a period of 35 years starting on 19 April 2007.
2. The tasks of the Joint Undertaking shall be as follows:
  - (a) to provide the contribution of the European Atomic Energy Community (Euratom) to the ITER International Fusion Energy Organisation;
  - (b) to provide the contribution of Euratom to Broader Approach Activities with Japan for the rapid realisation of fusion energy;
  - (c) to prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities including the International Fusion Materials Irradiation Facility (IFMIF).
3. The Joint Undertaking shall have its seat in Barcelona in Spain.
4. The Joint Undertaking shall be considered as an international body within the meaning of Article 151(1)(b) of Council Directive 2006/112/EC, and as an international organisation within the meaning of the second indent of Article 23(1) of Directive 92/12/EEC, of Article 22 point (c) of Directive 2004/17/EC and of Article 15 point (c) of Directive 2004/18/EC.

#### Article 2

##### Members

The Joint Undertaking shall have the following Members:

- (a) Euratom, represented by the Commission;
- (b) the Member States of Euratom;
- (c) third countries which have concluded a cooperation agreements with Euratom in the field of controlled nuclear fusion that associate their respective research programmes with the Euratom programmes and which have expressed their wish to become Members of the Joint Undertaking.

<sup>(1)</sup> OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1895/2006 (OJ L 397, 30.12.2006, p. 6).

<sup>(2)</sup> OJ L 52, 13.7.1967, p. 13. Protocol as amended by the Treaty of Amsterdam and the Treaty of Nice.

*Article 3***Statutes**

The Statutes of the Joint Undertaking, as set out in the Annex, are hereby adopted.

*Article 4***Financing**

1. The resources required for the Joint Undertaking to carry out its tasks shall be determined as follows:

- (a) as regards the tasks referred to in Article 1(2)(a), in accordance with the ITER Agreement;
- (b) as regards the tasks referred to in Article 1(2)(b), in accordance with the Broader Approach Agreement with Japan;
- (c) as regards the tasks referred to in Article 1(2)(c), in accordance with research and training programmes adopted pursuant to Article 7 of the Treaty.

2. The resources of the Joint Undertaking shall consist of a contribution from Euratom, contributions from the ITER host State, the annual membership contributions and voluntary contributions from Members of the Joint Undertaking other than Euratom, and additional resources.

3. The indicative total resources deemed necessary for the Joint Undertaking in accordance with paragraph 1 shall be EUR 9 653 million <sup>(1)</sup>. This is detailed as follows:

*(EUR million)*

2007-2016		2017-2041		2007-2041
	of which 2007-2011		Constant values	Total
4 127	1 717	5 526	3 544	9 653

4. The indicative total contribution from Euratom to the resources referred to in paragraph 3 shall be EUR 7 649 million, of which a maximum of 15 % shall be for administrative expenditure. This is detailed as follows:

<sup>(1)</sup> All figures shown are expressed in current values unless otherwise stated and subject to the adoption of the corresponding budgets for Community research and training programmes pursuant to Article 7 of the Treaty.

*(EUR million)*

2007-2016		2017-2041		2007-2041
	of which FP7 2007-2011		Constant values	Total
3 147	1 290	4 502	2 887	7 649

*Article 5***Financial Regulation**

1. The Joint Undertaking shall have a distinct financial regulation based on the principles of the Framework Financial Regulation. The financial regulation of the Joint Undertaking (the financial regulation) may depart from the Framework Financial Regulation where the specific operating needs of the Joint Undertaking so require and subject to prior consultation with the Commission.

2. The Joint Undertaking shall establish its own internal audit service.

3. Discharge for the implementation of the budget of the Joint Undertaking shall be given by the European Parliament on the recommendation of the Council.

*Article 6***Staff**

The Staff Regulations, as well as the rules adopted jointly by the institutions of the European Community for the purposes of the application of those Staff Regulations, shall apply to the staff of the Joint Undertaking.

*Article 7***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Joint Undertaking, its Director and staff.

*Article 8***Advantages**

The Member States shall confer all the advantages provided for in Annex III to the Treaty on the Joint Undertaking within the scope of its official activities, for as long as the Joint Undertaking exists.

*Article 9***Liability and jurisdiction of the Court of Justice**

1. The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the contract in question.



The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Joint Undertaking.

2. In the case of non-contractual liability, the Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its servants in the performance of their duties.

The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for such damage.

3. The Court of Justice shall have jurisdiction in actions brought against the Joint Undertaking, including decisions of its Governing Board, under the conditions provided for in Articles 146 and 148 of the Treaty.

4. Any payment by the Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the Joint Undertaking and shall be covered by the resources of the Joint Undertaking.

#### Article 10

##### **Dissemination of information**

The Joint Undertaking shall agree with the Commission appropriate provisions which will allow the Community to exercise its rights and obligations under Title II, Chapter 2 of the Treaty.

#### Article 11

##### **Host agreement**

A host agreement shall be concluded between the Joint Undertaking and Spain within three months from the establishment of the Joint Undertaking.

#### Article 12

##### **Application**

This Decision shall apply from the 20th day following its publication in the *Official Journal of the European Union*.

This Decision is addressed to the Member States.

Done at Brussels, 27 March 2007.

*For the Council*  
*The President*  
P. STEINBRÜCK

## ANNEX

## STATUTES OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY

## (FUSION FOR ENERGY)

## Article 1

**Name, seat, members**

1. The name of the Joint Undertaking shall be 'The European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy)' (the Joint Undertaking).
2. The seat of the Joint Undertaking shall be in Barcelona in Spain.
3. The Joint Undertaking shall have the following Members:
  - (a) the European Atomic Energy Community (Euratom) represented by the Commission;
  - (b) the Member States of Euratom;
  - (c) third countries which have concluded a cooperation agreement with Euratom in the field of controlled nuclear fusion that associates their respective research programmes with the Euratom programmes and which have expressed their wish to become Members of the Joint Undertaking.

## Article 2

**Objectives**

The objectives of the Joint Undertaking shall be:

- 1) to provide the contribution of Euratom to the ITER International Fusion Energy Organisation (the ITER Organisation), in accordance with the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project (the ITER Agreement);
- 2) to provide the contribution of Euratom to broader approach activities with Japan for the rapid realisation of fusion energy (Broader Approach Activities), in accordance with the bilateral Agreement for the Joint Implementation of Broader Approach Activities (the Broader Approach Agreement with Japan);
- 3) to prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities including the International Fusion Materials Irradiation Facility (IFMIF).

## Article 3

**Activities**

1. As the Euratom Domestic Agency for ITER, the Joint Undertaking shall discharge the obligations of Euratom to the ITER Organisation as defined in, and for the duration of, the ITER Agreement. In particular, it shall:
  - (a) oversee preparation of the ITER project site;
  - (b) provide components, equipment, materials and other resources to the ITER Organisation;
  - (c) manage procurement arrangements vis-à-vis the ITER Organisation and, in particular, associated quality assurance procedures;
  - (d) prepare and coordinate Euratom's participation in the scientific and technical exploitation of the ITER Project;
  - (e) coordinate scientific and technological research and development activities in support of Euratom's contribution to the ITER Organisation;
  - (f) provide Euratom's financial contribution to the ITER Organisation;
  - (g) arrange to make human resources available for the ITER Organisation;
  - (h) interface with the ITER Organisation and carry out any other activities in furtherance of the ITER Agreement.
2. As the Implementing Agency in the context of the Broader Approach Agreement with Japan, the Joint Undertaking shall discharge Euratom obligations for the implementation of Broader Approach Activities. In particular, it shall:
  - (a) provide components, equipment, materials and other resources for Broader Approach Activities;
  - (b) prepare and coordinate Euratom's participation in the implementation of Broader Approach Activities;
  - (c) coordinate scientific and technological research and development activities;
  - (d) provide the Euratom financial contribution to Broader Approach Activities;
  - (e) arrange to make human resources available for Broader Approach Activities;

(f) carry out any other activities necessary for meeting Euratom's obligations in furtherance of the Broader Approach Agreement with Japan.

3. In preparation for the construction of a demonstration fusion reactor and related facilities, including the IFMIF, the Joint Undertaking shall prepare and coordinate a programme of research, development and design activities other than ITER and Broader Approach Activities.

4. The Joint Undertaking shall carry out any other activities in furtherance of the overall objectives set out in Article 2, including activities to raise public awareness of the Joint Undertaking and its mission.

#### Article 4

##### Legal personality

The Joint Undertaking shall have legal personality. In the territory of each of its Members, it shall enjoy the most extensive legal capacity granted to legal persons under their respective laws. It may, in particular, conclude contracts, obtain licences, acquire or dispose of movable and immovable property, take out loans and be a party to legal proceedings.

#### Article 5

##### Bodies

1. The bodies of the Joint Undertaking shall be the Governing Board and the Director.

2. The Governing Board shall be assisted by the Executive Committee in accordance with Article 7.

3. The Governing Board and the Director shall seek advice from the Scientific Programme Board(s) in accordance with Article 9.

#### Article 6

##### Governing Board

1. The Governing Board shall be responsible for the supervision of the Joint Undertaking in the pursuit of its objectives set out in Article 2 and ensure close collaboration between the Joint Undertaking and its Members in the implementation of its activities.

2. Each Member of the Joint Undertaking shall be represented in the Governing Board by two members, one of whom shall have scientific and/or technical expertise in the areas related to the activities of the Joint Undertaking.

3. The Governing Board shall make recommendations and take decisions on any questions, matters or issues within the scope of and

in accordance with these Statutes. The Governing Board shall in particular:

- (a) approve proposals for amendments to these Statutes in accordance with Article 21;
- (b) decide all matters referred to it by the Executive Committee;
- (c) appoint the Chairman and members of the Executive Committee;
- (d) adopt the project plan, work programmes, resource estimates plan, the staff establishment plan and the staff policy plan;
- (e) adopt the annual budget, approve the annual accounts, including the specific parts related to the administrative and staff costs, and discharge the Director in respect of the implementation of the budget, in accordance with the financial regulation;
- (f) exercise the powers referred to in Article 10(3) in respect of the Director;
- (g) approve the basic organisational structure of the Joint Undertaking;
- (h) adopt the financial regulation and its implementing rules in accordance with Article 13(1);
- (i) adopt the implementing provisions referred to in the second subparagraph of Article 10(2) and in Article 10(4) in respect of the staff;
- (j) adopt implementing rules for making human resources available for the ITER Organisation and for Broader Approach Activities;
- (k) adopt and apply measures and guidelines to combat fraud, irregularities and manage potential conflicts of interest;
- (l) approve the host agreement between the Joint Undertaking and Spain (the Host State) provided for in Article 18;
- (m) decide on any acquisition, sale and mortgaging of land and other titles to real property, as well as on the giving of any sureties or guarantees, taking out of shares in other undertakings or institutions, and granting or taking of loans;
- (n) approve the conclusion of agreements or arrangements regarding cooperation with third countries and with institutions, undertakings or persons of third countries or with international organisations;
- (o) approve the annual activity reports on the progress of the Joint Undertaking with respect to its work programmes and its resources;
- (p) adopt rules on industrial policy, intellectual property rights and the dissemination of information in agreement with the Commission;
- (q) establish the Scientific Programme Board(s) and appoint their members;

(r) exercise such other powers and perform such other functions, including the establishment of subsidiary bodies, as may be necessary for the exercise of its functions in furtherance of its objectives.

4. The voting rights of the Members of the Joint Undertaking shall be as set out in Annex I. The votes of each Member shall be indivisible.

5. Decisions by the Governing Board under paragraph 3(a) shall require unanimity.

Decisions by the Governing Board under paragraph 3(b) to (m) shall require a two-thirds majority of the total votes.

Unless otherwise stated, all other Governing Board decisions shall require a simple majority of the total votes.

6. Euratom shall have the right to make a reservation to a decision by the Governing Board, when it considers that that decision may be contrary to Community law, including notably its international commitments arising from the ITER International Agreement. Euratom shall give due legal justification to such reservation.

In this case the decision shall be suspended and the matter referred to the Commission for a review of its legality, together with the view of the Governing Board.

The Commission may take a decision on the legality of the decision of the Governing Board within one month of the matter being referred to the Commission, failing which the decision of the Governing Board shall be deemed to have been upheld.

The Governing Board shall re-examine its decision in the light of the Commission's views and take a final decision.

7. The Governing Board shall elect its Chairman from among its members upon a proposal by Euratom, by a two-thirds majority of the total votes. He shall serve for a term of two years and may be re-elected once.

8. The Governing Board shall meet when convened by the Chairman, at least two times per year. The Governing Board may also be convened at the request of a simple majority of its members, or at the request of the Director or of Euratom. The meetings shall normally take place at the seat of the Joint Undertaking.

9. Unless otherwise decided in particular cases, the Director of the Joint Undertaking and the Chairman of the Executive Committee shall participate in the meetings of the Governing Board.

10. The Governing Board shall adopt its rules of procedure and shall approve the rules of procedure of the Executive Committee by a two-thirds majority of the total votes.

#### Article 7

##### Executive Committee

1. The Executive Committee shall assist the Governing Board in the preparation of its decisions and shall carry out any other tasks which the Governing Board may delegate to it.

2. The Executive Committee shall be composed of 13 members appointed by the Governing Board from among persons of recognised standing and professional experience in scientific, technical and financial matters relevant to the functions set out in this Article. One Member of the Executive Committee shall be Euratom.

3. The Executive Committee shall in particular:

(a) approve the award of contracts in accordance with the financial regulation;

(b) comment on and make recommendations to the Governing Board on the proposal for the project plan, work programmes, resource estimates plan, annual budget and accounts drawn up by the Director;

(c) submit to the Governing Board, upon request by Euratom or a majority of members, decisions on the awarding of contracts or any other decisions entrusted to it.

4. Each Executive Committee member shall have one vote.

5. Unless otherwise stated, decisions by the Executive Committee shall require a majority of nine votes in favour.

6. The term of office for members of the Executive Committee shall be two years renewable once. Every two years at least half of the members shall be replaced.

7. On expiry of their term of office members shall remain in office until their appointment is renewed or they are replaced. If a member resigns, he shall remain in office until he is replaced.

8. The Chairman of the Executive Committee shall be appointed by the Governing Board for a period of two years, renewable once.

9. The Executive Committee shall meet when convened by the Chairman, at least six times per year. The Executive Committee may also be convened at the request of at least three members, or at the request of the Director or of Euratom. The meetings shall normally take place at the seat of the Joint Undertaking.

10. The Chairman of the Executive Committee shall participate in the meetings of the Governing Board, unless the Governing Board decides otherwise.

11. Subject to the prior approval of the Governing Board, the Executive Committee shall adopt its rules of procedure.

#### Article 8

##### The Director

1. The Director shall be the chief executive officer responsible for the day-to-day management of the Joint Undertaking and shall be its legal representative.

2. The Director shall be appointed by the Governing Board, on the basis of a list of candidates proposed by the Commission following a call for expressions of interest published in the *Official Journal of the European Union* and in other periodicals or on Internet sites. The Director shall be appointed for a period of five years. After an evaluation of the Director's performance during this period by Euratom, and upon its proposal, the Governing Board may extend the term of office once for a further period of not more than five years.

3. The Director shall be subject to the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities, laid down by Regulation (EEC, Euratom, ECSC) No 259/68 (the Staff Regulations) as well as the rules adopted jointly by the institutions of the European Community for the purposes of the application of those Staff Regulations save as otherwise provided in these Statutes.

4. The Director shall implement the work programmes and direct the execution of the activities set out in Article 3. He shall supply the Governing Board, the Executive Committee, the Scientific Programme Board(s) and any subsidiary bodies with all information necessary for the performance of their functions.

In particular, the Director shall:

- (a) organise, direct and supervise the staff and exercise in respect of the staff the powers devolved on the appointing authority;
- (b) define the basic organisational structure of the Joint Undertaking and submit it to the Governing Board for approval;
- (c) draw up and regularly update the project plan, the work programmes of the Joint Undertaking and the staff policy plan;
- (d) draw up, in accordance with the ITER Agreement and with the Broader Approach Agreement with Japan, implementing rules for making human resources available for the ITER Organisation and for Broader Approach Activities;
- (e) draw up, in accordance with the financial Regulation, the resource estimates plan and annual draft budget including the staff establishment plan of the Joint Undertaking;
- (f) implement the budget, keep the inventory and draw up the annual accounts in accordance with the financial regulation;

(g) ensure the application of sound financial management and internal controls;

(h) draw up the rules on intellectual property rights and industrial policy, and on the dissemination of information;

(i) draw up the annual activity report on the progress of the implementation of the activities of the Joint Undertaking set out in the work programmes and resource estimates plan;

(j) draw up such other reports as may be requested by the Governing Board or Executive Committee;

(k) assist the Governing Board, the Executive Committee and any subsidiary bodies by providing their secretariat;

(l) participate in the meetings of the Governing Board, unless the Governing Board decides otherwise, and participate in the meetings of the Executive Committee;

(m) ensure that scientific and technical expertise is made available to the Joint Undertaking for the development of its activities;

(n) carry out other activities and, as may be necessary and make other proposals to the Governing Board in furtherance of the objectives of the Joint Undertaking.

#### Article 9

##### Scientific Programme Board(s)

1. The Governing Board shall appoint the members of Scientific Programme Board(s). The Chairman of the Programme Board(s) shall be elected from among its members.

2. The Scientific Programme Board(s) shall advise the Governing Board and the Director, as necessary, on the adoption and implementation of the project plan and work programmes.

#### Article 10

##### Staff

1. The staff of the Joint Undertaking shall assist the Director in the performance of his duties and shall in general be nationals of the Members of the Joint Undertaking.

2. The Staff Regulations as well as the rules adopted jointly by the institutions of the European Community for the purposes of the application of those Staff Regulations shall apply to the staff of the Joint Undertaking.

The Governing Board, in agreement with the Commission, shall adopt the necessary implementing provisions, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.

3. The Joint Undertaking shall exercise, with regard to its staff, the powers which are devolved on the appointing authority.

4. The Governing Board may adopt provisions to allow national experts from Members of the Joint Undertaking to be seconded to the Joint Undertaking.

#### Article 11

##### Work programmes and resource estimates plan

The Director shall prepare each year the submission of the project plan to the Governing Board, the resource estimates plan and the detailed annual work programmes and budget. One work programme shall be prepared for each of the groups of activities of the Joint Undertaking as set out in Article 3.

#### Article 12

##### Resources

1. The resources of the Joint Undertaking shall consist of a contribution from Euratom, annual membership contributions and voluntary contributions from the Members other than Euratom, contributions from the ITER host State and from additional resources:

- (a) the Euratom contribution shall be made available through the Community research and training programmes adopted pursuant to Article 7 of the Treaty;
- (b) annual membership contributions shall take the form of financial contributions and shall be made available in accordance with Annex II;
- (c) voluntary contributions may be made in cash or in kind and shall not count towards annual membership contributions.
- (d) contributions from the ITER host State;
- (e) additional resources may be received under terms approved by the Governing Board.

2. The resources of the Joint Undertaking shall be solely used in furtherance of its objectives as defined in Article 2. The value of contributions in kind shall be determined by the Joint Undertaking. Without prejudice to Article 19, no payment by way of division of any excess of resources over expenditure shall be made to the Members of the Joint Undertaking.

#### Article 13

##### Financial regulation

1. The financial regulation and its implementing rules shall be adopted by the Governing Board.

2. The financial regulation lays down the rules for the establishment and implementation of the budget of the Joint Undertaking.

3. The financial regulation shall be in accordance with the general principles set out in Annex III.

#### Article 14

##### Annual activity report

The annual activity report shall record the implementation of the work programmes by the Joint Undertaking. It shall in particular outline the activities conducted by the Joint Undertaking and evaluate the results with respect to the objectives and the timetable set, the risks associated with the activities carried out, the use of resources and the general operation of the Joint Undertaking. The annual activity report shall be prepared by the Director, approved by the Governing Board and sent to the Members, the Commission, the European Parliament and the Council of the European Union.

#### Article 15

##### Annual accounts and supervision

1. Within two months after the end of each financial year the provisional accounts of the Joint Undertaking shall be submitted to the Commission and the Court of Auditors of the European Communities ('the Court of Auditors').

The Court of Auditors shall, by 15 June after the end of each financial year, make its observations on the provisional accounts of the Joint Undertaking.

Within six months after the end of each financial year, the Director shall submit the final accounts of the Joint Undertaking to the Commission, the Council, the European Parliament and the Court of Auditors.

The European Parliament, on the recommendation of the Council acting by a qualified majority, shall, before 30 April of year  $n+2$ , give a discharge to the Director in respect of the implementation of the budget of the Joint Undertaking for year  $n$ .

2. The European Anti-Fraud Office (OLAF) set up by Commission Decision 1999/352/EC, ECSC, Euratom <sup>(1)</sup> shall enjoy the same powers in respect of the Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the Joint Undertaking is established, it shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF <sup>(2)</sup>. The Governing Board shall approve that accession and adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

3. All decisions adopted and contracts concluded by the Joint Undertaking, shall provide explicitly that OLAF and the Court of Auditors may carry out on-the-spot inspections of the documents of all contractors and sub-contractors which have received Community funds, including at the premises of the final beneficiaries.

<sup>(1)</sup> OJ L 136, 31.5.1999, p. 20.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 15.

*Article 16***Accession**

1. Upon accession to Euratom, any new Member State of the European Union shall become a Member of the Joint Undertaking.

2. Any third country which concludes a cooperation agreement with Euratom in the field of controlled nuclear fusion that associates its respective research programmes with the Euratom programmes and expresses its wish to become a Member of the Joint Undertaking shall become a Member.

*Article 17***Duration**

The Joint Undertaking shall be established for a period of 35 years starting on 19 April 2007.

*Article 18***Support from the host State**

A host agreement shall be concluded between the Joint Undertaking and the host State concerning, in particular, the site and support to be provided.

*Article 19***Winding up**

1. At the end of the period provided for in Article 17, or following a decision by the Council, the Joint Undertaking shall be wound up.

2. For the purpose of conducting the proceedings in winding up the Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the instructions issued by the Governing Board.

3. When the Joint Undertaking is being wound up, it shall return to the Host State any physical support item made available by the host State in accordance with the host agreement provided for in Article 18.

4. When any physical support item has been dealt with as provided for in Paragraph 3, any further assets shall be used to cover the liabilities of the Joint Undertaking and the costs relating to its winding up. Any surplus or deficit shall be distributed among or met by the Members existing at the time of the winding up in proportion to their actual total contributions to the Joint Undertaking.

*Article 20***Ownership and assignment of rights**

1. The Joint Undertaking shall own all resources, tangible and intangible, and financial assets created by it or acquired by it unless otherwise agreed between the Commission and the Joint Undertaking.

2. Members and their national fusion organisations shall offer free of charge to the Joint Undertaking any title, rights and obligations arising under contracts concluded and orders placed by or with the support of Euratom in relation to the activities of the Joint Undertaking prior to its establishment.

3. The Joint Undertaking may take over any contract and order referred to in paragraph 2.

*Article 21***Amendments**

1. Any Member of the Joint Undertaking may make a proposal to the Governing Board for the amendment of these Statutes.

However, proposals for changes in the voting system and rights, and for determining the voting rights of new Members shall be made by Euratom.

2. Upon approval by the Governing Board the proposal shall be submitted to the Commission.

3. The Commission will make a proposal to the Council for the approval of such amendments in accordance with Article 50 of the Treaty.

*Article 22***Settlement of disputes**

1. Without prejudice to Article 154 of the Treaty, any dispute either between Members of the Joint Undertaking or between one or more Members and the Joint Undertaking concerning the interpretation or application of these Statutes, which is not settled by the good offices of the Governing Board, may, at the request of any party to the dispute, be submitted to an arbitration tribunal.

2. The arbitration tribunal shall be established in each individual case. The tribunal shall be composed of three members nominated jointly by the parties to the dispute. The members of the arbitration tribunal shall elect the chairman from amongst themselves.

3. If the parties in the dispute fail to nominate the members of the arbitration tribunal within two months of the request for submission of a dispute to an arbitration tribunal, or if within one month of the nomination of the members these members do not elect a chairman, such member or members or the chairman shall be nominated by the President of the Court of Justice of the European Communities at the request of one of the parties to the dispute.

4. The arbitration tribunal shall reach its decision by a majority of votes. Such decision shall be binding and final.

## ANNEX I TO THE STATUTES OF THE JOINT UNDERTAKING

**GOVERNING BOARD VOTING RIGHTS**

The voting rights of the Members of the Governing Board shall be distributed as follows:

Euratom	5
Austria	2
Belgium	2
Bulgaria	1
Cyprus	1
Czech Republic	2
Denmark	2
Estonia	1
Finland	2
France	5
Greece	2
Germany	5
Hungary	2
Ireland	2
Italy	5
Latvia	2
Lithuania	2
Luxembourg	1
Malta	1
Poland	3
Portugal	2
Romania	2
Slovakia	2
Slovenia	2
Sweden	2
Switzerland	2
Spain	3
The Netherlands	2
United Kingdom	5



*ANNEX II TO THE STATUTES OF THE JOINT UNDERTAKING***ANNUAL MEMBERSHIP CONTRIBUTIONS**

1. Members other than Euratom shall make annual membership contributions to the Joint Undertaking.
2. The total amount of annual membership contributions for year n shall be calculated on the basis of the annual resources required for the administration of the Joint Undertaking in that year, as adopted by the Governing Board.
3. The total amount of annual membership contributions shall not exceed 10 % of the annual resources required for the administration of the Joint Undertaking, as set out in point 2.
4. The annual membership contribution of each Member, unless otherwise decided by the Governing Board by unanimity, shall be composed of:
  - (a) a minimum contribution of 0,1 % of the total amount of annual membership contributions set out in point 2;
  - (b) an additional contribution calculated in proportion to the Euratom financial participation <sup>(1)</sup> (expressed in EUR) in the Member's expenditure in the framework of the Community Fusion research programme in the year n-2 without including its voluntary contribution to the Euratom obligations included in the Broader Approach Agreement with Japan.

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<sup>(1)</sup> Excluding Euratom financial participation for JET Operation.

*ANNEX III TO THE STATUTES OF THE JOINT UNDERTAKING***FINANCIAL REGULATION: GENERAL PRINCIPLES**

1. The financial Regulation shall follow the budgetary principles of:
  - (a) unity and budget accuracy;
  - (b) annuality;
  - (c) equilibrium;
  - (d) unit of account;
  - (e) universality;
  - (f) specification;
  - (g) sound financial management;
  - (h) transparency.
2. The Joint Undertaking shall have internal control standards and mechanisms in place, including rules for financial circuits and procedures for financial operations.
3. The Joint Undertaking shall establish an internal audit unit.
4. Notwithstanding the principle of equilibrium referred to in point 1(c), the Joint Undertaking shall have the possibility to take out loans in accordance with Article 4 of these Statutes, following approval of the Governing Board and under the conditions set out in the financial Regulation.
5. The financial Regulation shall, in particular, set out:
  - (a) the financial year, which shall begin on the first day of January and end on the last day of December;
  - (b) rules and procedures for the multi-annual project plan and resource estimates plan, their presentation and structure, including budgetary provisions and estimates for a period of five years;
  - (c) rules and procedures for the annual work programmes and resource estimates plan and their presentation and structure, including budgetary provisions and estimates for a period of two years;
  - (d) rules and procedures for the preparation and adoption of the annual budget, and its implementation, including procedures for commitments and payments;
  - (e) the principles for the collection of recovery and for the interest yielded by the resources contributed by the members;
  - (f) rules and procedures for the internal financial control, including delegated powers, in particular concerning the ceilings, below which the Director can award contracts with or without the approval of the Executive Committee;
  - (g) rules and procedures for the method of calculating and transferring payments of the contributions by the Members of the Joint Undertaking;

- (h) rules and procedures for the management of resources, including procedures for purchasing, selling and determining the value of tangible and intangible assets;
  - (i) rules and procedures for the keeping and presentation of accounts and inventory records and the drawing up and presentation of the annual balance sheet;
  - (j) rules and procedures for the management of conflicts of interest and the reporting of suspected irregularities and fraud.
6. The Joint Undertaking shall keep accrual-based accounts in accordance with international accounting standards and international financial reporting standards. Income and expenditures shall be managed and accounted for separately in the annual accounts, which shall include budgetary implementation of commitments and payments together with administrative expenses. The Joint Undertaking shall have no separate accounts by membership origin, but shall account for annual membership contributions received and activities undertaken.
7. The establishment plan of the Joint Undertaking shall be drawn up in agreement with the Commission and in accordance with Article 46 of 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>(1)</sup>.
8. The estimates of revenue and expenditure, together with the operating accounts and the balance sheets of the Joint Undertaking for each financial year, shall be placed before the Commission, the Council and the European Parliament.
9. The Joint Undertaking shall adopt provisions and rules forming a procurement system, integrated and compatible with the ITER Organisation's procurement system and taking into account the Joint Undertaking's specific operational needs stemming, inter alia, from international commitments, thereby allowing the Joint Undertaking to accomplish efficiently and timely the scheduled procurement activities.
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<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1995/2006.

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EUROPEAN COMMISSION

Brussels, 4.5.2010  
COM(2010) 226 final

**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**ITER status and possible way forward**

{SEC(2010) 571}

# COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## ITER status and possible way forward

### 1. INTRODUCTION

This Communication responds to the request of the Council of 16 November 2009 that the European Commission examine and address the financing gap and related governance conditions concerning ITER. The purpose of this communication is to set out the governance and financial conditions under which the Union could support its partners in placing ITER on a sound and sustainable financial footing.

**ITER**<sup>1</sup> is a global project to build and operate an experimental reactor with the aim of demonstrating the scientific and technological feasibility of fusion energy for peaceful purposes. Its successful accomplishment would establish whether fusion can become a major sustainable energy source contributing to the EU's strategy for the long term security in the supply of energy. The process of nuclear fusion offers the prospect of producing an essentially limitless source of safe and clean energy with no CO<sub>2</sub> emission. The ITER project should be followed by a demonstration reactor on the path towards the commercial exploitation of fusion power.

ITER is a uniquely global cooperation - a pioneering initiative seeking to demonstrate shared technological solutions to global problems. The project is conducted under the terms of an International Agreement<sup>2</sup> between the European Atomic Energy Community (EURATOM) and 6 other Parties - China, India, Japan, Korea, Russia, and the USA, which was signed in Paris in November 2006 and which entered into force in October 2007. The agreement established the ITER Organization (IO) with full international legal personality, to be responsible for the joint implementation of the ITER project. The Agreement has an initial duration of 35 years in order to construct (10 years), operate (20 years), and de-activate (5 years) the ITER facilities.

With strong backing of the Council, the Commission successfully negotiated with international partners on behalf of the Community and succeeded to fix the site for building ITER in Europe at Cadarache, France. In addition to the linked opportunities, this agreement specifies that Europe's financial responsibilities to deliver buildings and a machine arise at the outset - the construction phase. This also means that other ITER contributors are dependent on the timely completion of Europe's contribution.

The EURATOM contribution for ITER is managed through the European Joint Undertaking for ITER – "Fusion For Energy" (F4E), established as the European Domestic Agency<sup>3</sup> by the

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<sup>1</sup> Originally denoted "International Thermonuclear Experimental Reactor".

<sup>2</sup> OJ L 358, 16.12.2006, p. 62–80.

<sup>3</sup> Under the ITER Agreement each Member has its own "Domestic Agency" responsible for managing its contribution, and especially for procuring the various components needed to build ITER and to be provided to ITER Organization as contributions in kind.

Council in March 2007<sup>4</sup> and based in Barcelona. The Members of F4E, EURATOM, the 27 Member States plus Switzerland, are all represented in its governance. The EU contribution to ITER construction mainly consists of major systems and components for ITER procured by F4E and provided "in kind" to the ITER Organization. The European Parliament is responsible for giving budgetary discharge to the European Joint Undertaking for ITER.

The construction of ITER is technically extremely challenging in its scale and complexity. It will represent a major engineering undertaking on the scale of the construction of a very large commercial power plant with large-scale industrial contributions in civil, mechanical, electrical and nuclear engineering combined in unprecedented conditions.

The launch of the ITER project marked an important milestone in the development of world-wide big science collaboration. For Europe the project is emblematic of the EU's capacity to take a leading role at the global level in science and technology. The ITER Organization presents a possible model for future large scale international collaborative infrastructure projects. Implementation of ITER is therefore a test case for future EU - international scientific collaboration on large-scale projects.

The cost of the project has significantly exceeded the original estimates on which the EU budget commitment was based. In order for the EU to meet these onerous responsibilities, it must address the need to find the additional resources to frame a sound and sustainable financial solution for the duration of the project, not just for the next two to three years but until the end of the project life. Therefore the budgetary authorities need to provide additional means for this important project and to deal with any future cost overruns.

## **2. CURRENT CONTEXT**

On 29 May 2009, the Commission presented to the Council a summary of the status of the ITER project, the challenges faced and the actions taken. The Commission also set out a number of "boundary conditions" that it considers pre-requisite to be met in order to ensure the success of the project at acceptable cost and reasonable risks. These include credible cost assessment and cost containment policies, realistic timetable and sound management of the project at all levels.

At its meeting of 16 November 2009<sup>5</sup>, the Council confirmed its unanimous support to the ITER project, understanding that the construction cost of ITER would be substantially higher than initially planned, and "provided that the boundary conditions elaborated by the Commission in the end can be met". The Council also concluded that the "Baseline"<sup>6</sup> (scope, schedule and cost) for ITER must build upon these boundary conditions. It called for action to be taken on necessary management changes and a strong policy to be applied on cost reduction and cost containment.

In addition, the Council invited the Commission to explore possibilities for providing the increased funding needed during the current Financial Perspectives, including advantages and disadvantages of a loan from the European Investment Bank (EIB) and a reprioritization of

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

<sup>5</sup> Documents 15815/09 RECH 401 ATO 136 + ADD 1 RESTREINT UE.

<sup>6</sup> The Baseline refers to the inter-related elements of scope (specifications of the machine to build), the schedule (time table for construction) and the cost.

funds within the current EU budget, and to present possible solution(s) to the Council as soon as possible.

At the international level, the immediate critical step for the construction phase is for ITER international partners to agree on the Baseline at the currently foreseen mid-June ITER Council in China. The Commission has insisted on meeting the Boundary conditions and has so far declined to adopt the proposed schedule as foreseen in November 2009. The EU now needs to define its position for the meeting of the ITER Council.

### **3. ITER Cost**

During the construction phase EURATOM contributes a value of 5/11 (around 45%) of the total, of which 80% is funded from EURATOM and 20% from France, the rest being equally divided among the other 6 ITER Parties (1/11 or around ~9% each)<sup>7</sup>. During the subsequent operation and deactivation phases, EURATOM will contribute 34% of the total costs:

The 2001 cost estimated the total ITER construction at EUR 5.9 billion (5896 million in 2008 value). The EURATOM contribution, amounted to EUR 2.7 billion (around 45%, 2680 million in 2008 value), corresponding to EUR 1 735 million for the components/systems to be provided "in kind", and EUR 945 million to be provided "in cash" to the ITER Organization. Each Party has committed to provide the agreed contributions in kind independently of the final cost of procuring and delivering those components.

The F4E current cost estimates for the construction period (cost for Europe only), updated according to the proposed schedule (2007-2020) and presented to the F4E Governing Board in March 2010, amount to EUR 7.2 billion (7253 million in 2008 value): EUR 6.6 billion<sup>8</sup> (6603 million in 2008 value) for the contribution to ITER construction and EUR 650 million for the F4E running costs and other activities. These estimates would require a EURATOM contribution of EUR 5.9 billion (EUR 5892 million)<sup>9</sup> and EUR 1.3 billion (EUR 1321 million) of funding from France (all figures in 2008 value)<sup>10</sup>.

EUR 2.1 billion (current value) of commitment appropriations from the FP7 EURATOM Budget are needed for the years 2012-2013 in order to commit the procurements needed early in the construction process. Programmed appropriations available in the current Multiannual Financial Framework (EUR 346 million for 2012 and EUR 344 million for 2013 in current value) mean that EURATOM is facing an estimated gap on commitment appropriations of about EUR 1.4 billion (in current value) for the years 2012-2013 (EUR 550 million in 2012 and EUR 850 million in 2013).

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<sup>7</sup> Cost Sharing for all Phases of the ITER Project. Attachment 2(b) to the Final Report on Negotiations on the ITER Joint Implementation, 1 April 2006.

<sup>8</sup> As the final construction cost of the whole ITER machine will not be known because each Party will suffer specific cost increases, it would be difficult to substantiate an estimation of what share of the overall ITER construction costs the EUR 6.6 billion would represent.

<sup>9</sup> This amount is broken down as follows:

For 2007-2011 (5 years) the estimated financial needs are about EUR 1.3 billion;

For 2012-2013 (2 years) the estimated financial needs are about EUR 2 billion;

For 2014-2020 (7 years) the estimated financial needs are about EUR 2.6 billion.

<sup>10</sup> To this contribution about EUR 40 million should be added, which come from the F4E members (EURATOM, 27 Member States and Switzerland) other than EURATOM and France.



Given the increased level of maturity of the design and the implementation of costing methodologies that could take into account more detailed data on the project, these estimates are not foreseen to undergo material variation in the short term. The scale of this funding gap requires a response from the budgetary authorities that is linked to a number of conditions.

#### **4. PRE-CONDITIONS FOR SOUND AND SUSTAINABLE FINANCING OF ITER**

##### **4.1. Sound Governance**

The expert assessment of the source of cost overruns has identified a range of issues which must urgently be addressed by the Member States in the governance of F4E and the International Organisation (IO). The governance of F4E will have to be reviewed.

To address these issues a clear programme of delivering the Boundary Conditions needs to be actively supported by the Member States. This will involve improving cost estimates, transparent monitoring and reporting of cost evolutions, and proactively managing cost containment policies notably addressing value engineering, rationalising allocation of procurement obligations, agreeing standards and exploiting economies of scale. Following the resignation of the F4E director in January 2010, it is being restructured and its cost containment overhaul is being put in pace by a new Director.

Beyond the expert assessment reports, additional measures may need to be taken. In the framework of the F4E governance overhaul there is need to also address the F4E procurement policies with European fusion research entities and industries, aiming at strategic partnerships and innovation.

For the IO costs escalations related to design and management resources. The ITER Council will implement key aspects of the Management Assessment report including management changes currently foreseen in June.

##### **4.2. Sustainable Financial Framework**

The Commission underlines its commitment to maintain and continue its original budgetary allocation for ITER. However, given the scale of the financing gap and the need for a systemic solution that will respect the Budget of the Union throughout the life of the project, there is a need for additional funds. The Commission has therefore explored the options requested by the Council.

##### **Loan of the European Investment Bank**

The European Investment Bank (EIB) could be asked to grant a loan to F4E as the underlying research infrastructure activities are within its lending objectives. In order to grant a credit line to F4E, the EIB would need to further investigate if an explicit collateral or guarantee from EURATOM would be required. Should the EIB need an explicit guarantee from EURATOM, the Commission would have to prepare a proposal for modifying the legal act establishing F4E that would need to be adopted by unanimity. Specific provisions would thereafter be set out in an agreement between EURATOM (represented by the Commission), the EIB and F4E. Moreover, certain changes and/or clarifications in the F4E financial regulation and its implementing rules would be required. However, the main problem with using a loan to fill the financing gap is the absence of an identifiable income stream which

could be used to make repayments on a loan; in practice this precludes a loan as being an appropriate solution for the identified funding gap.

## **Redeployment**

Additional financing needs for ITER could be partially covered by the transfer of funds from other headings. However, given the scale of the funding gap and the need for a systemic approach throughout the life of the ITER project, the recourse to redeployment of existing Union funds on this scale would have a significantly negative effect on a range of policies and programmes which are at the heart of the EUROPE 2020 agenda. In policy terms, it would not be advisable to make such significant reductions in these areas. This issue was already signalled in the Commission's recent report on the functioning of the Inter-institutional agreement on budgetary discipline<sup>11</sup>.

In addition, neither of these options (EIB nor redeployment) provides a structural solution to this issue.

The commitment of the Council, also towards the European Parliament, to guarantee adequate financial support to the ITER project throughout its construction and operations phases is a pre-condition of sustainability. Excluding the options of an EIB loan and of redeployment, the Commission considers that the EU's commitment to the ITER project can only be met by two options which are appropriate to the scale and systemic nature of this issue.

## **OPTION ONE: COMPLEMENTARY FINANCING FROM MEMBER STATES**

For 2012-2013, all EU Member States and Switzerland would need to make additional contributions of the order of EUR 1.4 billion and to undertake to finance any cost overruns beyond those provisions foreseen in the Budget of the Union and the Multiannual Financial Framework for the whole life of the project. The possibility of additional contributions from F4E Members is foreseen by the decision establishing F4E.

In the future, from 2014 until the end of the project, additional Member State financing would be triggered once the budget appropriations foreseen for ITER have been fully used. Consideration could be given to possible additional mechanisms increasing flexibility within the Multiannual Financial Framework and to be used before triggering Member States' additional contributions.

## **OPTION TWO: SET FINANCIAL PERSPECTIVES CEILINGS AT APPROPRIATE LEVEL**

Provided a solution for the financing of the whole life of the project is found, a net increase in the overall ceiling of the 2007-2013 financial framework could be envisaged for 2012-2013. However, the Council has so far set a condition that the 7-year global ceilings of the financial framework in terms of commitments and payments should remain unchanged<sup>12</sup>.

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<sup>11</sup> COM(2010) 185, 27.4.2010.

<sup>12</sup> Revision of the ceilings can be done in two ways: a) as a compensation mechanism offsetting the increase in one heading by a matching decrease in another or b) increasing the overall ceiling. A compensation mechanism has been used several times in the past. Until the end of 2013 though, the Commission expects that the margins available will be substantially reduced. Those reduced margins should be partially preserved to leave the possibility to adapt to competing future demands.

In the future, the financial Multiannual Financial Framework ceilings would need to be fixed at a level that would allow the EU to meet its commitment to the ITER project.

Whatever option is preferred by the budgetary authorities, a sustainable solution will require a clear financial commitment for the life of the project and a commitment to finance any overruns outside that framework, by Member States.

For any of the options a capping mechanism should be established to ensure sound financial management of the project.

## **5. TIME FRAME**

The time frame in which a solution for the financing of ITER would need to be found is very limited. Taking into account the need to clarify the situation to the EU's international partners and the dynamics of the EU budget, the Commission proposes that the Council and European Parliament consider this issue as a matter of urgency.

## **6. CONCLUSION**

The launch of the ITER project marked an important milestone in the development of world-wide big science collaboration. For Europe the project is emblematic of the EU's capacity to take a leading role at the global level in science and technology.

Finding an effective, systemic and durable solution to the sound financial governance and sustainability would provide a template for future global cooperation on the grand challenges such as energy supplies, facing our collective way of life.

At its meeting of 16 November 2009, the Council confirmed their support to the ITER project, despite the substantial cost increases, provided that boundary conditions elaborated by the Commission could be met, and invited the Commission to explore funding possibilities in the context of the current Multiannual Financial Framework.

Taking into account the elements presented in this communication, the Commission calls on the Council and the European Parliament to provide the additional resources necessary for the complete period of the ITER construction and to take a decision in principle on the provision of the necessary funding. The Commission considers that it has to be done as soon as possible in order for it to inform its international partners expecting a EURATOM decision on the ITER Baseline at the next meeting of the ITER Council in mid-June.

Once such a commitment is given, the Commission will present the necessary proposals to finance the additional needs for ITER in 2012 and 2013 in line with the recent report on the Inter-institutional agreement.

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EUROPEAN COMMISSION

Brussels, 9.11.2010  
SEC(2010) 1386 final

**COMMISSION STAFF WORKING PAPER**

**Towards a robust management and governance of the ITER project**

## COMMISSION STAFF WORKING PAPER

### Towards a robust management and governance of the ITER project

#### 1. INTRODUCTION

The Commission transmitted to the European Parliament and to the Council on 4 May 2010 a communication entitled "ITER status and possible way forward"<sup>1</sup> addressing the financing gap concerning ITER.

In its conclusions of 12 July 2010<sup>2</sup>, the Council reaffirmed its strong commitment to the successful completion of the ITER project, acknowledged its estimated financing needs and made a number of considerations on cost control and containment, governance and management, reporting and review, as well as financial aspects. The Council also mandated the Commission to support the adoption of the so called ITER Baseline<sup>3</sup>.

On 20 July 2010, the Commission adopted a proposal for a decision by the European Parliament and the Council for amending the Inter-institutional Agreement on the Multiannual Financial Framework in order to cover the additional financing needs of €1.4 billion for ITER for 2012 and 2013 stating that no more than one third of the needs will be covered by redeploying funds within the Seventh Framework Programme.

At the extraordinary ITER Council meeting of 28 July 2010, the Commission supported the adoption of the ITER Baseline *ad referendum*. Both arms of the budgetary authority (European Parliament and Council) are now to approve and secure the financing of ITER. The Baseline was unanimously adopted.

This document responds to the request of the Council of 12 July 2010 that the European Commission, in close collaboration with the Member States, examines and addresses the way in which the Commission, the Member States and F4E implement their responsibilities and tasks.

#### 2. ITER BACKGROUND

The ITER project is conducted under the terms of an **International Agreement**<sup>4</sup> between the European Atomic Energy Community (**Euratom**), represented by the Commission, and 6 other Parties - People's Republic of China, India, Japan, Republic of Korea, the Russian Federation, the United States-, which was signed in Paris in November 2006 and entered into force in October 2007. The Agreement established the **ITER Organization (IO)** with full

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<sup>1</sup> COM (2010) 226, of 4.5.2010

<sup>2</sup> 11902/10.

<sup>3</sup> The Baseline refers to the inter-related elements of scope (specifications of the machine to be built), the schedule (timetable for construction) and the cost.

<sup>4</sup> Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project. OJ L 358, of 16.12.2006, p.62

international legal personality to be responsible for the joint implementation of the ITER project. The Members of IO are the Parties to the Agreement and they jointly direct and supervise its conduct through their representation in the **ITER Council** which is the principal organ of IO. The ITER Council decides on a number of relevant issues by unanimity. This system represents *de facto* a so-called "veto right" for all the Parties and it represents an additional challenge in the decision making process. The **Director General** is the chief executive officer and the representative of IO.

According to the International Agreement, each Party provides its contribution to IO through an entity called **Domestic Agency (DA)**. IO holds the responsibility for the construction and performance of the machine (including design and assembly of the components, and quality and safety requirements), while the Parties commit to provide through their DAs the various constituent components/systems as **contributions in kind** under their own financial responsibility.

The International Agreement was the result of over five years of negotiation with the six other Parties. The room for changes in the **governance** of the project at international level is limited by this framework.

**At EU level**, the Euratom contribution to ITER is managed through the European Joint Undertaking for ITER – "**Fusion For Energy**" (**F4E**), established as the European DA by the Council in March 2007<sup>5</sup> and based in Barcelona.

The responsibility for the supervision of F4E in the pursuit of its objectives falls on the **Governing Board (GB)**, which is composed of two representatives of all the members of the Joint Undertaking (27 Member States, Switzerland and Euratom). It is currently assisted by an **Executive Committee (ExCo)** in the preparation of its decisions. In addition, the **Scientific Programme Board (TAP)** advises the GB and the Director, mainly on scientific and technical matters. The role of the F4E **Director**, as chief executive officer responsible for the day to day management of F4E, completes the governance of this Joint Undertaking.

The Community funds, through the Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities, represent about 80% of the **European contribution** to the ITER project and the Commission is ultimately accountable for the use of these public resources. The **European Parliament** is responsible for giving budgetary discharge to the European Joint Undertaking for ITER.

As announced in the Commission Communication of 4 May 2010, the cost of the project has significantly exceeded the original estimates on which the EU budget commitment was based. In order to fill the corresponding gap for 2012-2013, the Council requested on 12 July 2010 financing proposals drawing on resources beyond the Euratom budget. In its proposal of 20 July 2010, the Commission followed this principle.

This means that if a financing solution for ITER is agreed along this line by the budgetary authority, the construction of ITER will be supported both by the Euratom budget and the EC budget.

The **voting rights** distribution among the Members of the GB gives Euratom **5 votes out of a total of 70** (as much as France, Germany, Italy or United Kingdom).

At international level, **the Commission, representing Euratom:**

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

- leads the EU participation in the ITER Council (this political role is strengthened by the fact that the EU is the host party).
- represents bilaterally the EU vis-à-vis the international partners
- is responsible for the defence of EU positions in the ITER Council
- is accountable to the ITER Council for the implementation of the EU level contribution.

The Commission has effectively exercised its leadership at international level on several occasions in the past, e.g. at the end of 2009 by opposing the adoption of the ITER Baseline due to the unacceptable risks and costs it entailed. This leadership was supported by the F4E Governing Board and the EU Council allowing a successful outcome in a very challenging international context.

### 3. CHALLENGING ISSUES

#### 3.1. At international level: IO

- The ITER Agreement, while providing the Parties with a number of advantages in terms of development and sharing of know-how, sets a **very challenging structure**. It attributes differentiated roles and responsibilities to IO and the seven Parties. IO holds the overall responsibility of the construction of the machine while the DAs are in charge of the procurement of the components and its funding. In this essential aspect, ITER deviates from standard projects, where the responsibility and the funds are controlled by the same authority. The separation of technical and financial responsibilities between IO and DAs represents a testing challenge for the successful implementation of the project.
- The fact that the number of Parties to the project is seven creates a high number of interfaces, many more than if the Parties had been three, as initially foreseen. In particular, the process of assembling the thousands of ITER components coming from seven different parts of the world will be uniquely challenging.
- The **ITER Council** operates for relevant issues on **unanimity** basis. Proposals for specific improvements need to be developed in consultation with all the partners to achieve the high degree of convergence needed to assure their adoption by the ITER Council. This basis often represents an additional hurdle for Euratom that frequently finds itself isolated at the ITER Council when protecting its interests as the major stakeholder and Host Party.
- The appointment of the IO senior staff was initially done based on a certain geographical equilibrium: each Party to the Agreement appointed one Deputy Director General. This selection procedure was not mainly based on merits as it would be required in a project oriented organisation such as IO.
- In 2009, a **management assessment** of IO was performed. It revealed a number of **weaknesses** in the organisation, and concluded, inter alia, that a new and strong management group capable of commanding the ITER construction in a ‘global project management way’ was needed. The report also recommended measures to be taken in several areas of the organisation.



### 3.2. At European level: F4E Joint Undertaking

- The **cost of the project** has significantly exceeded the original estimates on which the EU budget commitment was based, mainly due to the increase in the in kind contributions. This increase, even if duly justified by a number of factors, calls for the development and implementation of strict cost containment policies and measures.
- ITER, as a large scale first of a kind project, is subject to certain budgetary uncertainties and possible cost overruns. This is hardly compatible with the **limited flexibility** provided by the strict budgetary discipline and medium-term predictability of EU expenditure.
- Due the current set-up, the capacities for the **Commission** to play an influential role in the governance of **F4E are limited**. Considering its role at international level, the fact that it is the major stakeholder and that it is responsible for the proper use of Community resources, these capacities are insufficient.
- Without prejudice to its role as part of the budgetary authority, and considering the framework defined by the Euratom Treaty, the **European Parliament** is not structurally involved in the ITER Project. Nevertheless, the Treaty of Lisbon strengthens the budgetary control of the European Union with a stronger role for the European Parliament. Moreover, the demand of the Council to fill the financing gap for 2012-2013 from EC budget, primarily by redeployment within the 7th Framework Programme, definitively calls for its involvement.
- Upon request of the Commission, a **management and governance assessment** was performed at F4E by an ad-hoc external Expert Group at the end 2009. It concluded, *inter alia*, that **radical changes** to the organisation and culture of F4E were required in order that it is in a position to fulfil the Euratom obligations to ITER. F4E needed to be reoriented towards sound and specific **management of the project**. Its structure needs to focus on the **procurement** processes and on the placing and supervision of **industrial** contracts.
- The assessment also pointed out that the 59-member **Governing Board** is ill-suited for the efficient executive control and steering of F4E.
- Providing Euratom representatives in the ITER Council and subsidiary bodies with **technical support** when exercising their responsibilities at international level is a function not formally assigned to any structure, nor to F4E. This fact could potentially leave Euratom in a weaker position when preparing for decision making at international level on issues exceeding the strict scope of the EU contribution.
- The 2009 **Annual report of the Internal Auditor** of F4E produced in May 2010, revealed weaknesses in the existing financial circuits and concluded that improvements need to be made in this area as well as in the F4E Internal Control System. It is necessary to **create a financial service** and to review the financial circuits in order to ensure sound financial management of the resources .
- The **Court of Auditors** recommended in its annual report for 2008 (issued by the end of 2009) and in its 2009 Report, *inter alia*, that the Commission's internal auditor should exercise the same powers with respect to EU bodies, including the Joint Undertakings, as with respect to Commission Departments.

- The existing **monitoring and reporting** systems do not fully allow for effective decision making and control processes. Audit systems are not yet completely in place.

## 4. GOAL AND GUIDING PRINCIPLES FOR IMPROVEMENT

### 4.1. Overall goal

The overall goal is the **successful construction of ITER** in accordance with the technical requirements, within the agreed schedule and with the resources fixed to that end. To this aim, integral adequate project management, including cost containment and risk management (technical, industrial, financial, legal) must be at the core of the ITER implementation at all levels

Building on the existing context, the Commission services consider it desirable that a number of guiding principles be followed:

### 4.2. Guiding Principles for the improvement measures at international level (IO)

#### 4.2.1. *Principles for governance*

- The **EU**, as host Party and largest contributor should keep on exercising strong **political leadership** in the implementation of the ITER project.
- **The Commission**, representing Euratom in the ITER Council, needs the support of **the Council, the Parliament** and the **F4E Governing Board** to effectively exercise leadership in the international field.
- **Member States** should **take full responsibility** of the project in the framework of their bilateral relations with the ITER international Parties.
- **The ITER Council** should focus its activity on steering the project and promote ownership among the Parties.
- Without prejudice of the division of responsibilities as provided for in the Agreement and due to the specific nature of the governance structure of the project, the **DAs have to closely co-ordinate their competences and means with those of IO** so as to provide the project with industrial capacities.

#### 4.2.2. *Principles for management*

- The organizational structure, management processes and culture of IO should be **project oriented** and should include a robust risk-assessment process.
- **Cost containment** policies and measures should be at the core of the structure, processes and culture of IO. Every measure for cost containment shall be taken during the finalisation of the designs, and at the control of the design changes.
- **Specific management processes** should be in place to overcome the challenges derived from the peculiar governance structure of the project as defined by the ITER Agreement.

- **IO** should be a professional **organisation** focused on project management to complete the construction of the machine. To that end, IO should be able to effectively bring into line the activities implemented by the DAs.

#### **4.3. Guiding Principles for the improvement measures at European level (F4E)**

##### *4.3.1. Principles for governance*

- The **Commission**, representing Euratom who has taken obligations under the ITER Agreement and as major stakeholder, **should have a specific role** in the governance and management of the ITER project, especially in F4E as implementing organisation to discharge Euratom from its obligations.
- The support of the **European Parliament** to the project is essential. It should have the opportunity for a closer scrutiny of the project.
- **Member States** should **take full responsibility** of the project in the F4E Governing Board.

##### *4.3.2. Principles for management*

- The organizational structure, management processes and culture of F4E should be **project oriented** and should include an integral adequate project management including robust risk-assessment process to ensure effective implementation of the project.
- **Cost containment** policies and measures shall be at the core of the structure, processes and culture of F4E. Every measure for cost containment shall be taken **at all levels** of the tendering procedures and of the procurement follow-up.
- **F4E** is a professional **procurement organisation**. Qualified expertise in technical (including specific industrial expertise), financial and administrative matters is essential. Outsourcing should be considered whenever additional expertise is needed.
- Without prejudice to the special role of the Commission in the implementation of the project, F4E must enjoy the management **autonomy** needed to fulfil its mission.

#### **5. IMPROVEMENT MEASURES IN THE SHORT AND MEDIUM TERM**

##### **5.1. At ITER Organization level**

###### *5.1.1. Management*

**First improvement measures taken so far**, notably as follow up of the management assessment report issued by the end of 2009:

- A new Director General, Prof. Motojima, was appointed by the ITER Council on 28 July 2010
- A new IO structure was also adopted in July 2010.

- In addition, the adoption of the Baseline of the project represents a milestone that provides the project with the basis for its sound management.

### **Further improvement measures considered desirable by the Commission services:**

The Commission services regard the following measures as desirable to ensure the success of the project and will do its utmost to have them implemented within the limits provided by the International Agreement. Some measures would require the support of the six other Parties at the ITER Council, while other measures would fall under the direct responsibility of the IO Director General.

- The recently appointed **Director General** should take full **leadership** in the management of the ITER Project.
- Within the limits of the ITER Agreement and considering the existing constraints on resources availability, IO needs to further exercise its **authority to take decisions** on technical requirements in the interest of the project when collaborating with the DAs in the design, preparation and execution of the procurement processes.
- Streamlining of the **management structure** of IO and functions of its senior staff, to make them project-oriented rather than institutionally-oriented.
- Senior executive posts should be appointed on the basis of **best qualifications and professional competence** and not as representatives of the individual ITER Parties.
- Management processes need to effectively address the **specific governance structure** of the project with one central structure (IO) ultimately responsible for the construction of the ITER facility and seven decentralised agencies (DAs) responsible for the procurement of its components.
- Implementation of established **best practices for managing** complex projects, including:
  - (a) systematic breakdown of project scope down to design specification;
  - (b) increased rigour and realism in **planning** and cost estimating;
  - (c) establishment of a **cost containment** culture and implementation of cost containment policies at all levels;
  - (d) establishment of a quality culture and application of **strict quality assurance and control** mechanisms for all processes and procedures;
  - (e) regular and transparent internal **auditing** of technical, financial and management processes and procedures;
  - (f) **effective monitoring and regular reporting** on the execution of the project and its budget by stakeholders (the ITER Parties) for increased transparency and effective decision making, and
  - (g) high standards of **accountability** for tax-payer funded activities, independent and effective **audit** and control systems.

- (h) Guarantee that **Quality Assurance** is fully carried out within IO and DAs at the required standards.

A closer integration of IO and DAs may require appropriate amendments to the ITER Agreement which would have to be discussed with the other ITER Parties.

#### 5.1.2. Governance

Improvements on the challenging structure of **governance** of the project at international level are limited considering its legal framework. This structure requires for strengthened management processes to cope with the existing constraints. No changes in the IO governance are proposed at this stage.

### 5.2. At EU level, F4E Joint Undertaking

#### 5.2.1. Management

##### **First measures for management improvement taken so far:**

As follow up of the management and governance assessment report issued by the end of 2009, the Commission called for a number of changes to be implemented:

A **new Director** has been appointed on February 2010. In addition, the GB created a "Standing Coordination Group" to increase its efficiency. The Chair and Vice-chair of the GB, one Euratom representative, one member from the ITER Host State, and three representatives chosen every year from the Board (at present Germany; Spain; Greece) are its members.

New measures to improve the technical, administrative and financial management of the processes in the organisation are being implemented by the new Director of F4E. Following his proposals **on measures for improvement**, the GB at its meeting of 5 October 2010:

- Approved a new F4E Basic **Organisation Structure**<sup>6</sup>, including *inter alia* the creation of a **new financial service**. This structure responds to the changes needed in F4E towards a project oriented organisation. The financial circuits and responsibilities have been reviewed according to the recommendations made by the Auditor and the establishment of a separate financial service will contribute to a sound financial management of the resources.
- Endorsed the **cost containment and reduction plan**<sup>7</sup> with regard to the actions to be taken by F4E, and encouraged F4E to advise the EU representatives in the different ITER Council instances on the IO proposals. The plan outlines the main actions to be undertaken at F4E level: review of the planned activities, review of the procurement strategy and industrial policy, suggestions to enhance joint work with the other DAs and IO. A regular reporting to the GB on the implementation and results of this plan is foreseen.
- Endorsed F4E's proposal to introduce an **industry-standard project management system** and noted the proposals concerning the introduction of **control processes and reporting**

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<sup>6</sup> F4E(10)-GB17-06 Final 20/09/2010

<sup>7</sup> F4E(10)-GB17-08 Final 20/09/2010

**mechanisms**<sup>8</sup>. This will provide support to the F4E management and to the GB in the establishment of transparent and effective decision making processes, and in keeping control of the implementation of the project and of the EU contribution. In addition, the proposed system allows integration with those being established in IO.

In order to fulfil its obligations, F4E should further ensure the availability of qualified **expertise in technical, financial and administrative** matters (including project and risk management). Whenever internal resources are not adequate to satisfy F4E's needs, calling upon external expertise should be considered, in particular to address specific industrial management problems in the transition towards a project-oriented organisation.

Moreover, work is ongoing in F4E on the development of a comprehensive **industrial policy**. The main role of such policy should be to provide the right framework conditions for value creation for European industrial development, taking account of the fact that most businesses are small and medium-sized enterprises (SMEs). This would help to make ITER technologies and in the long term future fusion power plants attractive for industrial investment and job creation. In order to reach that objective, a number of conditions are to be fulfilled:

- Clear, pragmatic and industry oriented procurement processes.
- Legal framework adapted to common industrial practices (i.e. liability, liquidated damages, etc.).
- Industrially recognised approach to quality management and implementation.
- Stimulation and facilitation of the participation and competition of industry in the procurement processes in a level playing field, paying especial attention on the SMEs.
- Transfer of fusion technology and know-how to the European industry.
- Due consideration must be given to the intellectual property rights.

In order to increase flexibility in the procurement processes, work on the **adaptation of the current implementing rules of the financial regulation** is being carried out.

The implementation of such measures needs to be **carefully and systematically monitored**.

The above mentioned actions constitute a **good basis** to improve the sound management of the project without changing the existing legal framework.

#### 5.2.2. *Governance*

##### **Further improvement measures considered desirable by the Commission services:**

The current political context, especially considering the Lisbon Treaty, calls for a closer scrutiny of the project by the **European Parliament**.

The **protection of the Community interests** in F4E governance would benefit from a close scrutiny of the project also by the European Parliament and a stronger role and enhanced capacities of the Commission in its governance.

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<sup>8</sup> F4E(10)-GB17-07 Final 20/09//2010

**To enhance the governance of the project on the short and medium term, the services of the Commission intend to submit to the College in due course a formal proposal for amending the statutes of F4E<sup>9</sup> taking into account issues such as:**

*a. The objectives of the Joint undertaking*

In addition to the objectives already established for the Joint Undertaking, and considering the responsibilities of Euratom in the ITER Council, effective support from F4E to the Commission on international aspects related to the implementation of the project should be ensured.

*b. Structure of Governance*

**b.1 The Governing Board (GB)**

The GB should enhance its focus on **strategic direction, organisational purpose and corporate governance** engaging all stakeholders to that purpose. The GB must provide leadership and direction to the organisation for it to be effective and fit for purpose.

A more strategically oriented GB, adequately supported by a committee, would benefit from a **reduced size**.

Considering the specific responsibility of Euratom in the financing of the Joint Undertaking, the voting majority needed for a number of predefined decisions should require a **positive vote of Euratom**. For budget matters a **direct correlation between the financial contribution and the capability of decision making of the members of the GB** should be introduced.

In addition, certain procedures for decision making in the Joint Undertaking, such as the requirements for amending its statutes, should be reviewed.

**b.2 Committees assisting the Governing Board**

In order to ensure sound management of the project and assist effectively the governing bodies in the preparation of its decisions, the structure of the committees needs to be effectively enhanced

The Executive Committee (**ExCo**) has so far focussed its activity on the procurement contracts and has not taken major action on management monitoring. The supervision and monitoring of the implementation of the responsibilities of F4E need to be strengthened.

The current **ExCo** should therefore be replaced by two committees: the "Management Supervisory Committee" (**MSC**) and the "Procurements and Grants Committee" (**PGC**). The charges and the members of these two committees would be differentiated:

- The **MSC** would be of a limited size (5-8 people), including Euratom and France (as host State) as permanent members. The MSC would be project oriented and its charges would be twofold: 1) monitoring the implementation of the project considering its financial and technical progress, and overseeing the industrial policy and procurement strategies, and 2)

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<sup>9</sup> Upon approval of the F4E GB and proposal from the Commission to the Council.

preparing the GB meetings and decisions. The MSC would make recommendations to the Director of F4E. Its members would be nominated on the basis of their experience in the technical and financial management of large projects.

- The **PGC** would also be of a limited size (8-10 people) and chaired by Euratom to minimise any possible conflict of interest. The tasks of this committee would be similar to those currently entrusted to the ExCo for the award of contracts. In addition, an early intervention of this committee in the procurement process would allow F4E to consider its opinion and recommendations in a more efficient manner. It would also monitor and make recommendations to the GB on the procurement processes. Its members would be nominated by the Governing Board on the basis of a short list presented by Euratom built upon a call for expression of interest.

The Scientific Programme board (**TAP**) has so far had a role in giving advice of a scientific nature. Without prejudice to requests of external expertise on any technical or industrial matter whenever it considers it necessary, F4E would benefit from a more prominent technical role of this committee on: 1) the assessment of expected technical difficulties in the fabrication of various components and advice on the most efficient way to solve them, and 2) the monitoring of the technical progress of the project and also on remedy actions to any delays and technical difficulties. Its members would be nominated by the Governing Board on the basis a short list presented by Euratom built upon a call for expression of interest.

### b.3 Supervision of the Joint undertaking

According to F4E's statutes, the annual accounts of the Joint Undertaking are subject to the control of the **Court of Auditors**, while the **European Anti-Fraud Office** (OLAF) enjoys the same powers in respect of F4E as it enjoys in respect of Commission Departments. In addition, internally, F4E's structure includes an "Internal Auditor" and has recently set up the "Audit Committee".

In line with the arrangements in place for other Community bodies and as recommended by the Court of Auditors, F4E should also be subject to the **Internal Audit Service** of the Commission.

## 6. FURTHER IMPROVEMENT MEASURES TO BE EXPLORED IN THE LONG TERM

**At EU level**, certain large scale projects requiring multi billion Euro contributions over long periods, such as ITER, are acknowledged to be of major strategic importance and could have long-term commercial potential. However, they are also subject to significant cost overruns and their governance is not well-suited to the direct management of the EU institutions. As the budgetary uncertainties are hardly compatible with the way in which the EU budget is planned, an alternative approach would be for the project promoters to set up a support structure as a separate entity, with the active interest of the EU to ensure effective governance, and to which the EU budget would make a stable contribution in the form of a fixed annual contribution with no assumption that the EU should make up any shortfalls.

The specificity of ITER, compared to other large scale European funded projects is its international dimension and its specific legal framework set by the International Agreement signed by Euratom. It confers to the Commission representing Euratom, as signatory to the Agreement and major stakeholder of the project, a special responsibility beyond a typical



European project only involving European partners, which needs to be reflected in the governance.

In this context, the services of the Commission should examine whether in the long run the legal status of a Joint Undertaking represents the best approach for managing a project such as ITER and whether changes are needed in the future.

**At international level**, amendments to the ITER Agreement would have to be discussed with the other ITER Parties considering that unanimity is required for their acceptance.

## 7. NEXT ACTIONS

- The Commission services consider it desirable for the Commission to continue to **actively exercise EU leadership**. It would be appropriate to strengthen its role in the governing bodies of IO and F4E counting on the support from the Institutions and Member States.
- The services of the Commission, representing Euratom in the governance of IO and F4E principally through its membership in the ITER Council (together with the international Parties) and on the F4E Governing Board (together with the Member States), should actively pursue the **implementation of the guiding principles** reflected in this document and should support effective actions and measures addressing the identified areas for improvement at the different levels and within the remits of the institutional framework.
- The services of the Commission intend to submit to the College in due course **a proposal for amending the statutes of F4E** in order to enhance the structure for governance of the Joint Undertaking in the short and medium term and to acknowledge the specific role of the Commission.
- The services of the Commission should also examine whether in the long run **the legal status** of a Joint Undertaking represents the best approach for managing a project such as ITER and whether changes are needed.
- At **international level**, the services of the Commission should also examine whether amendments to the ITER Agreement would be needed. In that case, they would have to be discussed with the other ITER Parties as they require unanimity for their acceptance.

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EUROPEAN COMMISSION

Brussels, 7.3.2011  
COM(2011) 72 final

2011/0046 (NLE)

Proposal for a

**COUNCIL DECISION**

**concerning the Framework Programme of the European Atomic Energy Community for  
nuclear research and training activities (2012 - 2013)**

{COM(2011) 71 final}  
{COM(2011) 73 final}  
{COM(2011) 74 final}  
{SEC(2011) 204 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1 Grounds for and objectives of the proposal**

The Euratom Treaty limits research programmes in the nuclear field to 5 years. The legislation in force will expire at the end of 2011. The proposal accompanying this memorandum is for the adoption of a Council decision concerning Euratom's Framework Programme for 2012-2013.

The Euratom Framework Programme concerns research activities in nuclear energy (fusion and fission) and radiation protection. It determines the overall budget for direct and indirect actions, sets the objectives of R&D activities and specifies the instruments for supporting them. Detailed scientific objectives are established by the Specific Programmes.

The overall aim of the proposal is to ensure the continuation of EU-funded research and training activities in nuclear science and technology during the years 2012-13, thereby maintaining the effective and efficient programmes currently catalysing and coordinating activities in Member States in order to maximise EU added value.

For example, the Euratom Framework Programme is crucial if Europe is to maximise the return on investment in ITER which has now entered its construction phase and relies on the continued support of Europe's fusion energy research programme.

Also, research co-funded by Euratom plays an important role in enhancing the safety, resource efficiency and cost-effectiveness of nuclear fission and other uses of radiation in industry and medicine, and some of the research project are playing a key initiating role in the recently launched European Sustainable Nuclear Industrial Initiative (ESNII), one of the six European industrial initiatives launched under the European Strategic Energy Technology Plan (SET-plan) in 2010.

The proposals for the Euratom Framework Programme are clearly linked to the objectives of the Europe 2020 and Energy 2020 strategies. The programme will contribute to the "Innovation Union" flagship by supporting pre-commercial research and facilitating technology transfer process between academia and industry and to the "Resource efficient Europe" flagship by greatly increasing the overall sustainability of nuclear energy. By putting emphasis on training in all its activities, boosting competitiveness in the current nuclear industry and creating a new sector of high-tech industry for fusion energy in particular, the Euratom programme will lead to growth and new jobs in a wide range of disciplines.

Proposals for the Euratom Framework Programme follow up the conclusions of the European Council (4 February 2011) which agreed that the EU and its Member States will promote investment in renewables, safe and sustainable low carbon technologies and focus on implementing the technology priorities established in the SET-plan. Both nuclear fission and fusion are identified in the SET-Plan as energy technologies which Europe must maintain, develop and deploy in order to meet its short and longer term energy objectives.

Proposals for the Euratom Framework Programme (2012-2013) take account of the simplification process, launched by the Commission in 2010, which makes current and future research programme more attractive and more accessible to the best researchers and most

innovative companies. Simplification measures for the Euratom Framework Programme (2012-2013) will be implemented through the Commission decision C(2011)174 of 24 January 2011.

## **1.2 Budget for Euratom Framework Programme 2012-2013 (including ITER)**

The proposals for the Euratom Framework Programme for 2012-13 provide a general framework for research activities in the nuclear field and an appropriate budget. However, the draft appropriations initially foreseen for nuclear research in the Multiannual Financial Framework for 2007-2013 (MFF) are insufficient owing to the substantial cost increase of the ITER project.

The cost increase of the ITER project was the subject of an in-depth assessment in the Commission Communication "ITER status and possible way forward"<sup>1</sup>. If no decision were taken on the increase of budget for ITER, Euratom's contribution to ITER would be limited to the appropriations foreseen for this purpose in the MFF, which would as a consequence prevent Euratom from fulfilling its legal obligations under the ITER agreement.

In its conclusions of 12 July 2010, the Council reaffirmed its commitment to ITER, acknowledged its increased financing needs and set out a number of guidelines on cost containment and management. The Council agreed on a 6.6 billion € (in 2008 value) limit of the European contribution to the construction phase of ITER until 2020. This includes EUR 1.4 billion during period of 2012-2013. The Council also mandated the Commission to support the adoption of the ITER Baseline, which prompted the Commission's proposal to amend the Multiannual Financial Framework, to address additional financing needs of ITER<sup>2</sup>.

At the extraordinary ITER Council meeting of 28 July 2010 the Baseline was adopted. Euratom's support was given *ad referendum*. The European Parliament and the Council are still to approve the Commission's proposed amendments.

Following Commission's proposal to amend the MFF, the Council reached an agreement in November 2010 on the use of existing margins of the 2010 budget and redeployment within the MFF and 7th EU Research Framework Programme to cover the additional ITER needs at the level of EUR 1.3 billion, i.e. 100 Million € short of the needs of 1.4 Billion € acknowledged by the Council conclusions of 12 July 2010. The reduction of 100 Million € for the period 2012-2013 does not contradict, nor cancel, the Council's commitment to an overall European contribution to the ITER construction costs at the level of 6.6 Billion €.

In the frame of the conciliation procedure for the 2011 budget and the linked discussion on the flexibility instrument, the budgetary authority did not conclude an agreement on additional European funding for ITER. Therefore, a decision on that matter, based on the Commission's proposal<sup>3</sup> will have to be taken as soon as possible during 2011.

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<sup>1</sup> Communication from the Commission "ITER status and possible way forward", COM(2010)226, SEC(2010)571

<sup>2</sup> Proposal for a decision of the European Parliament and of the Council amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework, to address additional financing needs of the ITER project, COM(2010) 403

<sup>3</sup> Proposal for a decision of the European Parliament and of the Council amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the

The Commission proposes that, in these circumstances, the legislative process concerning proposals for Euratom FP for 2012-13 will be carried out in parallel to the on-going discussion on the budget for ITER and the 2012 budget. Agreement on additional funding will allow for swift adoption of the Euratom research programme in 2011, a decision that will be important in view of maintaining Euratom's support for exploitation of nuclear facilities such as JET as well as JRC direct actions.

### **1.3 Content of the Euratom Framework Programme for 2012-2013**

This Framework Programme is part of a legislative package that contains proposals for decisions for the Framework Programme itself, two Specific Programmes (for direct and indirect actions), and the Rules for Participation. It presents the scientific and technological objectives of research activities and provides appropriate rules for the participation of research organisations, universities and industry. It will cover the construction of ITER, the accompanying fusion energy research programme, the fission and radiation protection research activities, and the JRC direct actions in nuclear security and safety.

The Euratom Framework Programme for 2012-13 contains broadly the same scientific, technical and strategic objectives and uses the same funding schemes as the current Euratom FP7 programme (2007-2011). Nonetheless, the programme has evolved over the last five years, and must take into account the results of recent research and the new policy context and research landscape in Europe. Regarding policy, the most significant development has been the adoption and endorsement of the SET-Plan as part of a broad portfolio approach to addressing future energy challenges.

The broad objectives for the Euratom Framework Programme for the years 2012-13 are:

- in the area of fusion energy research, to develop the technology for a safe, sustainable, environmentally responsible and economically viable energy source;
- in the area of nuclear fission and radiation protection, to enhance the safety, resource efficiency and cost-effectiveness of nuclear fission and other uses of radiation in industry and medicine, and to enhance nuclear security (nuclear safeguards, non-proliferation, combating illicit trafficking and nuclear forensics).

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **2.1 Consultations with interested parties**

In accordance with the Euratom Treaty the Commission has consulted Euratom's Scientific and Technical Committee (STC). The proposal for the Euratom Framework Programme is also based on the outcome of the discussions with the Council on ITER.

### **2.2 Collection and use of expertise**

The Commission has used various sources for preparing the Euratom Framework Programme proposal, including:

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multiannual financial framework, to address additional financing needs of the ITER project, COM(2010) 403

- Euratom FP7 Interim Evaluations carried out by independent panels of experts;
- a report for the European Fusion Development Agreement (EFDA) following an *ad-hoc* study group on the future of the fusion R&D programme;
- input from the JRC Board of Governors;
- input on the extension of Euratom FP7 and the preparation of future research programmes from Euratom's Scientific and Technical Committee (STC)
- reports such as vision documents and strategic research agendas prepared by the Technology Platforms/technical forums in the nuclear field – the Sustainable Nuclear Energy Technology Platform (SNETP)<sup>4</sup>, Implementing Geological Disposal Technology Platform (IGD-TP)<sup>5</sup> and Multidisciplinary European Low Dose Initiative (MELODI)<sup>6</sup>.

### **2.3 Impact assessment**

In accordance with Article 21 of the Implementing Rules for the Financial Regulation (Commission Regulation N°. 2342/2002), the Commission has prepared an *ex ante* evaluation. Since this proposal aims to continue the activities of the Euratom Framework Programme for 2012-13 under the same financial perspectives, the requirement for an Impact Assessment has been waived.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **3.2 Legal basis**

The legal basis for this Framework Programme is provided for by Articles 1, 2, 4 and 7 of the Euratom Treaty.

### **3.2 Subsidiarity and proportionality principle**

The added value of Euratom involvement in nuclear research is intimately linked to cross-border effects, economies of scale, and contributing to the resolution of market failures. Euratom projects in fission, fusion and radiation protection can allow research to achieve the required 'critical mass', while lowering commercial risk and leveraging private investment. Euratom actions also play a key role in transferring nuclear skills and knowledge across frontiers, helping to foster excellence in research and innovation through enhancing capability, quality and European-wide competition, and improving human capacity through training, mobility and career development.

## **4. BUDGETARY IMPLICATION**

The 'legislative financial statement' attached to this proposal for a Decision sets out the budgetary implications and the human and administrative resources needed.

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<sup>4</sup> [www.snetp.eu](http://www.snetp.eu)

<sup>5</sup> [www.igdtp.eu](http://www.igdtp.eu)

<sup>6</sup> [www.melodi-online.eu](http://www.melodi-online.eu)

Proposal for a

## **COUNCIL DECISION**

**concerning the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 - 2013)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 7 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament<sup>7</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>8</sup>,

Whereas:

- (1) Joint national and European efforts in the area of research and training are essential to promote and ensure economic growth and the well-being of citizens in Europe.
- (2) The Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 - 2013), hereinafter 'the Framework Programme (2012 - 2013)', should complement other Union actions in the area of research policy that are necessary for implementing the Europe 2020 strategy set out in the Communication from the Commission of 3 March 2010 entitled Europe 2020 - A strategy for smart, sustainable and inclusive growth<sup>9</sup>, in particular those on education, training, competitiveness and innovation, industry, employment, and the environment.
- (3) The Framework Programme (2012-2013) should build on the achievements of the Seventh Framework Programme of the Community adopted by Council Decision 2006/970/Euratom of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)<sup>10</sup> towards the creation of the European Research Area and towards the development of a knowledge economy and society in Europe.
- (4) The Framework Programme (2012-2013) should contribute to the implementation of the Innovation Union, one of the Europe 2020 flagship initiatives adopted by the

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<sup>7</sup> Opinion delivered on XXX

<sup>8</sup> OJ C XXX

<sup>9</sup> COM(2010) 2020 final.

<sup>10</sup> OJ L 460, 30.12.2006. p. 60.



Communication from the Commission of 6 October 2010 entitled Europe 2020 Flagship Initiative Innovation Union<sup>11</sup>, by enhancing competition for scientific excellence and accelerating the deployment of key innovations in the nuclear energy field to tackle energy and climate change challenges.

- (5) The Energy Policy for Europe recognises the potential contribution from nuclear power in the areas of competitiveness, CO<sub>2</sub> emission reduction and security of supply. The European Strategic Energy Technology Plan (SET-Plan) set out in the Communication from the Commission of 22 November 2007 entitled European Strategic Energy Technology Plan (SET-Plan) – Towards a low carbon future<sup>12</sup> is accelerating the development of a portfolio of low carbon technologies. Nuclear energy technologies are included in this portfolio as they have the greatest potential to meet the energy and climate objectives in both the short and longer term.
- (6) The SET-Plan acknowledges that, in the field of nuclear fission, the key technology challenges for meeting the Union's agreed 2020 energy targets are to maintain competitiveness in fission technologies and to ensure long-term waste management solutions. In order to achieve the 2050 vision of a low-carbon society, the SET-Plan mandates the Community to complete the preparations for the demonstration of a new generation (Generation-IV) of fission reactors for increased sustainability. In particular, the SET-Plan has established a European Industrial Initiative in Sustainable Nuclear Fission.
- (7) The SET-Plan, in the field of fusion, recognises the importance of ITER and the need to involve industry early in preparing demonstration actions. DEMO, a 'demonstration' fusion power station, constitutes a long term strategic goal of fusion research.
- (8) The European Council agreed, at the meeting on 4 February 2011, that the EU and its Member States will promote investment in renewables, safe and sustainable low carbon technologies and focus on implementing the technology priorities established in the European Strategic Energy Technology Plan (SET Plan).
- (9) Euratom has created a single and fully integrated fusion research programme that has taken a leading international role in the development of fusion as a source of energy.
- (10) Following the Council Decision of 20 December 2005 concerning the approval of the accession of the European Atomic Energy Community to a Framework Agreement for International Collaboration on Research and Development of Generation IV Nuclear Energy Systems, the Community acceded to the Framework Agreement of the Generation-IV International Forum (GIF) on 11 May 2006. The GIF coordinates multilateral cooperation in pre-conceptual design research on a number of advanced nuclear systems. The Community is therefore committed to international cooperation in this field, which is also closely linked with the SET-Plan.
- (11) The Council Conclusions on the need for skills in the nuclear field, adopted at its meeting held on 1 and 2 December 2008, recognise that it is essential to maintain within the Community a high level of training in the nuclear field.

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<sup>11</sup> COM (2010) 546 final

<sup>12</sup> COM (2007) 723 final

- (12) In 2010, the Commission received the final reports on an external assessment of implementation and results of the Community activities in nuclear research over the period 2007-2009, covering both direct and indirect actions.
- (13) The realisation of ITER in Europe, in accordance with the Agreement of 21 November 2006 on the establishment of the ITER International Fusion Energy Organisation for the joint implementation of the ITER project<sup>13</sup>, should be the central feature of fusion research activities under the Framework Programme (2012-2013).
- (14) The Community activities to help realise ITER, in particular to construct ITER at Cadarache and carry out the ITER Technology R&D during the Framework Programme (2012-2013) are to be steered by the European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy), following the 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>14</sup>.
- (15) Research activities supported by this Framework Programme should respect fundamental ethical principles, including those reflected in the Charter of Fundamental Rights of the European Union.
- (16) This Decision should establish, for the entire duration of the Framework Programme (2012-2013), a financial envelope that constitutes the prime reference, within the meaning of point 37 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management<sup>15</sup>, for the budgetary authority during the annual budgetary procedure.
- (17) The Joint Research Centre (JRC) should contribute to providing customer-driven scientific and technological support for the formulation, development, implementation and monitoring of the Union's policies. In this regard, the JRC should continue to function as an independent reference centre of science and technology in the Union in the areas of its specific competence.
- (18) The international and global dimension of European research activities is important with a view to obtain mutual benefits. The Framework Programme (2012-2013) should be open to the participation of countries that have concluded the necessary agreements to this effect, and should also be open, at project level and on the basis of mutual benefit, to the participation of entities from third countries and of international organisations for scientific cooperation.
- (19) The Framework Programme (2012-2013) should contribute to the enlargement of the Union by providing scientific and technological support to the candidate countries for their implementation of the Union acquis and for their integration within the European Research Area.

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<sup>13</sup> OJ L 358, 16.12.2006, p 62.

<sup>14</sup> OJ L 90, 30.3.2007, p. 58.

<sup>15</sup> OJ C 139, 14.6.2006, p. 1. [COMMENTS:] to be updated if and when the new framework agreement is adopted

- (20) The Communication from the Commission of 26 March 2009 on nuclear non-proliferation<sup>16</sup>, recognises the role of the JRC in the field of nuclear security research and training.
- (21) Appropriate measures should also be taken to prevent irregularities and fraud and to recover funds lost, wrongly paid or incorrectly used, in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests<sup>17</sup>, Council Regulation (Euratom, EC) No. 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities<sup>18</sup> and Council Regulation (Euratom) No. 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>19</sup>
- (22) The Commission has consulted the Euratom Scientific and Technical Committee.

HAS ADOPTED THIS DECISION:

#### *Article 1*

### **Adoption of the Framework Programme**

A multiannual framework programme for nuclear research and training activities, hereinafter the 'Framework Programme (2012-2013)', is adopted for the period from 1 January 2012 to 31 December 2013.

#### *Article 2*

### **Objectives**

1. The Framework Programme (2012-2013) shall pursue the general objectives set out in Article 1 and Article 2(a) of the Treaty, while contributing towards the creation of the Innovation Union and building on the European Research Area.
2. The Framework Programme (2012-2013) shall cover Community research, technological development, international cooperation, dissemination of technical information, exploitation activities and training, to be set out in two specific programmes.
3. The first specific programme shall cover the following indirect actions:
  - a) fusion energy research, with the objective of developing the technology for a safe, sustainable, environmentally responsible and economically viable energy source;

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<sup>16</sup> COM(2009)143

<sup>17</sup> OJ L 312, 23.12.1995, p. 1.

<sup>18</sup> OJ L 292, 15.11.1996, p. 2.

<sup>19</sup> OJ L 136, 31.5.1999, p. 8.

- b) nuclear fission and radiation protection, with the objective of enhancing resource efficiency, cost-effectiveness and in particular the safety of nuclear fission and other uses of radiation in industry and medicine.
- 4. The second specific programme shall cover the direct research activities of the Joint Research Centre (JRC) in the field of nuclear safety and security.
- 5. The objectives and broad lines of the specific programmes are set out in Annex I.

### *Article 3*

#### **Maximum amount and shares assigned to each specific programme**

The maximum amount for the implementation of the Framework Programme (2012-2013) shall be EUR 2 560 270 000. This amount shall be distributed as follows (in EUR):

- a) for the specific programme, to be carried out by means of indirect actions:
  - fusion energy research 2 208 809 000;
  - nuclear fission and radiation protection 118 245 000;
- b) for the specific programme, to be carried out by means of direct actions:
  - nuclear activities of the JRC 233 216 000.

The detailed rules for Community financial participation in the Framework Programme (2012-2013) are set out in Annex II.

### *Article 4*

#### **Protection of the Union's financial interests**

For Community actions financed under this Decision, Regulations (EC, Euratom) No 2988/95 and (Euratom, EC) No 2185/96 shall apply to any infringement of a provision of Union law, including the infringement of a contractual obligation under the Framework Programme (2012-2013), resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it as a result of an unjustified item of expenditure.

### *Article 5*

#### **Fundamental ethical principles**

All the research activities carried out under the Framework Programme (2012-2013) shall be carried out in compliance with fundamental ethical principles.

## *Article 6*

### **Monitoring, assessment and review**

1. The Commission shall continually and systematically monitor the implementation of the Framework Programme (2012-2013) and its specific programmes and regularly report and disseminate the results of this monitoring.
2. Following the completion of the Framework Programme (2012-2013), the Commission shall, by 31 December 2015, have an external evaluation carried out by independent experts of its rationale, implementation and achievements. The Commission shall communicate the conclusions thereof, accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

## *Article 7*

### **Entry into force**

This Decision shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*

## **ANNEX I**

### **SCIENTIFIC AND TECHNOLOGICAL OBJECTIVES, THEMES AND ACTIVITIES**

#### **INTRODUCTION**

The Framework Programme (2012-2013) is organised in two parts corresponding to the ‘indirect’ actions on fusion energy research and nuclear fission and radiation protection, and the ‘direct’ research activities of the JRC.

#### **I.A. FUSION ENERGY RESEARCH**

##### **Objective**

Developing the knowledge base for, and realising ITER as a major step towards, the creation of prototype reactors for power stations that are safe, sustainable, environmentally responsible, and economically viable.

##### **Rationale**

Fusion has the potential to make a major contribution to the realisation of a sustainable and secure energy supply for the Union a few decades from now. Its successful development would provide energy which is safe, sustainable and environmentally friendly. The long-term goal of European fusion research, embracing all the fusion activities in the Member States and associated third countries, is the joint creation of prototype reactors for power stations which meet these requirements, and are economically viable.

The first priority of the strategy to achieve the long-term goal is the construction of ITER (a major experimental facility which will demonstrate the scientific and technical feasibility of fusion power), followed by the construction of a demonstration fusion power plant (DEMO). ITER construction will be accompanied by a focussed programme of supporting R&D for ITER and limited activities on the technologies and physics required for DEMO.

The global dimension of fusion R&D is embodied in the agreement establishing the International Fusion Energy Organisation for the ITER Project and the Agreement between the Government of Japan and the Community for the Broader Approach Activities in the Field of Fusion Energy Research.

International cooperation is also pursued within eight bilateral fusion Cooperation Agreements in force between the Community and third countries.

##### **Activities**

###### **1. The realisation of ITER**

This includes activities for the joint realisation of ITER, in particular governance of the ITER International Organisation and the European Joint Undertaking for ITER, management and staffing, general technical and administrative support, construction of equipment and installations and support for the project during construction.

## 2. R&D in preparation of ITER operation

A focused physics and technology programme will exploit the Joint European Torus (JET) and other ITER-relevant magnetic confinement devices. It will assess specific key ITER technologies, consolidate ITER project choices, and prepare for ITER operation.

## 3. Limited technology activities in preparation of DEMO

Fusion materials and key technologies for fusion will be further developed, and the work of the team preparing for the construction of the International Fusion Materials Irradiation Facility (IFMIF) will continue.

## 4. R&D activities for the longer term

There will be limited activities on improved concepts for magnetic confinement schemes (focussed on the preparation for operation of the W7-X stellarator device), and theory and modelling aimed at a comprehensive understanding of fusion plasmas.

## 5. Human resources, education and training

In view of the immediate and medium term needs of ITER, and for the further development of fusion, initiatives aimed at training the "ITER Generation", in terms of numbers, range of skills and high-level training and experience will be pursued.

## 6. Infrastructures

ITER will be a new research infrastructure with a strong European dimension.

## 7. Industry and technology transfer processes

New organisational structures are needed for swift transfer of innovations deriving from ITER to European industry. This will be a task of the Fusion Industry Innovation Forum which will develop a fusion technology roadmap and human resource development initiatives, with an emphasis on innovation and potential for providing new products and services.

# I.B. NUCLEAR FISSION AND RADIATION PROTECTION

## Objective

Establishing a sound scientific and technical basis in order to accelerate practical developments for the safer management of long-lived radioactive waste, enhancing in particular the safety, resource efficiency and cost-effectiveness of nuclear energy and ensuring a robust and socially acceptable system of protection of man and the environment against the effects of ionising radiation.

## Rationale

Nuclear power constitutes an important element in the debate on combating climate change and reducing Europe's dependence on imported energy. More advanced nuclear technology offers the prospect of significant improvements in efficiency and use of resources, while ensuring even higher safety levels and producing less waste than current designs. Current European initiatives in this area are within scope of the Strategic Energy Technology Plan (SET-Plan), which has been endorsed by the Council and the European Parliament, and also contribute to the collaborative activities being undertaken with major third countries within the Generation IV International Forum (GIF).

Three major European cooperative initiatives in nuclear science and technology have been launched since the start of the Seventh Euratom Framework Programme. They are the Sustainable Nuclear Energy Technology Platform (SNETP), the Implementing Geological Disposal Technology Platform (IGDTP) and the Multidisciplinary European Low-Dose Initiative (MELODI). The activities of both SNETP and IGDTP correspond very closely with SET-Plan priorities, and a core group of SNETP organisations are responsible for implementing ESNII, the European Sustainable Nuclear Industrial Initiative under the SET-Plan. All encompass activities within the scope of the Framework Programme (2012-2013), and can ensure that it remains as efficient and effective as possible.

There is increasing interaction between SNETP, IGDTP and MELODI and other stakeholder forums at the Union level, such as the European Nuclear Energy Forum (ENEF) and the European Nuclear Safety Regulators Group (ENSREG), and this process will also be promoted to the extent possible through Framework Programme activities.

The Euratom Framework Programme (2012-2013) is characterised by an overriding concern to promote high levels of safety. It will also continue to support initiatives to ensure that facilities, training and training opportunities in Europe remain appropriate in view of current orientations of national programmes and in the best interests of the Union as a whole. This, more than anything else, will ensure that an appropriate safety culture is maintained.

## **Activities**

### **1. Geological disposal**

Implementation-oriented research activities on all remaining key aspects of deep geological disposal of spent fuel and long-lived radioactive waste with, as appropriate, demonstration of the technologies and safety, and to underpin development of a common European view on the main issues related to the management and disposal of waste.

### **2. Reactor systems**

Research to underpin the safe, efficient and more sustainable operation of all relevant reactor systems (including fuel cycle facilities) in use or under development in Europe, including waste-management aspects of the fuel cycle such as partitioning and transmutation.

### **3. Radiation protection**

Research, in particular on the risks from low doses, medical uses and the management of accidents, to provide a scientific basis for a robust, equitable and socially acceptable system of protection that will not unduly limit the beneficial and widespread uses of radiation in medicine and industry.

### **4. Infrastructures**

Support for the use and continued availability of, and cooperation between, key research infrastructures in the priority thematic areas above.

### **5. Human resources and training**

Support for the retention and further development of scientific competence and human capacity in order to guarantee the availability of suitably qualified researchers, engineers and employees in the nuclear sector over the longer term.



## II. NUCLEAR ACTIVITIES OF THE JOINT RESEARCH CENTRE (JRC)

### Objective

The JRC Nuclear Specific Programme aims at satisfying the R&D obligations of the Treaty and supporting both Commission and Member States in the fields of safeguards and non-proliferation, waste management, safety of nuclear installations and fuel cycle, radioactivity in the environment and radiation protection. The JRC shall further strengthen its role of a European reference for the dissemination of information, training and education for professionals and young scientists.

### Rationale

Nuclear power will play a strategic role in the Union's energy mix for at least the next half century, contributing to achieve the Union's target on emission of greenhouse gases, and improving the Union's independence, security and diversity of energy supply. This could be achieved within the strictest commitments towards responsible use of nuclear energy, covering safety and security.

To fulfil this goal, there is a clear need for developing knowledge, skills and competence to provide the required scientific state of the art independent and reliable expertise in support to the Union's policies in the domains of nuclear reactor and fuel cycles safety, nuclear safeguards and security. The customer driven support to the Union's policy underlined in the JRC's mission will be complemented with a proactive role within the European Research Area in undertaking high quality research activities in close contact with industry and other bodies and developing networks with public and private institutions in the Member States

### Activities

1. **Nuclear waste management and environmental impact**, will focus on reducing uncertainties and solving open issues in waste disposal, in order to develop effective solutions for the management of high level nuclear waste following the two major options (direct disposal or partitioning and transmutation). Activities will also be developed to enhance the understanding and modelling of the physics, chemistry and fundamental properties of actinide materials, and the database of high accuracy nuclear reference data, for nuclear energy and non-nuclear applications (e.g. medical). To extend the radiological protection effort, further development of environmental models of radioisotope dispersion coupled with monitoring tests in environmental radioactivity in support to the harmonisation of the national monitoring process and systems will be carried out.
2. **Nuclear safety**, will contribute to implement research on existing and new fuel cycles, reactor safety of present reactors in the Union, and reactor safety on new innovative designs that can improve efficiency, safety and safeguard aspects of innovative fuel cycles, extended burn-up or of new types of fuels for the next generation. It will also pursue the development of safety requirements and advanced evaluation methods for existing and new reactor systems. In addition the JRC will strengthen the Union's position in the world by coordinating the European contribution to the Generation IV International Forum R&D initiative, by acting act as integrator and disseminating research in this area.
3. **Nuclear security**, will further support the accomplishment of Community commitments, in particular development of methods for the control of the fuel cycle facilities, the implementation of the additional protocol including environmental sampling and integrated safeguards, and the prevention of the diversion of nuclear and radioactive materials associated with illicit trafficking of such materials including the nuclear forensics.

## FUNDING SCHEMES

Subject to the rules for participation established for the implementation of the Framework Programme (2012-2013), the Community will support research and technological development activities, including demonstration activities in the specific programmes, through a range of funding schemes. These schemes will be used, either alone or in combination, to fund different categories of actions implemented throughout the Framework Programme (2012-2013).

### 1. FUNDING SCHEMES IN FUSION ENERGY

In the field of fusion energy research, the particular nature of such activities requires specific arrangements. Financial support will be given to activities carried out on the basis of procedures set out in:

- 1.1. Contracts of Association, between the Commission and Member States or fully associated third countries or between the Commission and entities within Member States or fully associated third countries for the execution of part of the Community fusion energy research programme in accordance to Article 10 of the Treaty;
- 1.2. the European Fusion Development Agreement, a multilateral agreement concluded between the Commission and organisations in, or acting for, Member States and associated third countries to provide, among other things, a framework for further research on fusion technology in associated organisations and in industry, the use of JET facilities and the European contribution to international cooperation;
- 1.3. the European Joint Undertaking for ITER, based on Articles 45 to 51 of the Treaty;
- 1.4. international agreements between the Community and third countries covering activities in the field of fusion energy research and development, in particular the ITER and the Broader Approach Agreements;
- 1.5. any other multilateral agreement concluded between the Community and associated organisations, in particular the Agreement on Staff Mobility;
- 1.6. cost-sharing actions to promote and contribute to fusion energy research with bodies in Member States or third countries associated with the Framework Programme (2012-2013) where there is no Contract of Association.

In addition to the above activities, actions to promote and develop human resources, fellowships, integrated infrastructure initiatives and specific support actions may be undertaken in particular to coordinate fusion energy research, to undertake studies in support of these activities and to support publications, information exchange, and training in order to promote technology transfer.

### 2. FUNDING SCHEMES IN OTHER FIELDS

The activities in fields other than fusion energy under the Framework Programme (2012-2013) will be funded through a range of funding schemes. These schemes will be used, either alone or in combination, to fund different categories of actions implemented throughout the Framework Programme (2012-2013).

The decisions on specific programmes, work programmes and calls for proposals will mention, as and when appropriate:

- the type(s) of scheme(s) used to fund different categories of actions;
- the categories of participants (such as research organisations, universities, industry, public authorities) that can benefit from them;
- the types of activities (research, development, demonstration, training, dissemination, transfer of knowledge and other related activities) that can be funded.

Where different funding schemes can be used, the work programmes may specify the funding scheme to be used for the topic on which proposals are invited.

The funding schemes are as follows:

- a) To support actions that are primarily implemented on the basis of calls for proposals:

### **1. Collaborative projects**

Support for research projects carried out by consortia with participants from different countries, aiming to develop new knowledge, new technology, products or common resources for research. The size, scope and internal organisation of projects can vary from field to field and from topic to topic. Projects can range from small or medium-scale focused research actions to larger integrating projects that mobilise a significant volume of resources for achieving a defined objective. Support for the training and career development of researchers will be included in project work plans.

### **2. Networks of excellence**

Support for joint research programmes implemented by a number of research organisations integrating their activities in a given field and carried out by research teams under longer-term cooperation. The implementation of these joint research programmes will require the formal commitment of such organisations. Support for training and career development of researchers will be included in project work plans.

### **3. Coordination and support actions**

Support for activities to coordinate coordinating or supporting research (networking, exchanges, trans-national access to research infrastructures, studies, conferences, contributions during construction of new infrastructure, etc.) or to promote the development of human resources (e.g. networking and setting up training schemes). These actions may also be implemented by means other than calls for proposals.

- b) To support actions implemented on the basis of decisions by the Council, following a proposal from the Commission, the Community will provide financial support to multi-financed large-scale initiatives as follows:
- a financial contribution to the implementation of joint undertakings on the basis of the procedures and provisions set out in Articles 45 to 51 of the Treaty;
  - a financial contribution to the development of new infrastructures of European interest.

The Community will implement the funding schemes in compliance with the provisions of the Regulation (Euratom) No XXXX/2011 for the rules for the participation of undertakings, research centres and universities, the relevant state aid instruments, in particular the framework for state aid to research and development, as well as international rules in this area. In compliance with this international framework, the scale and form of financial participation will need to be considered on

a case-by-case basis, in particular if funding from other public sector sources is available, including other sources of EU financing such as the European Investment Bank.

For participants in an indirect action pursued in a region lagging in development (convergence regions as defined in Article 5 of Council Regulation (EC) No 1083/2006<sup>20</sup>, including regions eligible for funding from the Structural Funds under the Convergence objective and regions eligible for funding from the Cohesion Fund, and outermost regions), complementary funding from the Structural Funds will be mobilised wherever possible and appropriate.

### 3. DIRECT ACTIONS — JOINT RESEARCH CENTRE

The Community will have activities implemented by the JRC, which are referred to as direct actions, in accordance with Council Decision concerning the specific programme, to be carried out by means of direct actions by the Joint Research Centre, implementing the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 to 2013)

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<sup>20</sup> OJ L 210, 31.7.2006, p. 25...

## **LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS**

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management method(s) envisaged

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. Summary of estimated impact on expenditure*
  - 3.2.2. Estimated impact on operational appropriations*
  - 3.2.3. Estimated impact on appropriations of an administrative nature*
  - 3.2.4. Compatibility with the current multiannual financial framework*
  - 3.2.5. Third-party participation in financing*
- 3.3. Estimated impact on revenue

## **LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS**

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

#### **1.1. Title of the proposal/initiative**

Proposal for a Council decision concerning the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 - 2013)

#### **1.2. Policy area(s) concerned in the ABM/ABB structure<sup>21</sup>**

Research (indirect actions) and Direct Research (to be carried out by the Joint Research Centre)  
08 20 Euratom Fusion  
08 21 Euratom Nuclear Fission and Radiation Protection  
08 22 04 Appropriations accruing from contributions from third parties to research and technological development  
08 01 Administrative expenditure Research policy areas  
08 01 04 40 European Joint undertaking (F4E) Expenditure on Administrative management  
08 01 05 01 Expenditure related to Research Staff  
08 01 05 02 External staff for Research  
08 01 05 03 Other management expenditure for Research  
10 03 - Directly financed Research operational appropriations – Euratom  
10 03 01 - Nuclear action of the Joint Research Centre (JRC)  
10 03 02 - Appropriations accruing from contributions from third parties  
10 01 - Administrative expenditure of “Direct Research” policy area  
10 01 05 - Support expenditure for operations of Direct research policy area  
10 01 05 01 - Expenditure related to research staff  
10 01 05 02 - External staff for research  
10 01 05 03 - Other management expenditure for research

#### **1.3. Nature of the proposal/initiative**

- ☐ The proposal/initiative relates to **a new action**
- ☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action<sup>22</sup>**
- ☒ The proposal/initiative relates to **the extension of an existing action**
- ☐ The proposal/initiative relates to **an action redirected towards a new action**

<sup>21</sup> ABM: Activity-Based Management – ABB: Activity-Based Budgeting.  
<sup>22</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

## 1.4. Objectives

### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The Euratom Framework Programme is one of the building blocks of the European energy research policy and the EU 2020 strategy, especially the Innovation Union. The Euratom Framework Programme enhances competition for scientific excellence and supports innovation in the nuclear energy field to tackle the challenges presented by energy and climate change. The current proposal addresses in detail the period 2012-13, but the activities remain fully consistent with the key milestones for technological development in the nuclear field over the next decade as laid out in the European Strategic Energy Technology Plan (SET-Plan).

### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No.1 Developing the knowledge base for, and realising ITER as a major step towards, the creation of prototype reactors for power stations that are safe, sustainable, environmentally responsible, and economically viable.

Specific objective No.2 Establishing a sound scientific and technical basis in order to accelerate practical developments for the safer management of long-lived radioactive waste, enhancing in particular the safety, resource efficiency and cost-effectiveness of nuclear energy and ensuring a robust and socially acceptable system of protection of man and the environment against the effects of ionising radiation.

Specific objective No.3 The programme aims at satisfying the R&D obligations of the Treaty and supporting both Commission and Member States in the fields of safeguards and non-proliferation, waste management, safety of nuclear installations and fuel cycle, radioactivity in the environment and radiation protection. The JRC shall further strengthen its role of a European reference for the dissemination of information, training and education for professionals and young scientists.

### 1.4.3. *Expected result(s) and impact*

The proposed Euratom Framework Programme (2012-13) will have the following impacts:

**Euratom nuclear fission and radiation protection:** Impacts can be expected in many fields, including furthering the safe and more sustainable exploitation of nuclear energy, further significant steps towards safe implementation of geological disposal of high-level and long-lived nuclear waste, and ensuring more robust regulation of industrial and medical practices involving the use of ionising radiation.

**Euratom Fusion:** The construction and operation of ITER is a long term project and will deliver results over the forthcoming decades. Successful construction and exploitation of ITER accompanied by appropriate R&D programme will lead to the possibility of constructing a demonstration fusion reactor.

**Direct actions carried out by JRC:** JRC will satisfy the R&D obligations of the Treaty and supporting both Commission and Member States in the fields of safeguards and non-proliferation, waste management, safety of nuclear installations and fuel cycle, radioactivity in the environment and radiation protection. It will maintain the highest level of understanding in key phenomenon, and particular emphasis will be given to providing support for education and training of present and future scientists and engineers.

#### 1.4.4. *Indicators of results and impact*

##### **Euratom Fusion:**

ITER construction: number of milestones met by the Joint Undertaking Fusion for Energy (F4E).

JET facility: number of scientific publications on JET

EFDA coordinated activities: completion of deliverables under EFDA Task Agreements, number of fusion researchers and engineers trained for the needs of ITER and the Fusion R&D programme

Mobility Agreement: Level of researcher mobility in fusion R&D

##### **Euratom Nuclear Fission and Radiation protection:**

Percentage of projects' proposals which: (i) successfully addressed the criteria of scientific and/or technological excellence (ii) achieved their objectives and technical goals and have even exceeded expectations (iii) addressed the criterion of dissemination and use of project results (iv) showed evidence that they will produce significant scientific, technical, commercial, social or environmental impacts.

### 1.5. **Grounds for the proposal/initiative**

#### 1.5.1. *Requirement(s) to be met in the short or long term*

The proposed Euratom Framework Programme will address different scientific and technological challenges in order to meet short and long term goals of the SET-Plan. For more details please refer to the ex ante evaluation.

#### 1.5.2. *Added value of EU involvement*

The added value of Euratom involvement in nuclear research is linked to cross border effects and economies of scale. Some nuclear research activities are of such a scale that few Member State could provide the necessary resources and expertise. Euratom projects in fission, fusion and radiation protection provide 'critical mass', lowering commercial risk and leveraging private investment. Euratom actions help to transfer skills and knowledge across frontiers, by enhancing R&D capabilities, quality and competition, and improving human capacity through training, mobility and career development. For more details please refer to the ex ante evaluation.

#### 1.5.3. *Lessons learned from similar experiences in the past*

The current 7th Euratom Framework Programme was subject to the interim evaluation carried out by panel of independent experts. For more details please refer to the ex ante evaluation.

#### 1.5.4. *Coherence and possible synergy with other relevant instruments*

Proposed Framework Programme is coherent with the objectives of the SET-Plan and EU 2020 Strategy. For more details please refer to the ex ante evaluation and explanatory memorandum.



## 1.6. Duration and financial impact

**X Proposal/initiative of limited duration**

- **X** Proposal/initiative in effect from [01/01]2012 to [31/12]2013
- **X** Financial impact from 2012 to 2022 (estimated end of projects)

## 1.7. Management mode(s) envisaged<sup>23</sup>

**X Centralised direct management** by the Commission

**X Centralised indirect management** with the delegation of implementation tasks to:

- ☐ executive agencies
- **X** bodies set up by the Communities<sup>24</sup>
- ☐ national public-sector bodies/bodies with public-service mission
- ☐ persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

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<sup>23</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

<sup>24</sup> As referred to in Article 185 of the Financial Regulation.

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

The Commission will continually and systematically monitor the implementation of the Euratom Framework Programme and its specific programmes and regularly report and disseminate the results of this monitoring. Following the completion of the Framework Programme, the Commission will launch, not later than two years after its completion (2015) an external evaluation by independent experts of its rationale, implementation and achievements.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified*

In line with the Commission requirements, a risk assessment exercise is performed annually for identifying the risks and indicating the corrective actions proposed. The identified risks, the corrective measures and the indicative timetable are taken up as part of the Commission's Management Plan.

#### *2.2.2. Control method(s) envisaged*

Several control methods are applied as it was the case throughout Euratom 7th Framework Programme (2009-2011), including ex-ante control measures and randomly selected biannual ex-post verifications in the framework of the internal control scheme. Moreover, the requirement for audit certificates and the performance of regular independent external audits help to ensure sound financial management, including regularity and legality of the transactions performed.

### **2.3. Measures to prevent fraud and irregularities**

Appropriate measures will be taken to prevent irregularities and fraud and the necessary steps shall be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulation (EC, EURATOM) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, Commission Regulation (EC, EURATOM) No 2342/2002 of 23 December 2002 laying down detailed rules for implementation of the Financial Regulation, Council Regulations (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF).

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description..... .....]	DA/NDA (25)	from EFTA <sup>26</sup> countries	from candidate countries <sup>27</sup>	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1 a	<b>08 20</b> Euratom Fusion Energy <b>08 21</b> Euratom Nuclear Fission and Radiation Protection <b>08 22 04</b> Appropriations accruing from contributions from third parties to research and technological development  <b>10 03</b> Directly financed Research – Euratom <b>10 03 01</b> Nuclear action of the Joint Research Centre (JRC) <b>10 03 02</b> Appropriations accruing from contributions from third parties	DA	NO	YES/NO *	YES	YES
	<b>08 01</b> Administrative expenditure Research <b>08 01 04 40</b> European Joint Undertaking for ITER (F4E) administrative management <b>08 01 05 01</b> Expenditure related to Research Staff <b>08 01 05 02</b> External staff for Research <b>08 01 05 03</b> Other management expenditure for Research  <b>10 01</b> Administrative expenditure Direct Research <b>10 01 05</b> Support expenditure for operations of Direct research policy area <b>10 01 05 01</b> Expenditure related to research staff <b>10 01 05 02</b> External staff for research <b>10 01 05 03</b> Other management expenditure for research	NDA	NO	YES/NO *	YES	NO

\* discussions with Turkey related to Nuclear Research are ongoing.

- New budget lines requested
- Not applicable

<sup>25</sup> DA= Differentiated appropriations / DNA= Non-Differentiated Appropriations

<sup>26</sup> EFTA: European Free Trade Association.

<sup>27</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure EUR million (to 3 decimal places)

Heading of multiannual financial framework:	1 a		Competitiveness for Growth and Employment			
Indirect Research			Year	Year	Year	TOTAL
• Operational appropriations			2012	2013	≥ 2014	
Number of budget line: 08 2x total	Commitments	(1)	1,183.379	992.804	0	<b>2,176.183</b>
	Payments	(2)	436.422	898.164	841.597	<b>2,176.183</b>
Number of budget line: 08 20	Commitments	(1)	1,129.274	936.965	0	<b>2,066.239</b>
	Payments	(2)	401.822	863.164	801.253	<b>2,066.239</b>
Number of budget line: 08 21	Commitments	(1)	54.105	55.839	0	<b>109.944</b>
	Payments	(2)	34.600	35.000	40.344	<b>109.944</b>
Appropriations of an administrative nature financed from the envelop of specific programs <sup>28</sup> <b>08 01 xx xx total</b>			74.054	76.817	0	<b>150.871</b>
08 01 04 40 European Joint undertaking (F4E)			39.000	39.780		
08 01 05 01 Expenditure related to Research Staff			23.456	25.230		
08 01 05 02 External staff for Research			1.637	1.555		
08 01 05 03 Other management expenditure Research			9.961	10.252		
Number of budget line: 08 01		(3)	74.054	76.817		<b>150.871</b>
TOTAL appropriations for DG Research & Innovation	Commitments	=1+1a +3	1,257.433	1,069.621	0	<b>2,327.054</b>
	Payments	=2+2a+3	510.476	974.981	841.597	<b>2,372.054</b>

<sup>28</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)	1,183.379	992.804		<b>2,176.183</b>
	Payments	(5)	436.422	898.164	841,597	<b>2,176.183</b>
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)	74.054	76.817	0	<b>150.871</b>
<b>TOTAL appropriations under HEADING 1 a</b> of the multiannual financial framework	Commitments	=4+ 6	1,257.433	1,069.621	0	<b>2,327.054</b>
	Payments	=5+ 6	510.476	974.981	841.597	<b>2,327.054</b>

**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)				
	Payments	(5)				
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)				
<b>TOTAL appropriations under HEADINGS 1 to 4</b> of the multiannual financial framework (Reference amount)	Commitments	=4+ 6				
	Payments	=5+ 6				

<b>Heading of multiannual financial framework:</b>	<b>5</b>	" Administrative expenditure "
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EUR million (to 3 decimal places)

		Year 2012	Year 2013	<b>TOTAL</b>
DG: Research / Direct Research				
• Human resources		0	0	<b>0</b>
• Other administrative expenditure		<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL DG &lt;.....&gt;</b>	Appropriations	0	0	<b>0</b>

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total = Total payments) commitments	0	0	<b>0</b>
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EUR million (to 3 decimal places)

		Year 2012	Year 2013	Year ≥ 2014	<b>TOTAL</b>
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	0	0	0	<b>0</b>
	Payments	0	0	0	<b>0</b>

*Summary of estimated impact on expenditure*

*EUR million (to 3 decimal places)*

<b>Heading of multiannual financial framework:</b>	1 a	Competitiveness for Growth and Employment
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Direct Research			Year	Year	Year	TOTAL
• Operational appropriations			2012	2013	≥ 2014	
Number of budget line: 10.03	Commitments	(1a)	9.895	10.252	0	20.147
	Payments	(2a)	4.650	8.972	6.525	20.147
Number of budget line: 10.03.01	Commitments	(1a)	9.895	10.252	0	20.147
	Payments	(2a)	4.650	8.972	6.525	20.147
Appropriations of an administrative nature financed from the envelop of specific programs <sup>29</sup>						
10 01 05			104.648	108.421	0	213.069
10 01 05 01			57.444	59.515	0	116.959
10 01 05 02			10.577	10.958	0	21.536
10 01 05 03			36.627	37.948	0	74.574
TOTAL appropriations for DG Research & Innovation / Direct Research	Commitments	=1+1a +3	114.543	118.673	0	233.216
	Payments	=2+2a+3	109.298	117.393	6.525	233.216

• TOTAL operational appropriations	Commitments	(4)	9.895	10.252	0	20.147
	Payments	(5)	4.650	8.972	6.525	20.147
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)	104.648	108.421	0	213.069
TOTAL appropriations under HEADING 1 a of the multiannual financial framework	Commitments	=4+ 6	114.543	118.673	0	233.216
	Payments	=5+ 6	109.298	117.393	6.525	233.216

**If more than one heading is affected by the proposal / initiative:**

<sup>29</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)				
	Payments	(5)				
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)				
<b>TOTAL appropriations under HEADINGS 1 to 4</b> of the multiannual financial framework (Reference amount)	Commitments	=4+ 6				
	Payments	=5+ 6				



<b>Heading of multiannual financial framework:</b>	<b>5</b>	" Administrative expenditure "
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EUR million (to 3 decimal places)

		Year 2012	Year 2013	<b>TOTAL</b>
DG: Research / Direct Research				
• Human resources		0	0	<b>0</b>
• Other administrative expenditure		<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL DG &lt;.....&gt;</b>	Appropriations	0	0	<b>0</b>

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total = Total payments)	commitments		
--	-----------------------------	-------------	--	--

EUR million (to 3 decimal places)

		Year 2012	Year 2013	Year ≥ 2014	<b>TOTAL</b>
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	114.543	118.673	0	<b>233.216</b>
	Payments	109.298	117.393	6.525	<b>233.216</b>

*Summary of estimated impact on expenditure*

*EUR million (to 3 decimal places)*

<b>Heading of multiannual financial framework:</b>	1 a	Competitiveness for Growth and Employment
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<b>Summary</b>			Year	Year	Year	<b>TOTAL</b>
<b>Indirect Research / Direct Research</b>						
• Operational appropriations			2012	2013	≥ 2014	
Number of budget line: 08 20/08 21	Commitments	(1)	1,183.379	992.804	0	<b>2,176.183</b>
	Payments	(2)	436.422	898.164	841.597	<b>2,176.183</b>
Number of budget line: 10.03	Commitments	(1a)	9.895	10.252	0	<b>20.147</b>
	Payments	(2a)	4.650	8.972	6.525	<b>20.147</b>
Appropriations of an administrative nature financed from the envelop of specific programs <sup>30</sup>						
08 01 xx			74.054	76.817	0	<b>150.871</b>
10 01 xx			104.648	108.421	0	<b>213.069</b>
Number of budget line: 08 01 xx / 10 01 05		(3)	178.702	185.238	0	<b>363.940</b>
<b>TOTAL appropriations for DG Research &amp; Innovation / Direct Research</b>	Commitments	=1+1a +3	1,371.976	1,188.294	0	<b>2,560.270</b>
	Payments	=2+2a+3	619.774	1,092.374	848.122	<b>2,560.270</b>

• TOTAL operational appropriations	Commitments	(4)	1,193.274	1,003.056	0	<b>2,196.330</b>
	Payments	(5)	441.072	907.136	848.122	<b>2,196.330</b>
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)	178.702	185.238	0	<b>363.940</b>
<b>TOTAL appropriations under HEADING 1 a of the multiannual financial framework</b>	Commitments	=4+ 6	1,371.976	1.188.294	0	<b>2,560.270</b>
	Payments	=5+ 6	619.774	1,092.374	848.122	<b>2,560.270</b>

<sup>30</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)				
	Payments	(5)				
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)				
<b>TOTAL appropriations under HEADINGS 1 to 4</b> of the multiannual financial framework (Reference amount)	Commitments	=4+ 6				
	Payments	=5+ 6				

<b>Heading of multiannual financial framework:</b>	<b>5</b>	" Administrative expenditure "
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EUR million (to 3 decimal places)

		Year 2012	Year 2013	<b>TOTAL</b>
DG: Research / Direct Research				
• Human resources				
• Other administrative expenditure				
<b>TOTAL DG &lt;.....&gt;</b>	Appropriations			

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total = Total payments)	commitments			
--	-----------------------------	-------------	--	--	--

EUR million (to 3 decimal places)

		Year 2012	Year 2013	Year ≥ 2014	<b>TOTAL</b>
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	1,371.976	1.188.294	0	<b>2,560.270</b>
	Payments	619.774	1,092.374	848.122	<b>2,560.270</b>

### 3.2.2. Estimated impact on operational appropriations

- ☐ The proposal/initiative does not require the use of operational appropriations
- ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs  ↓			Year 2012		Year 2013		TOTAL	
	OUTPUTS							
	Type of output <sup>31</sup>	Average cost of the output	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
SPECIFIC OBJECTIVE No 1 <sup>32</sup> ...								
- Output – EURATOM Fusion	**	**	50*	1,129.274	50*	936.965	100*	2,066.239
- Output – EURATOM Fission			20*	54.105	20*	55.839	40*	109.944
Sub-total for specific objective N°1			70*	1,183.379	70*	992.804	140*	2,176.183
SPECIFIC OBJECTIVE No 2...								
- Output – EURATOM Direct research- JRC	***	64***	157*	9.895	160*	10.252	317*	20.147
Sub-total for specific objective N°2			157*	9.895	160*	10.252	317*	20.147
TOTAL COST				1,193.274		1,003.056		2,196.330

(\*) estimated number of outputs

(\*\*) usual output of a research grant is a report describing facts, findings and results. The output of the ITER project will be annual activity reports provided by F4E (Barcelona agency). The average costs are not shown. Such information would be not useful given the amounts at stake in our running projects (ITER).

<sup>31</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>32</sup> As described in Section 1.4.2. "Specific objective(s)..."

(\*\*\*) Type of output: Products and services for EU policy makers. Average cost of the output: The cost of each output is very variable. For instance, a routine deliverable (e.g. a periodical crop forecast bulletin) is not comparable to a final report of a large and possibly expensive study for which a considerable amount of credits may have led to a single study document. Both are relevant and useful but serve very different purposes. The average cost indicated is just a mathematical calculation dividing the budget by the estimated number of outputs.

### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- ☐ The proposal/initiative does not require the use of administrative appropriations
- ☒ The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year 2012 - N <sup>33</sup>	Year 2013 - N+1	<b>TOTAL</b>
--	--------------------------------	--------------------	--------------

<b>HEADING 5 of the multiannual financial framework</b>			
Human resources			
Other administrative expenditure			
<b>Subtotal HEADING 5 of the multiannual financial framework</b>			

<b>Outside HEADING 5<sup>34</sup> of the multiannual financial framework</b>	Indirect Research	Direct Research	Indirect Research	Direct Research	Indirect Research	Direct Research
Human resources	58.863	68.021	61.230	70.474	<b>120.093</b>	<b>138.495</b>
Other expenditure of an administrative nature	15.191	36.627	15.587	37.947	<b>30.778</b>	<b>74.574</b>
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>	74.054	104.648	76.817	108.421	<b>150.871</b>	<b>213.069</b>

<b>TOTAL</b>	<b>178.702</b>	<b>185.238</b>	<b>363.940</b>
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<sup>33</sup>

Year N is the year in which implementation of the proposal/initiative starts.

<sup>34</sup>

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

### 3.2.3.2. Estimated requirements of human resources

- ☐ The proposal/initiative does not require the use of human resources
- ☒ The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	Year 2012 - N	Year 2013 - N+1
<b>• Establishment plan posts (officials and temporary agents)</b>		
X 01 01 01 (Headquarters and Commission's Representation Offices)		
xx 01 01 02 (Delegations)		
08 01 05 01 (Indirect research)	190	190
10 01 05 01 (Direct research)	566	566
<b>• External personnel (in Full Time Equivalent unit: FTE)<sup>35</sup></b>		
XX 01 02 01 (CA, INT, SNE from the "global envelope")		
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)		
<b>08 01 04 40<sup>36</sup></b>	<b>- at Headquarters<sup>37</sup></b>	
	- in delegations (F4E Barcelona agency-ITER):	
	- officials and temporary agents	262
	- CA GFI-IV	150
	- SNE	10
<b>08 01 05 02 (CA, INT, SNE - Indirect research)</b>	<b>40</b>	<b>40</b>
<b>10 01 05 02 (CA, INT, SNE - Direct research)</b>	<b>166</b>	<b>166</b>
Other budget lines (specify)		
<b>TOTAL</b>	<b>1,384</b>	<b>1,384</b>

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	Tasks derived from the nuclear research/direct and indirect research specific programme, in particular related to nuclear
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<sup>35</sup> CA= Contract Agent; INT= agency staff ("Intérimaire"); JED= "Jeune Expert en Délégation" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert;

<sup>36</sup> Under the ceiling for external personnel from operational appropriations (former "BA" lines).

<sup>37</sup> Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).



External personnel	waste management, nuclear safety and nuclear safeguards and security.
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### 3.2.4. Compatibility with the current multiannual financial framework

- ☐ Proposal/initiative is compatible the current multiannual financial framework.
- X Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The proposals for the Euratom Framework Programme 2012-2013 provides a general framework for research activities in the nuclear field and an appropriate budget. However, the draft appropriations initially foreseen for the nuclear research in the Multiannual Financial Framework for 2007-2013 (Mff) are insufficient due to the substantial cost increase of the ITER project. The Commission proposes that the legislative process concerning proposals for Euratom FP for 2012-13 will be carried out in parallel to the ongoing discussion on the budget for ITER as well as the new 2012 budgetary procedure. Agreement on additional funding through redeployment between Headings and within the Heading (in accordance with the table that follows) will allow for swift adoption of the Euratom research programme in 2011.

	Transfer between Headings € Million	Redeployment within heading 1A € Million	Total
2012	650	100	750
2013	190	360	550
Total	840	460	1300

- ☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>38</sup>.

Not applicable

### 3.2.5. Third-party contributions

- The proposal/initiative does not provide for co-financing by third parties
- X The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year <b>2012</b>	Year <b>2013</b>
<i>Specify the co-financing body</i>	Third countries associated to the programme	
TOTAL appropriations co-financed *	pm	

\* Third party contributions are not fixed yet; they will be added at a later stage

<sup>38</sup> See points 19 and 24 of the Inter institutional Agreement.

### 3.3. Estimated impact on revenue

- ☐ Proposal/initiative has no financial impact on revenue.
- X Proposal/initiative has the following financial impact:
  - ☐ on own resources
  - X on miscellaneous revenue

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget exercise	Impact of the proposal/initiative <sup>39</sup>	
		Year 2012	Year 2013
Item 6011*		pm	pm
Item 6012*		pm	pm
Item 6013		pm	pm
Item 6031**		pm	pm

\* The agreements on the Swiss contribution as well as on the JET Joint Fund contribution are not yet finalised. Discussions with Turkey related to cooperation in Nuclear Research are ongoing.

For miscellaneous assigned revenue, specify the budget expenditure line(s) affected.

**08 22 04** Appropriations accruing from contributions from (non-European Economic Area) third parties to research and technological development

**10 03 02** Appropriations accruing from contributions from third parties

Specify the method for calculating the impact on revenue.

Certain associated states may contribute to a supplementary funding of the framework programme through association agreements. The method of calculation has been agreed in these Association Agreements and is not necessarily the same in all agreements. Mostly the calculations are based on the GDP of the Associates State compared to the GDP of the Member States whilst applying this percentage to the overall operational budget.

<sup>39</sup>

As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.

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EUROPEAN COMMISSION

Brussels, 7.3.2011  
SEC(2011) 204 final

**COMMISSION STAFF WORKING PAPER**

**EX ANTE EVALUATION**

*Accompanying document to the*

Proposals for a

**COUNCIL REGULATION (Euratom)**

**laying down the rules for the participation of undertakings, research centres and universities in indirect actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013)**

**COUNCIL DECISION**

**concerning the Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2012 - 2013)**

**COUNCIL DECISION**

**concerning the specific programme, to be carried out by means of indirect actions, implementing the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 - 2013)**

**COUNCIL DECISION**

**on the specific programme, to be carried out by means of direct actions by the Joint Research Centre, implementing the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 to 2013)**

{COM(2011) 71 final}

{COM(2011) 72 final}

{COM(2011) 73 final}

{COM(2011) 74 final}

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## **Ex-ante evaluation for the legislative package of Commission's proposals for Euratom research and training activities for 2012-2013**

### **1. INTRODUCTION**

This ex-ante evaluation accompanies the legislative package of Commission's proposals for the Euratom nuclear research and training activities (2012-13). It has been prepared in accordance with Article 21 of the Implementing Rules for the Financial Regulation (Commission regulation no. 2342/2002). This legislative package consists of the draft Council Decisions for the Framework Programme, Specific Programmes for direct and indirect actions and Rules for the Participation of undertakings, research centres and universities in actions under the framework programme and for the dissemination of research results. It will aim to continue supporting R&D actions in the nuclear field carried out under the 7th Euratom Framework Programme (2007-2011). The proposals will cover only two years (2012-13), in accordance with the current financial perspectives (2007-2013) and in line with the timeframe of the EU 7th Framework Programme (2007-2013).

The Directorates General (DGs) responsible for preparing this ex-ante evaluation are DG Research & Innovation and the Joint Research Centre (JRC). Work started in early 2010 and consultation with other Commission services was carried out through an inter-service group composed of representatives from the Secretariat General, DG Energy and the Joint Research Centre. The group was set up in May 2010 and met three times.

During its work on the ex-ante evaluation DG RTD and JRC used various sources, including

- (1) Respective Euratom FP7 Interim Evaluations carried out by independent panels of experts
- (2) A report of the European Fusion Development Agreement (EFDA) following an *ad-hoc* study group on the future of the Fusion R&D programme
- (3) Input to the extension of FP7 and preparation of future research programmes from Euratom's Science and Technical Committee (STC)
- (4) Input from the JRC Board of Governors
- (5) Reports such as vision documents and strategic research agendas prepared by the Technology Platforms in nuclear field – Sustainable Nuclear Energy Technology Platform (SNETP), Implementing Geological Disposal Technology Platform (IGD-TP) and Multidisciplinary European Low Dose Initiative (MELODI).

## 2. THE NEED TO BE MET IN THE SHORT OR LONG TERM

### 2.1. Energy challenge

Following a proposal by the Commission<sup>1</sup>, the European Council defined, at its March 2007 summit, an integrated policy for energy and climate change with three objectives: increased security of supply; competitiveness of European economies and availability of affordable energy; environmental sustainability whilst combating climate change. The resulting Energy Policy for Europe sets out a number of strategic energy policy objectives for 2020: (i) reduction in greenhouse gas emissions by 20% compared to 1990 levels; (ii) reducing primary energy use by 20% (through energy efficiency); (iii) increasing the level of renewable energy in the EU's overall mix to 20%; (iv) minimum target for biofuels of 10% of vehicle fuel. In addition, it sets out a vision for a low carbon society by 2050 in which greenhouse gas emissions must be reduced by 80% to 95% compared to 1990 levels<sup>2</sup>.

Nuclear power is Europe's principal low carbon source of electricity. 151 reactors account for almost 1/3 of the electricity production, amounting to 2/3 of the low-carbon energy produced in the EU. This represents a saving of almost 700 million tons CO<sub>2</sub> per year<sup>3</sup>, equivalent to that produced by all the cars in Europe. Nuclear power therefore plays a key role in limiting the EU's carbon emissions. In its Nuclear Illustrative Programme of October 2007<sup>4</sup> the contribution of nuclear power to the diversification and the security of energy supplies is recognised for a number of reasons, in particular the availability and distribution of nuclear fuel (natural uranium) and the limited impact of fuel price variations on plant operating costs. The role of nuclear is further underlined in the "Second Strategic Energy Review" published by the Commission in 2008<sup>5</sup>. More recently, in the Commission's Communication on "Energy 2020 - A strategy for competitive, sustainable and secure energy"<sup>6</sup> underlines the importance of nuclear safety and provisions of the Euratom Treaty in this respect, including safeguards of nuclear materials and detection of any illicit activities, especially in a scenario of increased recourse to nuclear power.

Major studies on future energy scenarios have been carried out by the European Commission<sup>7</sup>, international organisations such as the IEA<sup>8</sup>, NEA<sup>9</sup>, IAEA, and industrial groups such as Eurelectric<sup>10</sup>. Forecasts for energy consumption suggest that electricity demand will increase, despite efforts to improve energy efficiency. However, the contribution of nuclear is expected to remain at current levels, in terms of electricity generated and as a percentage of the total generation capacity. The realisation of nuclear technology must also be carried out in such a way that civil nuclear material and technology is not diverted into

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<sup>1</sup> Communication from the Commission "An Energy Policy for Europe", COM(2007)1

<sup>2</sup> Council conclusions, 30 October 2009.

<sup>3</sup> If nuclear capacity were replaced by a representative mix of alternative sources

<sup>4</sup> Communication from the Commission "Nuclear Illustrative Programme", COM(2007)565

<sup>5</sup> Communication from the Commission "Second Strategic Energy Review", COM (2008)781

<sup>6</sup> Communication from the Commission "Energy 2020, A strategy for competitive, sustainable and secure energy", COM (2010)639

<sup>7</sup> Energy Trends to 2030, [http://ec.europa.eu/energy/observatory/trends\\_2030/index\\_en.htm](http://ec.europa.eu/energy/observatory/trends_2030/index_en.htm)

<sup>8</sup> International Energy Agency World Energy Outlook 2010 and Energy Technology Perspectives 2010, IEA

<sup>9</sup> Nuclear Energy Outlook 2008, Nuclear Energy Agency

<sup>10</sup> "Power Choices, Pathways to Carbon-Neutral Electricity in Europe by 2050", Eurelectric, 2010



weapons programmes. This will become more important with nuclear expansion, especially in geographical areas not previously operating nuclear fuel cycle facilities.

For the civil use of nuclear energy, the public must be confident that nuclear materials are well protected against any use for illicit activities. These requirements call for strong and efficient safeguards, non-proliferation and nuclear security regimes.

Fusion is potentially a sustainable large-scale energy supply. It is inherently safe (in terms of accidents, waste and proliferation issues), carbon-free and has virtually inexhaustible and widely available fuel resources. The R&D challenges still to be met leave considerable uncertainty about the timescale on which commercial fusion power can be realised and the cost of fusion generated power, although some articles in peer reviewed journals<sup>11</sup> indicate a timescale of several decades after 2020 and an electricity cost likely to be competitive with other sources. Because of these uncertainties fusion is not usually included in the modelling of future energy scenarios, but it is firmly embedded in the energy research landscape, especially since the decision to proceed with ITER.

## **2.2. The SET-Plan and nuclear energy**

Energy technologies play a central role in offering both competitiveness and sustainability in the energy sector while increasing security of supply. To help achieve the medium and long term objectives (2020 and 2050) the Commission proposed the Strategic Energy Technology Plan (SET-Plan)<sup>12</sup> which was endorsed by the Council on 14th March 2008 and adopted by the Parliament on 9 July 2008. The SET-Plan aims to accelerate the development and deployment of cost-effective low carbon technologies. Its main assumption is that no single form or source of energy will be able to provide a sustainable supply or to cover all energy needs in the coming decades. A broad portfolio of low-carbon energy sources and carriers needs to be investigated and developed. This includes *inter alia* wind, photovoltaic (PV), fossil fuels with carbon capture and storage (CCS), bio-energy, and nuclear energy, especially advanced reactors for increased sustainability. This broad portfolio and 'technology neutral' approach to future low-carbon energy supply has been underlined again in the conclusions of the European Council (4 February 2011) which agreed that the EU and its Member States will promote investment in renewables, safe and sustainable low carbon technologies and focus on implementing the technology priorities established in the SET-plan.

In the short term (2020) the SET-Plan supports research to reduce costs and improve performance of existing energy technologies, and encourages the commercial implementation of these technologies. For the longer term (2050) it supports development of a new generation of low carbon technologies. Both nuclear fission and fusion are identified in the SET-Plan as energy technologies which Europe must maintain, develop and deploy in order to meet its short and longer term energy objectives.

Regarding nuclear technology in particular, to meet the short term (2020) goals of the Energy Policy for Europe (EPE), the SET-Plan aims to "*maintain the competitiveness in fission technologies together with long term waste management solutions*". To realise the longer-

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<sup>11</sup> See for example "Revised assessments of the economics of fusion power", W.E. Han, D.J.Ward, Fusion Engineering and Design 84 (2009) 895–898

<sup>12</sup> Communication from the Commission "A European Strategic Energy Technology Plan (Set-Plan). Towards a low carbon future", COM(2007)723

term EPE vision of a low carbon society by 2050, the SET-Plan states that the following milestones are to be reached by 2020: (1) *complete the preparations for the demonstration of a new generation (Gen-IV) of fission reactors for increased sustainability; and (2) complete the construction of the ITER fusion facility and ensure early industry participation in the preparation of demonstration units.* The European Sustainable Nuclear Industrial Initiative (ESNII), which is one of the six initial European Industrial Initiatives foreseen under the SET-Plan, was formally launched on 15 November 2010. ESNII will address the need for demonstration of Gen-IV Fast Neutron Reactor technologies, together with the supporting research infrastructures, fuel facilities and R&D work. The nuclear energy's milestones of the SET-Plan can be reached via research and development activities to be carried out by private and/or public sector in Europe. These R&D activities will address different challenges in fission and fusion, though some topics like development of nuclear-grade materials are cross-cutting. Finally, R&D should address some issues which are beyond scope of the SET-Plan, such as radiation protection and nuclear security (proliferation of fissile materials).

## 2.3. Main challenges in nuclear fission

### (i) Challenges in the timescale of 2020

- **Plant lifetime management:** The current nuclear fleet in Europe is based mostly on Light Water Reactors (LWR) that have been in operation for about 20 years on average. Current plans in most EU Member States are to extend their lifetime on case-by-case basis beyond 40 years, and possibly beyond 50 years. Key R&D issues are related to meeting safety requirements for long-term operation focussing on ageing of structures, systems and components. Other important issues are ageing mechanisms, ageing monitoring and prevention and mitigation of ageing. Finally, research can address the performance of existing plants.
- **Geological disposal:** As indicated in the Commission's revised draft proposal for a Council Directive on the Management of Spent Fuel and Radioactive Waste<sup>13</sup>, all EU Member States produce radioactive waste, which is generated by many beneficial activities including civil nuclear power and radioisotope applications in medicine, industry, agriculture, research and education. More than half of Member States have accumulations of spent nuclear fuel, or residues from the reprocessing of this fuel, as a result of the operation of nuclear power plants. The general principle is that those who benefit today from these activities should manage the resulting waste in a safe and sustainable manner. This is also the overwhelming view of European citizens<sup>14</sup>, whose acceptance of nuclear energy is also strongly correlated to the implementation of solutions to safely manage nuclear waste. This is why implementing safe long-term management of this waste is specifically mentioned in the SET-Plan. Indeed, the R&D work carried out over last three decades has confirmed that deep geological disposal is the most appropriate solution for long-term management of spent fuel, high-level waste, and other long-lived radioactive wastes. This scientific consensus now needs to be turned into an engineering reality, and this will be the focus of attention over the coming decade.

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<sup>13</sup> Proposal for a Council Directive on the management of spent fuel and radioactive waste, COM(2010)618, 3 November 2011

<sup>14</sup> Special Eurobarometer 297: *Attitudes towards radioactive waste*, published in June 2008.

- **Nuclear safeguards and security:** Expansion of civil nuclear technology brings with it an increasing concern about the risk of accidents, nuclear non-proliferation and the threat of nuclear terrorism. The European Parliament made world-wide nuclear disarmament by 2020 a top-priority for the EU Member States. High priority is given to strengthening prevention measures at both the national and international levels, and establishing measures to ensure a rapid and coordinated response should these measures fail. The spread of nuclear material, technology and know-how already increases the risk of proliferation. The world-wide growth of nuclear power will require even greater safeguards which rely on profound knowledge and expertise.

## (ii) Challenges by 2040 or beyond

- **Next generation fission systems:** Today's light water reactor technology uses less than 1% of the energy content of the mined uranium, which limits the sustainability of nuclear energy to a few decades because of the finite nature of the world's uranium reserves. By contrast fast neutron reactors will extract 50-100 times more energy from the same quantity of uranium, making nuclear much more sustainable. Furthermore, fast reactors will produce far less high-level long-lived waste, facilitating the management in future geological repositories. R&D challenges in fast reactors are needed to address cost competitiveness, enhanced safety and non-proliferation, requiring innovation both in reactor designs as well as fuel and fuel cycle technology. Though next generation fast neutron reactors are not expected to be widely deployed commercially before 2040, prototypes and demonstrators need to be designed and constructed in the next decade to enable sufficient return from experience before commercial deployment. In parallel, a broad-based programme of R&D is needed in key areas such as materials, numerical simulation and safety.

## 2.4. Main challenges in fusion energy

ITER, the next step in fusion R&D, is expected to demonstrate the feasibility of fusion power. The concentration of the majority of the funding on ITER is part of an evolution of the fusion programme that started during the ITER design phase and has recently accelerated as the needs of ITER have become more clearly defined and financial resources more scarce. The challenges for the Euratom Framework Programme in relation to ITER construction are not primarily concerned with R&D but involve issues of project schedule, cost containment and risk reduction in an international context. In parallel with this, a pioneering R&D programme is essential to building a demonstration power plant before 2040. The scientific and engineering challenges of fusion are major and require a research programme firmly focussed on this ultimate goal of fusion power plants.

The major challenges of ITER and fusion will not be resolved in the 2012-13 timeframe, but this period needs to be used to consolidate the programme strategy and to launch the activities for the next 10 years, i.e. in parallel with ITER construction, in order to ensure and enhance ITER's success and move towards the power plant goal as rapidly and as efficiently as possible. These major challenges are:

### (i) Challenges in the timescale of 2020

- **Complete ITER construction:** the key challenges surrounding ITER's construction are procuring, testing and integrating the components, and launching the plasma device in

2019. These must be completed within the approved budget, while minimising the technological risks for the correct operation of the completed machine.

- **Secure ITER operation:** by expanding the knowledge base to maximise the scientific output of ITER. To achieve this, the programme must: (i) develop operational scenarios that will secure and even exceed the baseline performance, and (ii) ensure the rapid and efficient start up of ITER operation, and protect the investment in ITER by minimising the chances of unexpected technical problems that would delay exploitation or incur extra cost.
- **Prepare the ITER generation of researchers and engineers:** to ensure that Europe will have the human resources to exploit ITER in an international and competitive environment. Europe must cultivate future leaders of the ITER programme or it will risk ceding leadership in fusion research.
- **Lay the foundations for fusion power plants:** driving forward developments in physics and technology to ensure the design and construction of a demonstration fusion power plant as soon after ITER as possible. Position Europe so that it gains a significant share of the intellectual property of fusion power.
- **Involve industry more closely and promote innovation:** by integrating industry in the development of fusion power plant studies, enhancing the transfer of knowledge and creation of spin offs from the programme as well as developing the skills and capacities necessary for a European fusion industry of the future. The Commission has launched the formation of a Fusion Industry Innovation Forum as the first step towards meeting these challenges.

#### (ii) Challenges by 2040 or beyond

- **Fusion power:** Beyond ITER, which is an experimental reactor to study the physics and the technology needed for power generation, it is envisaged to construct a demonstration fusion reactor (DEMO) that can produce electrical power and be commercialised. Preparation for experiments in ITER are supported by a number of other smaller fusion experiments for specific studies and by major experimental facilities required to develop operating scenarios and address key physics issues for an efficient start up of ITER and for research towards DEMO. As a result of the experiences obtained by the operation of ITER, the physics of burning plasmas will be well known and valuable technological know-how will have been obtained. A parallel programme of technology activities for materials testing, technological validation, prototype development and fabrication methods is foreseen. Key technologies should be sufficiently developed and embedded in industry to have a final design and construction of a DEMO by 2050.

### 2.5. Other challenges in nuclear science and technology

There are also other challenges which concern radiation protection and skills in nuclear field:

- The growing use of radiation in medical diagnostic and therapeutic techniques is responsible for a significant rise in exposure to low doses. Further research is needed to determine the true risks emanating from such exposure, and to understand the emergence of latent cancers and vascular diseases at these low doses. This will lead to better regulation and an appropriate level of protection for the public and workforce in all industrial and medical uses of radiation. However, this scientific challenge is enormous,

involving cutting edge research and an approach that must bring together experts from a wide range of disciplines, including radiation protection, radiobiology, molecular biology, genomics and epidemiology. Supporting basic and oriented research will be needed to keep the highest degree of understanding of key basic phenomenon.

- A particular focus must be given to provide support for education and training of present and future young scientists and engineers. As underlined by the Council conclusions<sup>15</sup>, it is essential to maintain in the European Union a high level of training in the nuclear field. This effort is indispensable for (a) Member States wishing to continue to make use of nuclear energy for their energy; (b) for Member States wishing to begin using this energy source; (c) for Member States wishing to phase out the use of nuclear fission for electricity production and still facing the challenge of decommissioning nuclear facilities, and of managing radioactive waste and spent fuel; (d) for Member States which have not developed a nuclear power programme for energy production but which use nuclear technologies for other purposes (research, medical applications).

## **2.6. Innovation in nuclear field**

Nuclear energy technology has special characteristics that affect the actors involved and the way innovation occurs: large up-front capital investments, large and complex facilities, special quality and safety requirements, and long R&D lead times. The fission sector has developed over 50 years into a mature industry and a major market. Nuclear innovation is stimulated by many factors including: (i) growing demand for affordable low-carbon electricity from citizens/industry, (ii) maintenance and reliability performance targets from the utilities, (iii) safety and emission standards set by public authorities, (iv) growing interest by industrial end-users in low carbon process heat, and (v) public policy intervention. The supply of innovative technologies is supported by public and private organisations (nuclear vendors and utilities) and involves technical safety organisations and regulators. Finance institutions are closely involved as nuclear is a very capital-intensive technology.

The fusion energy sector is in its infancy and high-tech industry has to learn-by-doing and gain appropriate skills and manufacturing capabilities. First steps need to be taken now at EU level to prepare this new industry and associate it to the programme evolution. The high technology industry involved in the construction of large-scale research fusion infrastructures, such as ITER and W7-X are keen to be involved in the fusion technology. They welcome the positive impact on their skills base and the possibility to re-use the new innovative manufacturing processes for other products and services<sup>16</sup>. The situation is similar to other big science research where more than 1/3 of industrial contracts yield new products and services according to CERN<sup>17</sup>.

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<sup>15</sup> Conclusions on the need for skills in the nuclear field, 2891st Competitiveness (Internal Market, Industry and Research) Council meeting, Brussels, 1 and 2 December 2008

<sup>16</sup> Commission's survey (2009) of companies involved in upgrade and construction projects in fusion

<sup>17</sup> Technology transfer and technological learning through CERN's procurement activity, E. Autio, M. Bianchi-Streit, A. Hameri, CERN, Geneva 2003 (<http://cdsweb.cern.ch/record/680242/files/p1.pdf>)

### **3. THE ADDED VALUE OF EURATOM COMMUNITY INVOLVEMENT IN NUCLEAR R&D**

Public support of research is justified in a variety of circumstances, including large scale, long term endeavours, matters concerning public safety and security, a low probability of a near term economic return ("market failure"). Research in radiation protection is an example of activity where public support is essential, since there is no industrial / private sector to speak of that can exploit such research on a commercial basis, but the research is nonetheless needed in order to adequately protect the public and the workforce. An example of market failure is in advanced nuclear technology, where commercial deployment is too far in the future for the nuclear sector to justify the economic, regulatory and political risks of investing now. The justification for public sector support for fusion research is its firm focus on the future public benefit of having a further option in the energy mix, but on a timescale for deployment too long for there to be, at present, significant investment by industry.

The Euratom Treaty is the legal basis underpinning R&D by the Euratom community. It enables research coordination and cooperation. Article 1 stipulates that it "it shall be the task of the Community to contribute to the raising of the standard of living in the Member States and to the development of relations with the other countries". Article 2 stipulates that "in order to perform its task the Community shall, as provided in the Treaty promote research and ensure dissemination of technical information". For this purpose "the Commission shall be responsible for promoting and facilitating nuclear research in the Member States and for complementing it by carrying out a Community research and training programme" (Article 4). The Nuclear Safeguards activities for current nuclear fuel cycle systems contribute to the implementation by the Commission services of chapter 7 of the Euratom Treaty and by the IAEA of the Non-Proliferation Treaty. To fulfil these obligations, nuclear material measurements, modelling skills for processes and equipment, advanced sealing and verification technologies, scientific and technical support from trusty and independent laboratories, and dedicated consultancy services are needed by the safeguards authorities (DG ENER and IAEA).

Because the research competence is not exclusive to Euratom, the principle of subsidiarity applies. In order for Community action to be justified, the principle of subsidiarity must be respected. This involves assessing two aspects.

Firstly, it is important to ensure that the objectives of the proposed action could not be achieved by Member States in the framework of their national systems (necessity test). This relates to the scope and size of the required research activities. Clear economies of scale may exist when R&D efforts are pooled on a European scale. European research funding allows Europe to benefit from transnational research teams, bringing together the best expertise in Europe to meet ambitious goals.

The second aspect to consider is whether the research serves Community aims and whether the benefits will be widely spread across the Member States. In the case of nuclear energy, with potential cross-border impacts, the need for Member States to work collectively together is clear, especially in areas that will lead to improved practices and/or regulation applicable in all Member States, and in areas where the rewards will only appear in the long term.

Public financial support for much nuclear research is more effective at a European level than at a national level for several reasons:

- Critical mass: Some nuclear research activities are of such a scale and complexity that very few Member States could provide the necessary financial resources or personnel, and hence need to be carried out at an EU level. For example, where a large research capacity is needed and resources must be pooled to be effective, or where complementary knowledge and skills are needed (such as inter-disciplinary fields like plasma physics, material science etc);
- Access to common research facilities such as JET and the fusion programme's High Performance Computer;
- Participation of smaller Member States: doing large nuclear R&D projects at European level brings in valuable contributions from the smaller Member States who otherwise might be left out;
- Improving skills and technology capabilities: Research teams wishing to develop their capabilities in specific fields can participate in top trans-national teams, benefit from learning and synergies, and so become recognised global leaders and centres of excellence;
- Leverage on private and public investment: Through EU research schemes, private companies and public research bodies can collaborate with foreign partners at a scale not possible at national level, which induces them to invest more of their own funds than they would under national funding schemes;
- Dissemination of results: It is more efficient to disseminate the results of research at an EU level - to users, industries, firms, citizens, etc. – leading to a better use of research, and creating a larger impact than would be possible only at Member State level;

#### **4. THE OBJECTIVES TO BE ACHIEVED**

The Euratom Framework Programme is one of the building blocks of Europe 2020 and the Innovation Union. It promotes competition for scientific excellence and fosters innovation in the nuclear energy field to tackle challenges in energy and climate change strategy. The programme will contribute to the "Innovation Union" flagship by supporting pre-commercial research and facilitating technology transfer process between academia and industry and to the "Resource efficient Europe" flagship by greatly increasing the overall sustainability of nuclear energy. By putting emphasis on training in all its activities, boosting competitiveness in the current nuclear industry and creating a new sector of high-tech industry for fusion energy in particular, the Euratom programme will lead to growth and new jobs in a wide range of disciplines.

The current proposal addresses in detail just the 2-year period 2012-13, but the activities remain fully consistent with the key milestones for technology development in the nuclear field over the next decade as laid out in the European Strategic Energy Technology Plan (SET-Plan).

The Euratom Framework Programme for 2012-13 , covers the same scientific & technical and strategic objectives and using the same funding schemes of current FP7 programme (2007-2011). Nonetheless, the programme has evolved over the last 5 years, and must take into account results of recent research and the new policy context and research landscape in Europe. Regarding policy, the most significant development has been the adoption and

endorsement of the SET-Plan as part of a broad portfolio approach to addressing future energy challenges.

The broad objectives for the Euratom Framework Programme for the years 2012-13 are:

- in the area of fusion energy research, to develop the technology for a safe, sustainable, environmentally responsible and economically viable energy source;
- in the area of nuclear fission and radiation protection, to enhance the safety performance, resource efficiency and cost-effectiveness of nuclear fission and other uses of radiation in industry and medicine; and to enhance nuclear security (nuclear safeguards, non-proliferation, combating illicit trafficking and nuclear forensics)

#### **4.1. Indirect actions in the area of nuclear fission and radiation protection**

In the area of nuclear science and technology, the last 3 years have seen the launch of key technical forums that bring together all key nuclear research and industrial stakeholders across Europe. These are the Technology Platforms in Sustainable Nuclear Energy and Implementing Geological Disposal (SNETP and IGDTP) and the joint programming initiative MELODI – the Multidisciplinary European Low-Dose Initiative. All three have come together around agreed visions for future R&D in their respective field, and all have defined, or are defining, Strategic Research Agendas (SRA) and Deployment Strategies, to be implemented by sharing members' resources in the respective platforms. Both SNETP and IGDTP are closely aligned with the objectives of the SET-Plan.

The Euratom strategy in FP7 (2007-11) has already adapted to this new landscape by focusing on areas defined in the SRAs. This approach needs to be maintained in the 2-year prolongation, and extended to ESNII, the European Sustainable Nuclear Industrial Initiative, which is one of the six initial European Industrial Initiatives foreseen under the SET-Plan, and one of the pillars of SNETP's SRA. ESNII was formally launched at the Belgian Presidency's SET-Plan Conference in Brussels on 15-16 November 2010.

Within the programme's five priority areas, the specific objectives are:

- **Geological disposal** – Implementation-oriented research and development activities on all remaining key aspects of deep geological disposal of spent fuel and long-lived radioactive waste and, as appropriate, demonstration of the technologies and safety, and to underpin the development of a common European view on the main issues related to the management and disposal of waste.
- **Reactor systems and safety** – Research to underpin the safe operation of all existing reactors (including fuel cycle facilities). This research must take into account new challenges such as life-time extension and the development of new advanced safety assessment methodologies (both the technical and human element). Further research to assess the potential, the safety and waste-management aspects of future reactor systems, in the short and medium term, thereby maintaining the high safety standards already achieved within the EU and considerably improving the long-term management of radioactive waste. Research on partitioning and transmutation and/or other concepts aimed at reducing the amount and/or hazard of the waste for disposal.



- **Radiation protection** – Research, in particular on the risks from low doses, on medical uses and on the management of accidents, to provide a scientific basis for a robust, equitable and socially acceptable system of protection that will not unduly limit the beneficial and widespread uses of radiation in medicine and industry.
- **Infrastructures** – Supporting the availability of, and cooperation between, research infrastructures necessary to maintain high standards of technical achievement, innovation and safety in the European nuclear sector, such as material test facilities, underground research laboratories, radiobiology facilities and tissue banks,.
- **Human resources and training** – Supporting the retention and further development of scientific competence and human capacity (for instance through joint training activities) in order to guarantee the availability of suitably qualified researchers, engineers and employees in the nuclear sector over the longer term.

#### 4.2. Indirect actions in fusion energy

The construction of ITER in Europe has brought about a fundamental change in the environment in which the European fusion research programme operates. However, the FP7 objectives were framed in the context of extensive negotiations with the other international partners which were taking place and the decision to proceed with ITER (the international agreement was signed in November 2006). The FP7 objectives are therefore already well adapted to the needs of the period 2012-13.

The overall objective remains “To develop the knowledge base for, and to realise ITER as the major step towards, the creation of prototype reactors for power stations that are safe, sustainable, environmentally responsible, and economically viable”. This entails:

- **The realisation of the ITER machine** as a joint international research infrastructure within the approved scope and schedule. EU objective, as host, is to maintain a leading role in site preparation, the ITER Organisation's management and staffing, and general technical and administrative support. As an ITER Party, the Community objective includes the construction of equipment and installations, support to the project during construction and the management of R&D activities in support of ITER construction carried out in the Fusion Associations and European industries.)
- **R&D in preparation of ITER operation** to consolidate ITER project choices. Preparation for a rapid start-up of ITER operation, reducing significantly the time and cost needed for ITER to achieve its baseline objectives. This will include assessment of specific key technologies for ITER operation through the completion and exploitation of the JET Enhancements (first wall, heating systems, diagnostics) and the exploration of ITER operating scenarios by means of targeted experiments on JET and other facilities, and coordinated modelling activities.
- **Technology activities in preparation of DEMO**, with the objective of developing the key technologies and materials required for the licensing, construction and operation of the DEMO power plant.
- **Human resources, education and training** aiming at ensuring adequate human resources and a high level of cooperation within the programme, both for the immediate and medium term needs of ITER, and for the further development of fusion.

- **Technology transfer processes** which have the short term objective of ensuring that innovation and technological progress created in the programme is transferred to industry swiftly, so that European industry becomes more competitive.

#### **4.3. Direct actions in nuclear safety and security**

The overarching goal is to provide customer driven scientific and technical support to EU policy related to nuclear energy. In particular, the nuclear activities of the JRC aim to satisfy the R&D obligations of the Euratom Treaty and support both the European Commission and Member States in the fields of safeguards and non-proliferation, waste management, safety of nuclear installations and fuel cycle, radioactivity in the environment and radiation protection. To fulfil this goal, knowledge and skills need to be updated continuously to provide the cutting edge scientific expertise required for nuclear reactor safety and nuclear security. Furthermore, the JRC will further strengthen its role as a European reference for the dissemination of information, training and education for professionals and young scientists, ensuring that Europe's leading scientific position in the nuclear field is preserved and reinforced, and that the necessary competent workforce of scientists and operators is available in the future to implement, monitor, evaluate and assess current and new nuclear programmes. The safe and reliable operation and maintenance of all nuclear installations and laboratories located in the JRC's nuclear sites and related management of the operational waste from their exploitation will remain a high priority objective.

The JRC's specific objectives are:

##### **(1) Nuclear Waste Management and environmental impact**

- Nuclear waste management: strengthening the knowledge base of relevant processes during dry storage of spent fuel and in the near-field of the final repository (from the waste/waste package to the geological barrier); in the field of partitioning and transmutation, contribution to demonstration of efficient processes and safe operation of fuel fabrication and partitioning facilities at laboratory scale, based on aqueous and dry techniques.
- Basic research and applications: remaining at the forefront of actinide physics, chemistry and nuclear reference data, with the main goal of providing world-class experimental results and opening its facilities to scientists from universities and research centres; in the field of nuclear data, production of internationally required data and safe operation of the Van de Graaff and GELINA accelerators; in medical applications, supporting the development of targeted alpha therapy, focusing on alternatives for the production of alpha emitters and the radio-biological testing of radio-labelled bio molecules, assessing their efficiency and feasibility.
- Monitoring radioactivity in the environment: development of analytical techniques and production of the corresponding reference materials; development of real-time systems to collect, validate, map and report on environmental radioactivity in Europe.

### ***Nuclear Safety***

- Nuclear reactor safety: maintaining competences in design and operational nuclear safety for EU and Russian designed power plants in order to provide valuable technical support to the other policy making Commission DG's in nuclear safety related legislation/projects/issues, to the EU regulatory bodies and technical support organisations in the interpretation and dissemination of events occurring in nuclear power plants.
- Nuclear fuel cycle safety for the present generation of reactors: development of current and evolutionary fuel cycle trends and concepts for fuels operating in Gen II and III reactors; fuel rod safety assessment during in-pile operation through state of the art post irradiation examination techniques; modelling applications.
- Safe operation of advanced nuclear systems: giving support to the implementation of the Sustainable Nuclear Energy Technology Platform (SNETP) deployment strategy, to further coordinate the Euratom participation in GIF, remaining a major Euratom contributor to the GIF knowledge and data base build-up in the field of advanced fuels, safety assessments and qualification of innovative materials.

### ***Nuclear Safeguards and Security***

- Nuclear safeguards: development of verification and detection, containment and surveillance technologies, advanced and innovative measurement methods for nuclear materials, production of required nuclear reference materials, organisation of inter-laboratory comparisons, and provision of training, in particular for IAEA and Commission inspectors; related to the "Additional Protocol", strengthening of the capability for detection of undeclared nuclear activities, enhancement of the spectrometric methods towards high resolution, high sensitivity and reliability.
- Combating illicit trafficking of nuclear materials including forensic analysis: establishment of an integrated nuclear security concept for prevention, detection, and response to scenarios of undeclared activities. This includes establishment and implementation of the European Security Training Centre at the JRC, based upon a robust and high quality scientific background in terms of personnel and equipment.

## 5. THE POLICY OPTIONS AVAILABLE

The proposal for the Euratom Framework Programme will aim to continue support for R&D actions in nuclear field carried out under the 7th Euratom Framework Programme (2007-2011). The proposal will cover only two years (2012-13), in accordance with the current financial perspective (2007-2013) and in line with the timeframe of the EU 7th Framework Programme (2007-2013). There are three policy options for Euratom all of which should be based on the Commission Staff Working Document "Towards a robust management and governance of the ITER project"<sup>18</sup> and the available/planned budget (including the Commission's proposal to amend the financial perspective<sup>19</sup>). The variable factors behind each option are the cost increase of Euratom's contribution to ITER, the need to ensure continuity of fusion research programme parallel to the ITER construction, and the need to support implementation of SET-Plan in nuclear energy.

In this section, three policy options representative of the range of scenarios for the Euratom Framework Programme are presented, together with the planned activities and immediate results. Long term impacts are discussed under section 6.

### 5.1. Option 1 – Same level of Euratom R&D and no additional funding for ITER

The Euratom Framework Programme is extended to cover 2012-13 with the budget envelope provided in the current financial perspective. The Commission's proposal to amend the financial perspective to provide additional funding for ITER<sup>20</sup> is not adopted. The funding for indirect R&D actions in fission and radiation protection would remain at the same level as during the last 5 years, while the appropriations for fusion R&D would be similar to the average level of Euratom contribution to fusion research during FP7. Regarding direct actions in nuclear safety and security to be implemented by the Joint Research Centre, the draft appropriations proposed for 2012-13 also follow the budget provided under FP7 (2007-2011).

#### Activities to be implemented and expected results:

**Fission and Radiation Protection:** Under this scenario, the 'fission' programme will be able to co-fund in 2012-13 a limited number of projects in all key research areas (radioactive waste management, nuclear systems & safety, radiation protection, training actions, related cross-cutting topics). As in Euratom FP7 (2007-2011) there will be flexibility in the annual budget that allows the allocation of funds to be tailored, taking into account the strategic, scientific and technical needs of a particular time. This flexibility also enables results of ongoing projects to be taken into consideration in the annual work programmes. At present, it is expected that, following the annual calls for proposals and evaluations, approximately 20 additional projects will be launched each year. Some of these will be in support of SET-Plan aims and objectives presented in Section 2.2 above. In nearly all cases, there will be a focus on key research topics identified in the Strategic research agendas (SRAs) emerging from SNETP, IGDTP and MELODI. Such an approach will enable even more effective use of

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<sup>18</sup> SEC(2010) 1386

<sup>19</sup> Proposal for a decision of the European Parliament and of the Council amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework, to address additional financing needs of the ITER project, COM(2010) 403

<sup>20</sup> COM(2010) 403

Framework Programme funds, since these SRAs promote joint programming of research and commit a broad range of organisations including industrial players (except in the case of MELODI, where only public research funding is available) and those responsible for implementing national programmes. This level of activity in the 'fission' programme is considered the minimum possible in view of the objectives laid down in the SET-Plan regarding nuclear energy and radioactive waste management, and in particular the requirements of ESNII in coming years. Though the Euratom FP is unlikely ever to be able to make large financial contributions to actual construction of large demonstrator facilities, which are the focus of ESNII, Euratom can and should be an important player in the allied cross-cutting research programme that is also foreseen under ESNII. The current ESNII Concept Paper, endorsed by the SET-Plan Steering Committee, estimates that €1B will be required over 10 years for the accompanying R&D programme, to be carried out largely in new or upgraded research infrastructures. Much of this effort will be on safety-related aspects of next generation nuclear systems, advanced modelling and numerical simulation techniques, pre-commercial and pre-normative R&D in general, for example in materials science, and in related all-important training and knowledge management activities, all of which are areas where the Euratom FP has a clear role to play. Though these activities will often continue till 2020 and beyond, many must nonetheless begin in earnest now and are often based on current Euratom research projects and actions.

**ITER:** The cost increase of the ITER project was the subject of in-depth assessment in the Commission Communication "ITER status and possible way forward"<sup>21</sup>. In the business-as-usual scenario, Euratom's contribution to ITER would be limited. Such a budget would require key procurements to be delayed beyond 2013. The resulting substantial delays would not allow the Community to implement the project according to the schedule agreed in July 2010 (ITER baseline). Euratom would therefore not fulfil its obligations under the ITER agreement. In the longer term, any delay in ITER construction and exploitation would have an impact on the realisation of the SET-Plan and on the European long term vision of a low carbon society in 2050.

**Fusion R&D programme:** The level of appropriations would be used to maintain a minimum research programme in fusion. The Commission, with the support of a high-level expert group, is currently assessing the role of JET in this programme. Depending on the level of funding dedicated to ITER this policy option could have very serious disadvantages because insufficient funds for the fusion programme would compromise the Joint European Torus Facility (JET) and the EU's global reputation. JET could face closure, resulting in redundancies of around 500 staff, the money recently spent on upgrading it would be wasted, and its contribution to ITER would be negligible. The ability of the EU to lead the ITER project during and beyond construction could be seriously damaged. The credibility of the European Union as the coordinator of European fusion research could be lost both in Europe and worldwide. It is clear that leadership in the development of fusion would move to Asia, since the Korean prime Minister made very supportive comments about fusion in his key note address to the recent IAEA fusion energy conference in Korea. At the same time, in China it is reported that 2000 PhDs in plasma science have graduated last year.

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<sup>21</sup> Communication from the Commission "ITER status and possible way forward", COM(2010)226, SEC(2010)571

**Direct actions in nuclear security and safety:** The JRC will continue to act as a reference centre for unbiased robust science, supporting independent policy making, in key areas of nuclear energy and nuclear security, satisfying the R&D obligations of the Euratom Treaty and supporting both the European Commission and Member States in the fields of safeguards and non-proliferation, waste management, safety of nuclear installations and fuel cycle, radioactivity in the environment and radiation protection.

Knowledge and skills need to be updated continuously to provide the cutting edge scientific expertise required for nuclear reactor safety and nuclear security. Furthermore, the JRC will further strengthen its role as a European reference for the dissemination of information, training and education for professionals and young scientists, ensuring that Europe's leading scientific position in the nuclear field is preserved and reinforced, and that the necessary competent workforce of scientists and operators is available in the future to implement, monitor, evaluate and assess current and new nuclear programmes. The R&D component will remain the key aspect in the nuclear programme justifying the added value of the JRC. Another essential aspect is the need of independent and reliable research and assessment in a controversy context in which public acceptance, policy concerns and nuclear industries are strong components.

Nuclear Waste Management and environmental impact will cover R&D work and relevant data on fuel cycle (back-end); development of optimised waste management and final repositories; development of closed fuel cycles and recycling techniques to reduce the long-term waste burden; development, implementation and training of tools to improve the exchange of information on environmental radioactivity in the EU MSs (routine and emergency conditions), according to the underlying EU legislation (EURATOM, Chapter III, art. 35, 36 and 39); maintaining expertise in environmental monitoring (sampling-measurement) by performing international intercomparison exercises; underpinning science in chemistry and physics of the actinide elements, nuclear materials research and pre-normative and exploratory research; health impact and medical uses of radiation sources and radioisotopes, becoming increasingly important with emerging new technologies; non nuclear applications of nuclear materials and techniques.

Nuclear Safety will address current nuclear policy and innovative systems (Innovative safety concepts both in nuclear reactor and nuclear fuels, targeting at harmonised guidelines on operational safety issues; plant safety assessment; operational feedback and event analysis; performance standards and codes for current and new materials, and for conventional and advanced fuel safety concepts, fabrication of prototype nuclear materials, determination of their properties, safety and performance analyses and improved nuclear data for reduced modelling and simulation uncertainties of reactor core and fuel cycle parameters

Nuclear Security, Safeguards and Non-Proliferation will include three main pillars in the domain, prevention (includes a full set of nuclear safeguards tools and techniques, including running of on-site laboratories for DG ENER and an extensive R&D support programme to the IAEA), detection, response (includes nuclear forensics analysis and response plans). They will cover improved and new methods and technology development (in Non Destructive and Destructive Analyses, Mass/volume determinations, Containment and surveillance, sealing, particle analysis etc), forensics analyses and response in case of seized materials; detection technologies for nuclear and radiological security; nuclear materials accounting and control statistical analysis; production and certification of reference materials, reference measurements and inter-laboratory comparisons; - Operations and process modelling and

monitoring; development of methodologies for Gen IV proliferation resistance analysis and safeguards by design.

## **5.2. Option 2 – No additional funding but priority given to ITER**

The Euratom Framework Programme is extended to cover 2012-13 with the budget envelope provided in the current financial perspective. The Commission's proposal to amend the financial perspective to provide additional funding for ITER<sup>22</sup> is not adopted. In order to give priority to ITER the funding for fusion R&D, the indirect R&D actions in fission and radiation protection would be reduced to a very low level, but direct actions in nuclear safety and security to be implemented by the Joint Research Centre would remain at the same level as in option 1.

### **Activities to be implemented and expected results:**

#### **Fission and Radiation Protection:**

Most of nuclear research and training activities in Europe would be carried out only on the basis of existing national programmes. The leverage effect of the Euratom FP on national and industrial programmes would be lost at a time when SET-Plan activities should be starting in earnest. Euratom FP support to complement key EU policy initiatives in nuclear safety (EU Directive adopted in 2009) and radioactive waste management (Directive to be adopted this year) would no longer be possible. Bilateral and multilateral links between research and industrial organisations in Europe would be seriously curtailed with consequences for the realisation of the European Research Area in this field.

**ITER:** The limited additional appropriations coming from the fusion and fission research programme would still not be sufficient to launch the necessary procurements in the 2012-2013 timeframe. The delay in construction compared to the schedule agreed by the members of the ITER International Organisation, which foresees the start of operation of the facility in 2019, would be almost as severe as in option 1. Such delays would necessarily increase the total costs for the period of ITER construction, because of the running costs of the ITER Organization and F4E.

**Fusion R&D programme:** The level of appropriations would be insufficient to maintain a minimum viable research programme in fusion. The detailed impacts of a low level of budget would be:

- Closure and termination of the JET facility - Exploitation of the JET facility would be limited to 2012 as the largest part of available funding would be used to cover the termination expenditures, mainly on staff and operational waste, currently estimated at 45 Million GBP. In accordance with the JET agreement, the host of the facility, the Culham Centre for Fusion Energy, will cover costs of the facility's decommissioning.
- Termination of the Contracts of Association and EFDA – Within this budget envelope, Euratom would not be able to maintain the support to the fusion Associations: the Contracts of Association and EFDA would terminate at the end of 2011. But the training activities and the mobility of researchers might continue to be supported at a low level.

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<sup>22</sup> COM(2010) 403

- Cessation of R&D activities in support of ITER – Closure of JET in 2012 and the termination of the Contracts of Association at the end of 2011 would mean the integrated fusion programme would practically cease to exist. The ability of the EU to lead the ITER project during and beyond construction would be brought into question.

**Direct actions in nuclear security and safety:** see option 1

### **5.3. Option 3 –Same level of Euratom R&D and budget increase for ITER**

The Euratom Framework Programme would be extended to cover 2012-13 with the budget envelope provided in the financial perspective and additional funds foreseen in the Commission's proposal to amend financial perspective in order to provide additional funding for ITER<sup>23</sup>. The funding for fusion would maintain a minimum-sized EU coordinated research programme. The funding for indirect R&D actions in fission and radiation protection and direct actions in nuclear safety and security to be implemented by the Joint Research Centre would remain at the same level as in the option 1.

**Activities to be implemented and expected results:**

**Fission and Radiation Protection:** see option 1

**ITER:** The construction of ITER in Cadarache, France, will continue in 2012-13. The schedule for ITER construction agreed by the members of the ITER International Organisation foresees the start of research in November 2019. In 2012-13, the European Joint Undertaking 'Fusion for Energy' will carry on procurement activities concerning key European components of the ITER facility.

**Fusion R&D programme:** This policy option is a "bridge to the next research programme (beyond 2013)". EU funding in 2012 and 2013 is minimal, around the same level of Euratom contribution to fusion research in 2011. A bridge to the next research FP will have no impact on the EU's contribution to ITER outlined in the schedule agreed between ITER Parties, and would be part of the requested reduction of the European contribution to the ITER construction costs over its lifetime. In this scenario, a much reduced EU-coordinated fusion research programme would be maintained in 2012-13 through activities which, if followed by adequate funding in the next research FP, would protect the European investment in ITER and make sure that Europe, its research community and its industry, will reap the full benefit of the research at ITER. Depending upon the outcome of the assessment carried out with the support of a high level group of experts JET may continue to operate during 2012-13 and to close during the following research FP. The Fusion Associations would continue to work together under very tight financial constraints, focussing on preparing the operation of ITER, but very limited activities in power plant physics and technologies would be funded. This funding does not undermine the schedule and baseline of ITER, nor affects the full EU contribution to its construction costs. In fact, it will allow vital mitigation of risks and cost containment activities for ITER to continue.

**Direct actions in nuclear security and safety:** no change from option 1.

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<sup>23</sup> Additional funds foreseen in the Commission's proposal to amend the financial perspective. Ibidem, COM(2010) 403



## **6. THE RESULTS AND IMPACTS EXPECTED, IN PARTICULAR ECONOMIC, SOCIAL AND ENVIRONMENTAL IMPACTS, AND THE INDICATORS AND EVALUATION ARRANGEMENT NEEDED TO MEASURE THEM**

### **6.1. Impacts of limited funding for ITER (option 1 and 2)**

A budget for Euratom contribution to ITER limited to the appropriations foreseen for this purpose in 2006 does not allow the Community to implement projects according to the schedule agreed in July 2010 (ITER baseline) and prevents the Euratom Community from fulfilling its legal obligations under the ITER agreement. The Joint Undertaking 'Fusion for Energy' would need to postpone some key procurements beyond 2013. It will result in the substantial delay of the start of the ITER exploitation.

The possible impacts include: (1) loss of credibility of the European Union, (2) additional cost for Euratom as the host for ITER (additional running costs for ITER IO and F4E), and (3) compensation to other parties in the ITER agreement.

### **6.2. Results and impacts of ITER construction according to the baseline agreed in July 2010 (option 3)**

The realisation of the ITER machine as a joint international research infrastructure will continue within the approved scope and schedule and is the highest priority of the fusion programme. The objectives of reaching burning plasma conditions at 500MW of fusion power over 400 seconds, with an amplification factor of 10, and of controlling plasma discharges well beyond this duration at reduced fusion power are essential for building an electricity producing demonstration reactor (DEMO). In addition to its scientific objectives, ITER will contribute to DEMO by testing technologies impossible to test on present-day fusion devices.

The objective of the Community as the host of the project is to maintain a leading role in site preparation, the ITER Organisation, management and staffing, plus general technical and administrative support. The objectives of the Community as an ITER Party include construction of equipment and installations, support of the project during construction and the management of R&D activities in support of ITER construction carried out in the Fusion Associations and European industries.) Almost 50% of the budget for construction of ITER will be spent in Europe to provide the components "in-kind" to ITER by F4E. The scale and complexity of components requires a constant flow of information and transfer of technologies between industry and research associations. This will involve key enabling technologies and a wide variety of sectors. Fusion for Energy will have an extremely important role of bringing together the scientific knowledge of laboratories and the practicality-based thinking and management of industry.

Joint Undertaking 'Fusion for Energy' procurement activities since 2007 have already given a huge boost to high-tech sector, paving the way for existing and future industries consortia. Major European companies are already joining forces to respond to the calls for tender launched by F4E in challenging science and engineering areas. As a result, the industry will gain new skills and manufacturing capabilities. Technological progress will also produce spin-off results in other sectors which are difficult to predict today.

Fusion for Energy has placed many industrial contracts already for the construction of ITER. These first contracts are large and therefore limited in scope for SMEs but already 7% of the contracts have been placed with SMEs. This is not including the many service contracts that

have been awarded for which there is a significant number of SME participation. At present F4E is reviewing these contracts to gauge the exact involvement of SMEs in the activities of F4E. For the future procurement contracts, SME participation is expected to increase due to the smaller size and higher technology content of the contracts. To encourage the participation of SMEs, F4E is developing a policy whereby a certain percentage of SME are included in the call for tender for contracts under a certain threshold, as well as contractual requirements on main suppliers to include SME subcontracting with favourable conditions such as payment schedules etc.

This way the Community will stay a leader in the field and be in the forefront for next steps in the development of technology for a demonstration power plant, while gaining valuable experience in combining the worlds of laboratories and industries

The scientific and technological results from ITER operations will only start to appear after ITER first plasma planned for the end of 2019. A staged exploitation mode for ITER is foreseen to gain gradual experience in the operation of this device, which is of a completely new nature compared with previous experiments. However, a great deal of scientific or technical information can be reached before reaching full performance, including information having an important impact for the design of DEMO.

### **6.3. Results and impacts of termination of fusion R&D programme (option 2)**

As discussed in section 5, the near zeroing of the budget under option 2 would result in the de facto termination of the integrated European fusion programme and the abandoning of its long term aim of demonstrating fusion power. The closure of JET would be irreversible (mothballing is not a viable option) and the withdrawal of support given to the Associations would rule out all fusion R&D, and undermine the priority status given to ITER. Associated with this would be a substantial loss of expertise and training activities from fusion research. Even if funding were to be restored in the following research FP, the ability of the programme to support ITER and to work towards its long term aims would be seriously impaired. Lack of expertise would leave Europe in a very weak position for the future exploitation of ITER, which will certainly involve competition with our international partners, and Europe would not be able to capitalise on the results of ITER.

### **6.4. Results and impacts of prolongation of fusion R&D programme (option 3)**

Option 3 would provide just enough funding in 2012 and 2013 to bridge the gap to the next research programme (beyond 2013) and keep the momentum of the programme going towards its long term objectives. A Working Group of the Consultative Committee for the Euratom Specific Research and Training Programme in the Field of Nuclear Energy (Fusion - CCE-FU) has identified the objectives and deliverables for the fusion programme over the period of ITER construction. The objectives are (i) securing ITER operation by expanding the existing knowledge base; (ii) preparing the ITER generation to ensure that Europe will have the human resources to exploit ITER in an international and competitive environment; and (iii) laying the foundations for fusion power plants by driving forward the significant physics and technology developments that are required.

Achieving objectives (i) and (ii) will have a significant and direct impact on the efficient operation of ITER. It will be a unique experiment, its operation posing first-of-a-kind challenges ranging from the need to have pre-planned high performance operating scenarios

guaranteed not to damage the machine, through the maximisation of operational efficiency in view of the substantial operating costs, to the creation of an effective way for a geographically spread, multi-national group of researchers to work together in a unified team. The integrated fusion programme, and especially the experience of the collective exploitation of JET, will put Europe in a strong position to take the leading role in meeting all these challenges.

All three objectives are important for Europe to be able to benefit from the success of ITER and to be able to move on to the following stage of fusion development: the demonstration power plant. The body of expertise created in Europe, both in industry and the research community, by working for ITER will provide immediate technology transfer benefits. Steps will continue to be taken at EU level in 2012 and 2013 to prepare the European industry to meet fusion technological challenges and mobilize relevant stakeholders, in particular through the Fusion-Industry Innovation Forum. On a longer timescale, the ITER-generated expertise in industry and the research community, together with the physics and technology developments in parallel to ITER, will provide the essential basis for demonstration power plants.

#### **6.5. Results and impacts of a very low funding for the fission & radiation protection programme (option 2)**

Under this option a very low level of funding could mean that only small coordinated actions could be launched in fission and radiation protection research. The Euratom 'fission' programme would not be in a position to contribute to reaching Europe's long-term energy targets and to address societal concerns in areas such as nuclear safety, radioactive waste management and use of radiation in industrial and medical practices. For example Euratom would not be able to support topics identified in respective Strategic Research Agendas of the technical forums SNETP, IGDTP and MELODI. In particular Europe would lose an important added value in the form of the leverage on national and industrial programmes. Finally Euratom would not fulfil Council requests to undertake actions for maintaining knowledge and competence in Europe, including in Member States without civil nuclear power programmes but who have to regulate nuclear research and medical activities and/or who decide to develop nuclear power.

#### **6.6. Results and impacts of maintaining the fission & radiation protection programme (options 1 and 3)**

The overall aim of the Euratom 'fission' programme is to contribute to reaching Europe's long-term energy targets and to address societal concerns in areas such as nuclear safety, radioactive waste management and use of radiation in industrial and medical practices. The activities carried out in the programme are intended to maximise impacts in these areas over the longer term for the greater benefit of the maximum number of EU citizens.

However, the 'fission' programme has limited financial means for 2012-13 – so the emphasis is on ensuring funding is allocated as effectively as possible in all thematic areas of the programme. This is achieved by concentrating on topics identified in respective SRAs of the technical forums SNETP, IGDTP and MELODI (provided these topics are also within the scope of the Euratom FP) and relying on the catalytic effect to maximise the leverage on national / industrial programmes. In the period 2007-2010, this leverage has been >100%, i.e. the combined total costs of all FP7 projects to date is more than double the Euratom contribution over these 4 years. This Euratom seed money is particularly effective in projects in more cross-cutting fields (including nuclear safety), or where the research is largely pre-

commercial and a broad cooperative approach is required across Europe in order to ensure critical mass.

In any scientific field, impacts of individual research projects, or whole lines of research, may become apparent only after several years. In the nuclear sector the timescales can be even more protracted; we are only now seeing these impacts in the case of research carried out in Euratom FP4. For example, the research on geological disposal completed some 10-15 years ago is now feeding through as an element in actual implementation programmes in the most advanced Member States; similar situations are apparent in aspects of research on nuclear installation safety, and even longer timescales may be apparent in research on advanced nuclear systems, since such systems will not be deployed commercially for decades.

However, in addition to adding to the knowledge base in key fields, Euratom FP6 & FP7 have had a more immediate restructuring effect on the fission research landscape in Europe; these positive impacts will continue in 2012&13 and will contribute, along with the actions undertaken by the technical forums, to establishing the European Research Area in the nuclear field. In this process of facilitating effective cooperation in Europe, Euratom research also ensures the all-important development of a common European view in key scientific and technical issues, and forges a clear link with the Commission's policy initiatives in areas such as nuclear safety (new Directive came into force in 2009) and radioactive waste management (new Directive proposed by the Commission in Oct. 2010) and radiation protection (new Communication on medical applications of ionising radiation adopted by the Commission in Aug. 2010). Effective links with the nuclear safety regulatory authorities, through such forums as ENSREG (European Nuclear Safety Regulators Group), are an important part of this overall approach.

Euratom is a nuclear research and training programme, and the impacts in the latter field are already being felt following a number of key activities in recent years, including the establishing of a number of Euratom Fission Training Schemes. The political dimension to such issues as availability of competences and know-how in this field has already been addressed in the EU Council Conclusions of December 2008, in which the role and impacts of the Euratom FP were clearly mentioned. Again, Euratom influence is in providing a catalyst and initial seed money, but also a framework for change and a Community-wide vision. Training and knowledge management have become a focus of the activities of SNETP and other Europe-wide nuclear stakeholder initiatives, such as the European Nuclear Energy Forum (ENEF).

In conclusion, and in view of this long-term nature of the research in most nuclear fields, the importance is to maintain continuity research and related competences and to ensure that the R&D contribution is in line with the evolving Community strategy / policy, as represented by the SET-Plan (low-carbon energy policy / strategy) or under the Euratom umbrella (i.e. nuclear safety, radioactive waste management / radiation protection). The potential benefits for the Community as a whole will be maximised if this coherence can be maintained, and this can be best achieved by working closely with SNETP, IGDTP and MELODI for as long as these forums continue to be effective and work efficiently. To date, the establishing by the research community of the above technical forums, and cementing the relationship with the SET-Plan, especially the launch of ESNII, represent the most tangible success of the Euratom FP. Euratom's contribution to this process remains crucial over the coming years if we are to capitalise on its success in the longer term.

## **6.7. Conclusions of assessment**

Following assessment of options presented in the section 6, it is concluded that option 3 (budget increase for ITER and continuation of fusion, fission and radiation protection R&D programmes) would enable the Community to address the medium (2020) and long term (2040) R&D challenges and to reach SET-Plan objective of low carbon society by 2050.

## **6.8. Indicators and evaluation arrangement for the preferred option**

For the monitoring and evaluation it is proposed that, like in the past, the Commission would assess the execution of the Euratom Framework Programme through the following indicators:

### **ITER construction:**

- Number of milestones met by Joint Undertaking Fusion for Energy (F4E).
- Number of procurement contracts launched and research grants awarded by the Joint Undertaking 'Fusion for Energy'
- Number of new industrial consortia formed to deliver ITER components and technology

### **Fusion research:**

#### **JET**

- Number of scientific publications on JET
- Number of operational days devoted to experimental campaigns
- Number of professional person days of Association staff at JET for campaigns

#### **EFDA coordinated activities**

- Completion of deliverables under EFDA Task Agreements
- Implementing Agreement for Power Plant Physics and Technology activities
- Number of fusion researchers and engineers trained for the needs of ITER and the programme)

#### **Associations**

- Planning & monitoring of Associations' programmes by the Steering Committees
- New Association Work Programmes

#### **Mobility Agreement**

- Level of researcher mobility in fusion R&D

#### **High Performance Computer**

- Number of proposals and allocation of CPU time to the Associations

### **Indirect actions in Fission and Radiation protection:**

Indicators have already been laboriously developed and endorsed as part of the RTD Annual Management Plan, and these will be maintained (and improved if necessary) during the period 2012-13 (see list below). In view of the 'business-as-usual approach', no major changes are considered necessary.

In brief, the indicators include:

- Coverage of areas being granted highest priority in the Specific Programme for indirect actions.
- Percentage of proposals which successfully addressed the criteria of scientific and/or technological excellence (based on the consensus report for research projects established by the evaluators to rank the proposals)
- Percentage of projects which generate one or more patent application (in the field of nuclear fission and radiation protection, the intellectual property acquired during the project implementation could result in patent applications not only during the lifetime of the project and Euratom Framework Programme, but also in the 10-15 years after the end of the project).
- Percentage of the projects which have fully achieved their objectives and technical goals and have even exceeded expectations.
- Percentage of proposals which successfully addressed the criterion of dissemination and use of project results.
- Percentage of projects showing evidence that they will produce significant scientific, technical, commercial, social or environmental impacts.
- Percentage of projects with publications in peer reviewed journals.
- Percentage of projects which generate one or more patent application
- Percentage of industrial participation in the projects (Excluding Radiation Protection )

### **Direct actions in waste management, nuclear safety and security (JRC)**

The JRC has put in place a system of evaluation support activities, ranging from the monitoring of achieving objectives, through to a Periodic Action Review, which assesses the set of JRC research projects (called "actions") in terms of achieved policy impact and scientific output once a year using an elaborated indicator-based methodology.

Regarding policy support, the JRC determines:

- the number of deliverables (productivity indicator), and
- the number of occurrences of a tangible impact at the level of policy makers using a list of pre-defined criteria (impact indicator).

Scientific output is measured through:

- the number of publications in peer reviewed journal articles (productivity indicator), and
- the number of joint publications with external research organizations (for measuring the degree of cooperation with top class institutes).

In 2011, the JRC will develop a system to assess the impact of its scientific publications.

- Training and education results and impact will be assessed on the basis of:
- the number of PhD-Thesis performed at JRC premises
- the number of visiting scientific researchers (PhD, Post-docs and visiting scientists)
- the number of hours of training modules delivered multiplied by the respective number of participants.

**Regarding the evaluation arrangements,** the Commission will continually and systematically monitor the implementation of the Euratom Framework Programme and its specific programmes and regularly report and disseminate the results of this monitoring. In accordance with the article 173 of the Treaty on the functioning of the European Union and article 11 of the Euratom Treaty, the Commission publishes annual reports. These reports are accompanied by a Commission Staff Working Document, which provides more detailed reporting and by Statistical Annexes. Following the completion of the Framework Programme, the Commission will launch, not later than two years after its completion (2015) an external evaluation by independent experts of its rationale, implementation and achievements. The Commission will communicate the conclusions of this evaluation, accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

## 7. THE MOST APPROPRIATE METHOD OF IMPLEMENTATION FOR THE PREFERRED OPTION

The following management modes are envisaged. The funds will be managed in a centralised direct management system and by indirect management through a body set up by the Communities (Fusion for Energy, a Joint Undertaking situated in Barcelona). Several control methods are applied as for FP7, including ex-ante control measures and randomly selected biannual ex-post verifications in the framework of the internal control scheme. Moreover, the requirement for audit certificates and the performance of regular independent external audits help to ensure sound financial management, including regularity and legality of the transactions performed.

**Fission and radiation protection:** The 'fission' programme during 2012-13 will continue on the basis of annual calls for proposals, covering most if not all thematic priority areas and committing most if not all of the annual budget. This system has been applied successfully for the years 2007-2011. By setting call deadlines in April and evaluations in May, the time taken to process the proposals and grant funds ("time to grant") has been reduced to 240 days which is about as efficient as could be expected. If simplifications are introduced for the Euratom 2012-13 programme, then the time to grant may be even quicker.

**Fusion R&D programme:** Substantial changes to funding mechanisms (and their associated governance provisions) are not envisaged. These mechanisms are the Contracts of Association, EFDA (the European Fusion Development Agreement, under which there are Implementing Agreements for JET and the High Performance Computer for Fusion), the JET Operating Contract and the Agreement on Staff Mobility. They are interconnected, so any substantial change to one would have important consequences for the others. The integrated nature of the fusion programme is largely due to the success of these mechanisms, and any adaptation of them should be done in consultation with the actors and stakeholders in the programme. Such adaptations could be considered as part of preparations of research programme after 2013.

**ITER:** In its Staff Working Paper "Towards a robust management and governance of the ITER project"<sup>24</sup> the Commission examines and addresses the way in which the Member States, F4E, and the Commission itself fulfil their responsibilities under the ITER agreement. The overall goal is the successful construction of ITER in accordance with the technical requirements, within the agreed schedule and with the resources fixed to that end. To this aim, an adequate project management, including cost containment and risk management (technical, industrial, financial, legal) must be at the core of the ITER implementation at all levels. The Staff Working Paper provides an overview of the possible measures for improvement of governance and management at the European level (Joint Undertaking 'Fusion for Energy') and level of the ITER International Organisation.

The ITER project is conducted under the terms of an International Agreement<sup>25</sup> between Euratom, represented by the Commission, and 6 other Parties - People's Republic of China, India, Japan, Republic of Korea, the Russian Federation, the United States-, which was signed in Paris in November 2006 and entered into force in October 2007. The Agreement established the ITER Organization (IO) with full international legal personality to be responsible for the joint implementation of the ITER project. According to the International Agreement, each Party provides its contribution to IO through an entity called Domestic Agency (DA). The IO is responsible for the construction and performance of the machine (including design and assembly of the components, and quality and safety requirements), while the Parties are committed to providing various components and systems. At EU level, the Euratom contribution to ITER is managed through the European Joint Undertaking for ITER – "Fusion For Energy" (F4E), established as the European "DA" by the Council in March 2007<sup>26</sup> and based in Barcelona. Community funds advanced through the Euratom Framework Programme represent about 80% of the European contribution to the ITER project and the Commission is ultimately accountable for the use of these public resources. The European Parliament is responsible for giving budgetary discharge to the European Joint Undertaking for ITER.

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<sup>24</sup> Commission Staff Working Document "Towards a robust management and governance of the ITER project", SEC(2010) 1386, 9 November 2010

<sup>25</sup> Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project. OJ L 358, of 16.12.2006, p.62

<sup>26</sup> OJ L 90, 30.3.2007, p. 58.



## 8. THE INTERNAL COHERENCE OF THE PROPOSED PROGRAMME OR ACTIVITY AND ITS RELATIONS WITH OTHER RELEVANT INSTRUMENTS

Indirect R&D activities to be supported by the proposed Euratom Framework Programme are within the scope of the Strategic Energy Technology Plan (SET-Plan), which has been endorsed by the European Council. The programme also takes account of major EU policy documents such as Communications on Europe 2020 and Energy 2020.

The direct actions to be carried out by JRC aims to build on the Strategic Research Agenda (SRA 2009) of the Sustainable Nuclear Energy Technology Platform (SNETP), the Implementing Geological Disposal of Radioactive Waste Technology Platform (IGDTP) and other instruments for stability and global security such as EU CBRN Action Plan (June 2009), EU New Dual Use Regulation (May 2009), EU Council Decision on New Lines for combating proliferation of WMD (Dec 2008).

## 9. THE VOLUME OF APPROPRIATIONS, HUMAN RESOURCES AND OTHER ADMINISTRATIVE EXPENDITURE TO BE ALLOCATED WITH DUE REGARD FOR THE COST-EFFECTIVENESS PRINCIPLE

In the following section, the budget for the preferred option 3 is explained. The proposal for Euratom Framework programme is of limited duration and will be in force from 1<sup>st</sup> January 2012 until 31<sup>st</sup> December 2013. Financial impact is expected from 2012 until 2016.

The programmatic content of the two year period 2012-13 is a direct continuation of Euratom FP7, with strong continuity in the activities and outcomes. In all areas except ITER construction the proposed appropriations are consistent with the corresponding figures for FP7, and there is therefore a similar cost-effectiveness. The cost of ITER construction has been the subject of extensive analysis and the present appropriation proposals are considered to represent the most cost-effective way of achieving the aims within a regime of strict cost containment<sup>27</sup>

### Commitment figures:

	<b>2012</b> <i>Million euro</i>	<b>2013</b> <i>Million euro</i>	<b>Total</b> <i>Million euro</i>
Fission R&D	54,105 €	55,839 €	109,944 €
Fusion R&D and ITER	1.129,274 €	936,965 €	2.066,239 €
Administration	74,054 €	76,817 €	150,871 €
<b>Total indirect R&amp;D actions</b>	<b>1.257,433 €</b>	<b>1.069,621 €</b>	<b>2.327,054 €</b>
JRC operational expenditure	9,895 €	10,252 €	20,147 €
JRC administrative expenditure	104,648 €	108,421 €	213,069 €
<b>Total direct R&amp;D actions</b>	<b>114,543 €</b>	<b>118,673 €</b>	<b>233,216 €</b>
<b>Total for direct and indirect actions</b>	<b>1.371,976 €</b>	<b>1.188,294 €</b>	<b>2.560,270 €</b>

<sup>27</sup> Communication from the Commission "ITER status and possible way forward", COM(2010)226, SEC(2010)571

### Payment figures:

	<b>2012</b> <i>Million euro</i>	<b>2013</b> <i>Million euro</i>	<b>2014 - 2016</b> <i>Million euro</i>	<b>Total</b> <i>Million euro</i>
Fission R&D	34,600 €	35,000 €	40,344 €	109,944 €
Fusion R&D and ITER	401,822 €	863,164 €	801,252 €	2.066,239 €
Administration	74,054 €	76,817 €	- €	150,871 €
<b>Total indirect R&amp;D actions</b>	<b>510,476 €</b>	<b>974,981 €</b>	<b>841,596 €</b>	<b>2.327,054 €</b>
JRC operational expenditure	4,650 €	8,972 €	6,525 €	20,147 €
JRC administrative expenditure	104,648 €	108,421 €	- €	213,069 €
<b>Total direct R&amp;D actions</b>	<b>109,298 €</b>	<b>117,393 €</b>	<b>6,525 €</b>	<b>233,216 €</b>
<b>Total for direct and indirect actions</b>	<b>619,774 €</b>	<b>1.092,374 €</b>	<b>848,121 €</b>	<b>2.560,270 €</b>

### Human resources:

		<b>Year 2012</b>	<b>Year 2013</b>
<b>Establishment plan posts (officials and temporary agents)</b>			
X 01 01 01 (Headquarters and Commission's Representation Offices)		-	-
XX 01 01 02 (Delegations)		-	-
XX 01 05 01 (Indirect research)		<b>190</b>	<b>190</b>
10 01 05 01 (Direct research)		<b>566</b>	<b>566</b>
<b>External personnel (in Full Time Equivalent unit: FTE)</b>			
XX 01 02 01 (CA, INT, SNE from the "global envelope")		-	-
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)		-	-
08 01 04 yy	- at Headquarters	-	-
	- in delegations (F4E)	<b>239</b>	<b>239</b>
08 01 05 02 (CA, INT, SNE - Indirect research)		<b>40</b>	<b>40</b>
10 01 05 02 (CA, INT, SNE - Direct research)		<b>166</b>	<b>166</b>
Other budget lines (specify)		-	-
<b>TOTAL</b>		<b>1,201</b>	<b>1,201</b>

There is no extra need for staff in spite of the increase of the budget in 2012 and 2013.

## 10. THE LESSONS LEARNED FROM SIMILAR EXPERIENCES IN THE PAST

In 2009 two panels of independent experts carried out the interim evaluation of direct and indirect actions under the Euratom FP7 (2007-2011). More recently, the Euratom Scientific and Technical Committee (STC) produced its ex-ante opinion on orientations for Euratom Framework Programme (2012-13), which also provided an initial reflection on Euratom research programmes beyond 2013.

Regarding the indirect actions in fission and radiation protection, the report of the panel fully supports the establishing of Technology Platforms / Joint Programming Initiatives in line with ERA (European Research Area) and SET-Plan goals, which is a growing focal point of the calls for proposals, and considers that the Euratom FP7 'fission and radiation protection' programme is on track to meet its objectives in all research activities.

The panel recommended that the EU should alter the balance of the fission research programme to be able to better reflect the priorities agreed by all stakeholders, as formulated by the Technology Platforms and Joint Programming initiatives, particularly with respect to the increasingly important field of advanced and more sustainable reactor systems (also prioritised under the SET-Plan). Very similar conclusions and recommendations are reflected in the Euratom STC opinion. In addition, previous ex-post evaluations of the Euratom FP5 and FP6 fission programmes have demonstrated the effectiveness of the research carried out in these programmes, the restructuring effect of the new funding instruments introduced in FP6, and the importance of developing the technology platforms to ensure longer term strategic impacts in Europe.

Regarding the indirect actions in fusion research, the panel expressed its conviction that the potential of fusion is so great that it should be actively pursued. The costs, timescale and project risks inherent in the development of fusion are great – so much so that it is unlikely that any European Member State could contemplate undertaking it alone. The panel believes that the fusion research coordinated under European Fusion Development Agreement is well focussed and managed and is essential to support ITER.

The fusion programme has also been the subject, in 2009, of an in-depth examination by a high level panel of nine European and non-European experts<sup>28</sup>. The Fusion Facilities Review panel was charged with the tasks of developing “a vision of the R&D required to make fusion energy production ready for commercial exploitation” and defining “the facilities needed to support the envisioned R&D”. With regard to the programme, the panel concluded that:

During the period of ITER construction the key strategic R&D emphasis should be on supporting ITER construction and preparation for operation, and preparing DEMO design, simultaneously carrying out long-term R&D;

During the following decade the focus must shift towards preparing for DEMO construction, based on ITER and the accompanying R&D;

ITER and DEMO must be complemented by long-term strategy for human resources to guarantee a future workforce with adequate skill and expertise.

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<sup>28</sup> “R&D Needs and Required Facilities for the Development of Fusion as an Energy Source” - Report of the Fusion Facilities Review Panel - October 2008.

The panel also prioritised the present and possible future facilities in the programme according to their benefits, costs and risks in relation to ITER and DEMO.

On the basis of these conclusions, the Commission launched a dialogue with all the Fusion Associations on how their programmes could and should be adapted, and which facilities should continue to receive Community support. These dialogues have taken on an increased urgency in view of the serious budget constraints during the last two years of FP7, which may continue in 2012-13. The process of adaption will continue into that period.

The ITER project is inherently complex but it provides enormous potential for sustainable energy. The FP7 Interim Evaluation panel considered ITER an essential step towards the commercial realisation of fusion energy and if Euratom is to pursue fusion energy it must be adequately funded. The panel was critical of the existing structure of the ITER project because it believes that it has not been and is not effective, and may still fail to deliver even at the higher costs and longer timescales presented during the review. On the basis of this review the Commission has strived to have a more focused leadership at the ITER organisation to secure a positive outcome within the limits set by the adopted baseline. It also requires a more streamlined international management structure with fewer and/or better interfaces implemented according to the best practice either from the construction of nuclear power plants or large international projects. Changes of management will take place during the last years of FP7 but continued monitoring, verification of planning and quality of the deliverables will continue in 2012-2013.

A separate panel of external experts carried out an interim evaluation of direct actions under Euratom FP7. It evaluated the rationale and relevance of the programme, the implementation of the programme (its governance), the achievements and performance level (at macro-level). The panel made a positive evaluation of the achievements and performance of the JRC nuclear programme, with the three broad recommendations specifically focusing on the governance and management structure of the programme:

Governance of the programme should be improved through the better management structure and distribution of responsibilities, enhanced customer consultation and reduction of bureaucratic burden;

Present work and future proposals should be based on a vision and strategy linked to Strategic Research Agendas of the technical forums such as SNETP, and through a definition of a 10 to 20 year outlook for JRC's research facility infrastructure;

JRC programming, planning and reporting should be improved.

In response to these recommendations, a series of actions are being undertaken in JRC and will be implemented as proposed, namely:

a series of actions regarding governance and management, as well as planning and reporting;

the development of a nuclear safety and security specific strategy taking into account the recommendations of the report.

It should be noted that since the beginning of 2011, a new structure has been put in place in the JRC, defining 7 Thematic Areas (nuclear R&D being one of them), with a Lead Director who has the responsibility of the programme definition and follow-up of its implementation.



EUROPEAN COMMISSION

Brussels, 20.4.2011  
COM(2011) 226 final

Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework, to address additional financing needs of the ITER project**

## **EXPLANATORY MEMORANDUM**

### **1. INTRODUCTION**

The present proposal replaces the Commission's proposal of 20 July 2010 for a decision of the European Parliament and of the Council amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework, to address additional financing needs of the ITER project<sup>1</sup>.

The proposal takes progress made so far in negotiations into account, notably with regard to the level of redeployment within Heading 1A and the amounts for additional commitment and payment appropriations required for ITER under Heading 1A in 2012 and 2013. It aims at facilitating a rapid agreement by the budgetary authority with a view to securing the success of the ITER project.

The proposal is fully consistent with the Draft Budget 2012, as well as with the Commission's proposal for a Council Decision concerning the framework programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)<sup>2</sup>. Final adoption of the Euratom Framework Programme by the Council will be conditional upon a positive outcome of the parallel budgetary procedure to provide additional funds for ITER.

### **2. USE OF MARGINS AND REDEPLOYMENT WITHIN HEADING 1A**

No margin is left for 2011 under the expenditure ceiling of Heading 1A, and the margins available in 2012 and 2013 are insufficient to meet the ITER requirements and to leave, at the same time, sufficient margins for unforeseen needs as provided for in Point 13 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management (IIA)<sup>3</sup>.

In accordance with Point 23, first paragraph, of the IIA the Commission has examined the scope for reallocating expenditure between the programmes covered by Heading 1A with the objective that a significant amount, in absolute terms and as a percentage of the new expenditure planned, is made available within the existing ceiling for this Heading. As a result, it proposes to redeploy an amount of EUR 100 million in 2012 and of EUR 360 million in 2013 from the Seventh Research Framework Programme.

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<sup>1</sup> COM(2010) 403 final of 20.7.2010.

<sup>2</sup> COM(2011) 72 final of 7.3.2011.

<sup>3</sup> OJ C 139, 14.6.2006, p. 1.

### 3. TRANSFERS FROM ONE HEADING TO ANOTHER (COMMITMENT APPROPRIATIONS)

In accordance with Point 23, second paragraph, of the IIA the Commission has examined the scope for offsetting any raising of the ceiling for one heading by the lowering of the ceiling for another.

The margins left under the expenditure ceilings for the Headings other than Heading 1A for the years 2011 to 2013 are currently estimated as follows:

	2011	2012	2013
Heading 1B	6.4	22.1	0.4
Heading 2	1678.8	651.6	112.8
Heading 3 A	67.0	65.6	34.3
Heading 3 B	0.1	15.5	25.3
Heading 4	0	246.7	112.0
Heading 5	243.2	472.6	521.6

With a view to Point 13 of the IIA the Commission considers that the margins left under the ceilings of Headings 1B, 3A and 3 B are too tight to contribute to cover the additional financing needs of the ITER project and that the likely additional needs under Heading 4 do not allow for a reduction of the related expenditure ceiling.

On the other hand, the margins for the year 2011 under Headings 2 and 5 are at a level that allows for a reduction in the respective expenditure ceilings to offset the increase required in the expenditure ceiling of Heading 1A for ITER in 2012 and 2013. Therefore, the Commission proposes to lower the ceiling of Heading 2 for the year 2011 by an amount of EUR 650 million, and the ceiling of Heading 5 for the same year by EUR 190 million, and to increase the expenditure ceilings of Heading 1A by EUR 650 million for the year 2012 and by EUR 190 million for the year 2013.

The proposed adjustment between expenditure ceilings leaves a margin of EUR 1028.8 million available under the ceiling of Heading 2 and of EUR 53.2 million under Heading 5 in 2011. The Commission has undertaken to take all appropriate measures to ensure that decisions taken on CAP expenditure and its financing, including the agreement on the Health Check, are respected.

#### 4. PAYMENT APPROPRIATIONS

Point 23, fourth paragraph, of the IIA provides that any revision must maintain an appropriate relationship between commitments and payments. The proposal keeps the overall ceiling for payment appropriations under the 2007-2013 financial framework unchanged, whilst ensuring an orderly progression in relation to appropriations for commitments.

#### 5. SUMMARY TABLE AND CONCLUSION

The table below summarises the proposed changes to the ceilings for commitment and payment appropriations in the financial framework. Amounts are expressed in current prices:

(EUR million)	2007	2008	2009	2010	2011	2012	2013	2007-2013
1a. Competitiveness for Growth and Employment						650	190	840
2. Preservation and Management of Natural Resources					-650			-650
3a. Freedom, security and justice								0
3b. Citizenship								0
4. EU as a global player								0
5. Administration					-190			-190
6. Compensations								0
Total change in commitment appropriations	0	0	0	0	-840	650	190	0
Total change in payment appropriations				0	-840	0	840	0

The revision keeps unchanged the global ceilings for commitment and payment appropriations over the period 2007-2013 expressed in current prices.

The table below shows the revised annual expenditure ceilings of the financial framework resulting from the above changes in current prices.

The formal decision amending the IIA as regards the financial framework must refer to the basic table agreed in the IIA, which is expressed in constant 2004 prices. The amounts in current values are thus to be converted into 2004 prices by means of a fixed deflator of 2% a year, in accordance with Point 16 of the IIA (see below annex to the proposed Decision of the European Parliament and of the Council).



## FINANCIAL FRAMEWORK 2007-2013: ADJUSTED FOR ITER

(EUR million - current prices)

COMMITMENT APPROPRIATIONS	2007	2008	2009	2010	2011	2012	2013	Total 2007-2013
<b>1. Sustainable Growth</b>	<b>53.979</b>	<b>57.653</b>	<b>61.696</b>	<b>63.555</b>	<b>63.974</b>	<b>67.614</b>	<b>70.147</b>	<b>438.618</b>
1a Competitiveness for Growth and Employment	8.918	10.386	13.269	14.167	12.987	14.853	15.623	90.203
1b Cohesion for Growth and Employment	45.061	47.267	48.427	49.388	50.987	52.761	54.524	348.415
<b>2. Preservation and Management of Natural Resources</b>	<b>55.143</b>	<b>59.193</b>	<b>56.333</b>	<b>59.955</b>	<b>59.688</b>	<b>60.810</b>	<b>61.289</b>	<b>412.411</b>
of which: market related expenditure and direct payments	45.759	46.217	46.679	47.146	47.617	48.093	48.574	330.085
<b>3. Citizenship, freedom, security and justice</b>	<b>1.273</b>	<b>1.362</b>	<b>1.518</b>	<b>1.693</b>	<b>1.889</b>	<b>2.105</b>	<b>2.376</b>	<b>12.216</b>
3a Freedom, Security and Justice	637	747	867	1.025	1.206	1.406	1.661	7.549
3b Citizenship	636	615	651	668	683	699	715	4.667
<b>4. EU as a global player</b>	<b>6.578</b>	<b>7.002</b>	<b>7.440</b>	<b>7.893</b>	<b>8.430</b>	<b>8.997</b>	<b>9.595</b>	<b>55.935</b>
<b>5. Administration <sup>(1)</sup></b>	<b>7.039</b>	<b>7.380</b>	<b>7.525</b>	<b>7.882</b>	<b>8.144</b>	<b>8.670</b>	<b>9.095</b>	<b>55.735</b>
<b>6. Compensations</b>	<b>445</b>	<b>207</b>	<b>210</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>862</b>
<b>TOTAL COMMITMENT APPROPRIATIONS</b>	<b>124.457</b>	<b>132.797</b>	<b>134.722</b>	<b>140.978</b>	<b>142.125</b>	<b>148.196</b>	<b>152.502</b>	<b>975.777</b>
as a percentage of GNI	1,02%	1,08%	1,16%	1,18%	1,15%	1,13%	1,12%	1,12%
<b>TOTAL PAYMENT APPROPRIATIONS</b>	<b>122.190</b>	<b>129.681</b>	<b>120.445</b>	<b>134.289</b>	<b>133.440</b>	<b>141.360</b>	<b>144.171</b>	<b>925.576</b>
as a percentage of GNI	1,00%	1,05%	1,04%	1,12%	1,08%	1,08%	1,06%	1,06%
Margin available	0,24%	0,19%	0,20%	0,11%	0,15%	0,15%	0,17%	0,17%
Own Resources Ceiling as a percentage of GNI	1,24%	1,24%	1,24%	1,23%	1,23%	1,23%	1,23%	1,23%

(1) The expenditure on pensions included under the ceiling for this heading is calculated net of the staff contributions to the relevant scheme, within the limit of € 500 million at 2004 prices for the period 2007-2013.

Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework, to address additional financing needs of the ITER project**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management<sup>4</sup>, and in particular to points 21, 22 and 23 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) At the [trilogue]/[budgetary conciliation] meeting of ... 2011 the European Parliament, the Council and the Commission have agreed on the modalities for providing additional financing to the ITER project. The financing requires a revision of the multiannual financial framework 2007-2013 in accordance with Points 21, 22, and 23 of the Interinstitutional Agreement, so as to raise the ceilings for commitment appropriations under sub-Heading 1A by EUR 650 million for the year 2012 and by EUR 190 million for the year 2013 in current prices.
- (2) The increase of the ceilings for commitment appropriations under sub-Heading 1 A for the years 2012 and 2013 will be fully offset by a decrease of the ceilings for commitment appropriations for the year 2011 under Heading 2 and Heading 5.
- (3) In order to keep an appropriate relationship between commitments and payments, the annual ceilings for payment appropriations will be adjusted. The adjustment will be neutral in terms of payment requirements over the period 2007-2013.
- (4) Annex I of the Interinstitutional Agreement on budgetary discipline and sound financial management should therefore be amended accordingly<sup>5</sup>,

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<sup>4</sup> OJ C 139, 14.6.2006, p. 1.

<sup>5</sup> For that purpose, the figures resulting from the above agreement are converted into 2004 prices.

HAVE DECIDED AS FOLLOWS:

*Sole Article*

Annex I to the Interinstitutional Agreement on budgetary discipline and sound financial management is replaced by the Annex to this Decision.

Done at Brussels,

*For the European Parliament*

*For the Council*

## ANNEX

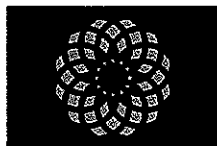
### FINANCIAL FRAMEWORK 2007-2013

*(EUR million - constant 2004 prices)*

COMMITMENT APPROPRIATIONS	2007	2008	2009	2010	2011	2012	2013	Total 2007-2013
<b>1. Sustainable Growth</b>	<b>50.865</b>	<b>53.262</b>	<b>55.879</b>	<b>56.435</b>	<b>55.693</b>	<b>57.708</b>	<b>58.696</b>	<b>388.538</b>
1a Competitiveness for Growth and Employment	8.404	9.595	12.018	12.580	11.306	12.677	13.073	79.653
1b Cohesion for Growth and Employment	42.461	43.667	43.861	43.855	44.387	45.031	45.623	308.885
<b>2. Preservation and Management of Natural Resources</b>	<b>51.962</b>	<b>54.685</b>	<b>51.023</b>	<b>53.238</b>	<b>51.962</b>	<b>51.901</b>	<b>51.284</b>	<b>366.055</b>
of which: market related expenditure and direct payments	43.120	42.697	42.279	41.864	41.453	41.047	40.645	293.105
<b>3. Citizenship, freedom, security and justice</b>	<b>1.199</b>	<b>1.258</b>	<b>1.375</b>	<b>1.503</b>	<b>1.645</b>	<b>1.797</b>	<b>1.988</b>	<b>10.765</b>
3a Freedom, Security and Justice	600	690	785	910	1.050	1.200	1.390	6.625
3b Citizenship	599	568	590	593	595	597	598	4.140
<b>4. EU as a global player</b>	<b>6.199</b>	<b>6.469</b>	<b>6.739</b>	<b>7.009</b>	<b>7.339</b>	<b>7.679</b>	<b>8.029</b>	<b>49.463</b>
<b>5. Administration <sup>(1)</sup></b>	<b>6.633</b>	<b>6.818</b>	<b>6.816</b>	<b>6.999</b>	<b>7.090</b>	<b>7.400</b>	<b>7.610</b>	<b>49.366</b>
<b>6. Compensations</b>	<b>419</b>	<b>191</b>	<b>190</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>800</b>
<b>TOTAL COMMITMENT APPROPRIATIONS</b>	<b>117.277</b>	<b>122.683</b>	<b>122.022</b>	<b>125.184</b>	<b>123.729</b>	<b>126.485</b>	<b>127.607</b>	<b>864.987</b>
as a percentage of GNI	1,08%	1,09%	1,06%	1,06%	1,03%	1,03%	1,01%	1,049%

<b>TOTAL PAYMENT APPROPRIATIONS</b>	<b>115.142</b>	<b>119.805</b>	<b>109.091</b>	<b>119.245</b>	<b>116.168</b>	<b>120.649</b>	<b>120.636</b>	<b>820.736</b>
as a percentage of GNI	1,06%	1,06%	0,95%	1,01%	0,97%	0,98%	0,96%	1,00%
Margin available	0,18%	0,18%	0,29%	0,22%	0,26%	0,25%	0,27%	0,23%
Own Resources Ceiling as a percentage of GNI	1,24%	1,24%	1,24%	1,23%	1,23%	1,23%	1,23%	1,23%

(1) The expenditure on pensions included under the ceiling for this heading is calculated net of the staff contributions to the relevant scheme, within the limit of €500 million at 2004 prices for the period 2007-2013.



## FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy

### THE GOVERNING BOARD

#### **DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ADOPTING THE FINANCIAL REGULATION**

THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER  
AND THE DEVELOPMENT OF FUSION ENERGY,

Having regard to the Council Decision (EURATOM) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it<sup>1</sup> (hereinafter "the Constituent instrument") and in particular Article 5 thereof;

Having regard to the Statutes annexed to the Constituent instrument (hereinafter "the Statutes") and in particular Article 6(3)(h), Article 13, and Annex III thereof;

Having regard to the Council Regulation (EC, EURATOM) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>2</sup> (hereinafter "the general Financial Regulation");

Having regard to the Commission Regulation (EC, EURATOM) No 2343/2002, on the framework Financial Regulation for the bodies referred to in Article 185 of the general Financial Regulation<sup>3</sup>;

Having regard to the positive opinion of the Commission of 29 October 2007<sup>4</sup>,

Whereas:

- (1) The Joint Undertaking set up to carry out certain Community activities in the field of fusion energy research has a legal personality and hence should have its own budget governed by the specific financial rules.
- (2) The main task of the Joint Undertaking should be to discharge certain international commitments of Euratom in the field of fusion energy research, in particular to provide the components and services for experimental purposes to ITER Organisation under the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project<sup>5</sup> (hereinafter "the ITER Agreement") and to Japan for Broader Approach Activities under the Agreement for

<sup>1</sup> OJ L 90, 30.3.2007, p. 58.

<sup>2</sup> OJ L 248, 15.09.2002, p.1. Regulation as last amended by Regulation 1995/2006/EC/Euratom (OJ L 390, 30.12.2006)

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

<sup>4</sup> C(2007) 5200

<sup>5</sup> OJ L 358, 16.12.2006, p. 62

the Joint Implementation of the Broader Approach Activities<sup>6</sup> (hereinafter "the Broader Approach Agreement with Japan") as well as to implement progressively programme of activities in preparation for demonstration fusion reactors.

- (3) The Joint Undertaking should have a distinct financial regulation based on the principles of the framework Financial Regulation, which may depart from the latter where the specific operating needs of the Joint Undertaking so require and subject to prior consultation with the Commission.
- (4) Like the general Financial Regulation, this Regulation confines itself to setting out the broad and basic rules governing the whole of the budgetary cycle, while detailed implementing provisions should subsequently be adopted by the Governing Board of the Joint Undertaking (hereinafter "the Governing Board").
- (5) For the purpose of establishing and implementing the budget, the fundamental budgetary principles of unity, budgetary accuracy, annuality as well as the principle of equilibrium, unit of account, universality, specification, sound financial management and transparency should be reasserted.
- (6) Given the high cost and the duration of some individual legal commitments, in particular for the implementation of the ITER Project and notwithstanding the principle of annuality, the commitment appropriations covering the total cost of the legal commitments may be made in annual instalments.
- (7) To ensure the overall implementation of the Joint Undertaking's tasks and activities, in particular the implementation of the ITER Project, the cancelled commitment appropriations should be entered in the estimate of revenue and expenditure of the following financial years.
- (8) It is necessary to define the powers and responsibilities of the accounting officer, the internal auditor and authorising officers.
- (9) The internal audit function within the Joint Undertaking should be performed by its own internal audit service in accordance with Article 5(2) of the Constituent instrument.
- (10) To facilitate the execution of the requests for payment of the Community contributions to the Joint Undertaking, the Joint Undertaking should agree with the Commission terms and intervals of such requests.
- (11) In accordance with Annex III point 9 of the Statutes, the specific operating needs of the Joint Undertaking stemming, in particular, from the contribution of high technological and experimental components and services under the terms of international agreements and associated procedures, require that the Joint Undertaking should apply specific provisions for the award of contracts related to the implementation of its tasks referred to in Article 1(2) of the Constituent instrument.

These procurement provisions, laid down in this Regulation and the detailed rules for implementing this Regulation to be adopted by the Governing Board, partly depart

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<sup>6</sup> OJ L 246 of 21.09.2007, p.32.

from the relevant provisions laid down in the general Financial Regulation and the rules implementing that Regulation.

For the award of contracts other than those implementing the tasks referred to in Article 1(2) of the Constituent instrument, the relevant provisions of the general Financial Regulation and its implementing rules should apply.

- (12) As regards grants, the Joint Undertaking may award grants in furtherance of its tasks and activities under the rules that should observe the same requirements as the Community institutions in the award of public grants.
- (13) Like the Community institutions, the Joint Undertaking may, for the performance of the tasks entrusted to them, employ external private sector bodies only where necessary and not for tasks involving any public service mission or any use of discretionary powers of judgment, in order to guarantee that the Joint Undertaking is accountable for the implementation of its budget and adheres to the objectives assigned to it on its creation.
- (14) In accordance with Article 11 and Annex III of the Statutes, the specific multi-annual nature of the tasks of the Joint Undertakings requires the establishment of a project plan and resource estimates plan.
- (15) The timetable for establishing the budget, presenting the accounts and granting the discharge should be aligned with the equivalent provisions of the general Financial Regulation.
- (16) The accounting rules of the Joint Undertaking should allow for the consolidation of its accounts with the accounts of the Community institutions, and, to this end, they should be adopted by the Commission's accounting officer in accordance with the relevant provisions of the general Financial Regulation.
- (17) The Joint Undertaking should have access to the panel referred to in the general Financial Regulation set up by the Commission to examine irregularities so that a similar assessment might be made of identical cases.
- (18) The Court of Auditors should scrutinise the accounts of the Joint Undertaking and the European Parliament should give a discharge for the implementation of the budget of the Joint Undertaking on the recommendation of the Council.

HAS ADOPTED THIS DECISION:

## TITLE I

### SUBJECT MATTER

#### *Article 1*

This Decision (hereinafter "the Financial Regulation" or "this Regulation") spells out the essential financial rules of the Joint Undertaking for the establishment, implementation, accounting and discharge of the Joint Undertaking's budget.

#### *Article 2*

For the purposes of this Decision:

1. "Joint Undertaking" shall mean the European Joint Undertaking for ITER and the Development of Fusion Energy established by the Constituent instrument;
2. "Governing Board" shall mean the main body of the Joint Undertaking taking decisions on financial and budgetary matters;
3. "Director" shall mean the person responsible for implementing the decisions of the Governing Board and the Joint Undertaking's budget as authorising officer;
4. "Constituent instrument" shall mean the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it<sup>7</sup>;
5. "Statutes" shall mean the Statutes of the Joint Undertaking annexed to the Constituent instrument;
6. "Budgetary authority" shall mean the European Parliament and the Council of the European Union;
7. "General budget" shall mean the general budget of the European Union;
8. "Host state" shall mean the Kingdom of Spain (Spain) as the host country of the Joint Undertaking;
9. "ITER host state" shall mean the French Republic as the host country of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project;

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<sup>7</sup> OJ L 90, 30.3.2007, p. 58.



10. "Projects of the Joint Undertaking" shall mean the ITER Project and any other projects implemented by the Joint Undertaking in accordance with its tasks and activities;
11. "Member(s)" shall mean the Member(s) of the Joint Undertaking as referred to in Article 2 of the Constituent instrument;
12. "Economic operator" shall mean a natural or legal person or public body offering the execution of work and/or supplies and/or services.

## **TITLE II**

### **BUDGETARY PRINCIPLES**

#### *Article 3*

The establishment and implementation of the budget of the Joint Undertaking (hereinafter "the budget") shall comply with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification and sound financial management which requires effective and efficient internal control and transparency as provided for in this Regulation.

## **CHAPTER 1**

### **PRINCIPLES OF UNITY AND OF BUDGET ACCURACY**

#### *Article 4*

The budget is the instrument which, for each financial year, forecasts and authorises the revenue and expenditure considered necessary for the Joint Undertaking.

#### *Article 5*

1. The budget shall comprise:
  - a) revenue made up of Euratom (hereinafter "the Community") contribution as a participation in the financing of the Joint Undertaking in accordance with Article 4 of the Constituent instrument and Article 12 of the Statues;
  - b) revenue made up of annual membership contributions from other members than Euratom in accordance with Article 4 of the Constituent instrument and Article 12 and Annex II of the Statutes;

- c) revenue made up of financial contributions of the ITER host state in accordance with Article 4 of the Constituent instrument and Article 12 of the Statutes;
  - d) own revenue consisting of all fees and charges which the Joint Undertaking is authorised to collect by virtue of the tasks entrusted to it;
  - e) revenue assigned to specific items of expenditure in accordance with Article 19(1);
  - f) revenue made up of additional resources received under terms approved by the Governing Board in accordance with Article 12 of the Statutes;
  - g) any other revenue;
  - h) the expenditure of the Joint Undertaking, including administrative expenditure.
2. Any in-kind contributions to the Joint Undertaking shall be annexed to the budget.

#### *Article 6*

1. No revenue shall be collected and no expenditure effected unless booked to a heading in the budget.
2. Any appropriation must not be entered in the budget if it is not for an item of expenditure considered necessary.
3. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget.

## **CHAPTER 2**

### **PRINCIPLE OF ANNUALITY**

#### *Article 7*

The appropriations entered in the budget shall be authorised for one financial year which shall run from 1 January to 31 December.

#### *Article 8*

1. The budget shall contain non-differentiated appropriations and differentiated appropriations.

The latter shall consist of commitment appropriations and payment appropriations.

2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.
4. Administrative appropriations shall be non-differentiated. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.
5. Paragraphs 1 and 2 shall not prevent appropriations to be committed globally nor in annual instalments.

#### *Article 9*

1. The revenue of the Joint Undertaking referred to in Article 5 shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year.
2. The revenue of the Joint Undertaking shall give rise to an equivalent amount of payment appropriations.
3. The appropriations authorised in the budget for a given financial year may be used solely to cover expenditure committed and paid in that financial year, and to cover amounts due against commitments from preceding financial years.
4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December.
5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year at the latest.

#### *Article 10*

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations shall be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.

However, appropriations may, by decision of the Governing Board taken not later than 15 February, be carried over to the next financial year only, in accordance with the paragraphs 2 to 7.

2. Appropriations relating to staff expenditure may not be carried over.
3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory

stages of the commitment procedure have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.

4. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant headings in the budget for the following financial year do not cover requirements. The Joint Undertaking shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.
5. Non-differentiated appropriations corresponding to obligations duly contracted at the close of the financial year shall be carried over automatically to the following financial year only.
6. Appropriations carried over which have not been committed by 31 March of the following year shall be automatically cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations shall be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.

Appropriations carried over in this way shall be identified in the accounts.

7. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically.

The appropriations available corresponding to assigned revenue carried over shall be used first.

#### *Article 11*

Where amounts are decommitted, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were committed, the appropriations concerned shall be cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations shall be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.

#### *Article 12*

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has become definitive.

#### *Article 13*

1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the appropriations decided by the Governing Board on the corresponding budget line for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.

2. Expenditure which shall be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In this case, the limit referred to in paragraph 1 shall not apply.

#### *Article 14*

1. If the budget has not become definitive at the beginning of the financial year, the following rules shall apply to commitment and payment of expenditure which it has been possible to book to a specific heading in the budget as part of implementation of the last budget duly adopted.
2. Commitments may be made per chapter up to a maximum of one quarter of the total appropriations authorised in the chapter in question for the previous financial year, plus one twelfth for each month which has elapsed.

Payments may be made monthly per chapter up to a maximum of one twelfth of the appropriations authorised in the chapter in question for the previous financial year.

The limit of the appropriations provided for in the statement of estimates of revenue and expenditure may not be exceeded.

3. At the request of the Director, if the continuity of action by the Joint Undertaking and management needs so require, the Governing Board may simultaneously authorise two or more provisional twelfths for both commitments and payments over and above those automatically made available by the provisions of paragraphs 1 and 2.

The additional twelfths shall be authorised in full and shall not be divisible.

## **CHAPTER 3**

### **PRINCIPLE OF EQUILIBRIUM**

#### *Article 15*

1. The budget revenue and payment appropriations referred to in Article 5 shall be in balance.
2. Commitment appropriations may not exceed the relevant Euratom contribution available through the Community research and training programmes adopted pursuant to Article 7 of the Treaty, plus annual membership contributions from other members than Euratom, revenue from the contribution from ITER-host state and any other revenue referred to in Article 5.
3. The Joint Undertaking may grant or raise loans in accordance with Article 4 and Annex III point 4 of the Statutes.

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4. In its payment requests to Euratom, the Joint Undertaking shall submit detailed and updated forecasts on its real cash requirements throughout the year.

#### *Article 16*

1. If the balance of the outturn account within the meaning of Article 117 is positive, it shall be repaid to the Commission up to the amount of the Community contribution paid during the financial year. The part of the balance exceeding the amount of the Community contribution paid during the financial year shall be entered in the budget for the following financial year as revenue.

The difference between the Community contribution entered in the general budget and that actually paid to the Joint Undertaking shall be cancelled.

2. If the balance of the outturn account provided for in Article 117 is negative, it shall be entered in the budget for the following financial year.
3. The revenue or payment appropriations shall be entered in the budget during the budgetary procedure using the letter of amendment procedure or, while budget implementation is under way, by means of an amending budget.

## **CHAPTER 4**

### **PRINCIPLE OF UNIT OF ACCOUNT**

#### *Article 17*

The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

However, for cash-flow purposes, the accounting officer and, in the case of imprest accounts, imprest administrators shall be authorised to carry out operations in national currencies.

## **CHAPTER 5**

### **PRINCIPLE OF UNIVERSALITY**

#### *Article 18*

Total revenue shall cover total payment appropriations, subject to Article 19. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 21.

*Article 19*

1. The following items of revenue shall be used to finance specific items of expenditure:
  - a) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts, bequests, voluntary contributions or other donations;
  - b) contributions to the activities or projects of the Joint Undertaking from its Member(s), non-member countries or miscellaneous bodies, in so far as this is provided for in the agreement concluded between the Joint Undertaking and the Member, non-member countries or bodies in question;
  - c) revenue from third parties in respect of goods, services or work supplied at their request with exception of fees and charges referred to in Article 5 (d);
  - d) revenue arising from the repayment of amounts wrongly paid;
  - e) proceeds from the supply of goods, services and works for the Community institutions or Community bodies;
  - f) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped when the book value is fully depreciated;
  - g) insurance payments received;
  - h) revenue from payments connected with lettings;
  - i) revenue from the sale of publications and films, including those on an electronic medium.
2. All items of revenue within the meaning of paragraph 1 shall cover all direct or indirect expenditure incurred by the activity, project or purpose in question.
3. The budget shall carry items to accommodate the categories of assigned revenue referred to in paragraph 1 and wherever possible shall indicate the amount.

*Article 20*

1. The Director may accept any donation made to the Joint Undertaking, such as voluntary contributions, foundations, subsidies, gifts and bequests.
2. The value of voluntary contributions in-kind shall be determined by the Joint Undertaking.
3. Acceptance of donations shall be subject to the prior authorisation of the Governing Board, which shall take a decision within two months of the date on which the request is submitted to it. If the Governing Board fails to take a decision within that period, the donation shall be deemed accepted.

*Article 21*

1. The cases where certain amounts may be deducted from requests for payment, invoices or statements, which shall then be passed for payment of the net amount shall be as follows:
  - a) enforceable court or arbitration order;
  - b) cases where contractual provisions entitle to do so;
  - c) discounts, refunds and rebates on individual invoices and payment requests.
2. The cost of products or services provided to the Joint Undertaking shall be charged to the budget for the full ex-tax amount, where they incorporate taxes refunded:
  - a) either by the Members pursuant to the Protocol on the Privileges and Immunities of the European Communities that applies to the Joint Undertaking or pursuant the advantages provided for in Annex III to the Euratom Treaty conferred on the Joint Undertaking;
  - b) or, in addition, by a Member or non-member country on the basis of other relevant agreements.

Any national taxes temporarily borne by the Joint Undertaking under the first subparagraph shall be entered in a suspense account until they are refunded by the State concerned.

3. Any negative balance shall be entered in the budget as expenditure.
4. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the financial year.

## **CHAPTER 6**

### **PRINCIPLE OF SPECIFICATION**

*Article 22*

The appropriations in their entirety shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

*Article 23*

1. The Director may make transfers from one chapter to another and from one article to another without limit and from one title to another up to a maximum of 10 % of the appropriations for the financial year shown on the line from which the transfer is made.



2. Beyond the limit referred in the first paragraph, the Director may propose to the Governing Board transfers of appropriations from one title to another. The Governing Board shall have four weeks in which to oppose such transfers; after this time-limit they shall be deemed to be adopted. In cases of urgency, the Director may shorten the time-limit to at least five working days.
3. Proposals for transfers and transfers carried out under paragraphs 1 and 2 shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the headings to be credited and for those from which the appropriations are drawn.
4. The Director shall inform the Governing Board as soon as possible of all transfers made.

#### *Article 24*

1. Appropriations may be transferred only to budget items for which the budget has authorised appropriations or carries a token entry (p.m.).
2. Appropriations corresponding to assigned revenue may be transferred only if they are used for the purpose to which the revenue is assigned.

## **CHAPTER 7**

### **PRINCIPLE OF SOUND FINANCIAL MANAGEMENT**

#### *Article 25*

1. Budget appropriations shall be used in accordance with the principle of sound financial management, that is to say, in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the Joint Undertaking for the pursuit of its tasks and activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all chapters of activity covered by the budget. Achievement of those objectives shall be monitored by performance indicators for each activity and information shall be

provided to the Governing Board by the Director. This information shall be provided annually and at the latest in the documents accompanying the draft budget.

4. In order to ensure optimal decision-making, the Director shall regularly carry out *ex ante* and *ex post* evaluations of its programmes or activities. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results shall be sent to the Governing Board.

#### *Article 26*

1. The budget shall be implemented in compliance with effective and efficient internal control.
2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of management and designed to provide reasonable assurance of achieving the following objectives:
  - a) effectiveness, efficiency and economy of operations;
  - b) reliability of reporting;
  - c) safeguarding of assets and information;
  - d) prevention and detection of fraud and irregularities;
  - e) adequate management of the risks relating to the legality and regularity of the underlying transactions taking into account the multi-annual character of programmes as well as the nature of the payments concerned.

## **CHAPTER 8**

### **PRINCIPLE OF TRANSPARENCY**

#### *Article 27*

1. The budget shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency.
2. A summary of the budget and of amending budgets shall be published in the *Official Journal of the European Union* within three months following the date on which they become definitive.
3. The budget and amending budgets, as became definitive, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission and shall be published on the official internet website of the Joint Undertaking within two months following the date on which they become definitive.

4. The Joint Undertaking shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from its budget. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data as laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2001<sup>8</sup>.

### **TITLE III**

## **ESTABLISHMENT AND STRUCTURE OF THE BUDGET**

### **CHAPTER 1**

#### **ESTABLISHMENT OF THE BUDGET**

##### *Article 28*

1. The budget shall be established in accordance with the provisions of the Constituent instrument and the Statutes of the Joint Undertaking.
2. The Director shall prepare the estimate of the revenue and expenditure of the Joint Undertaking for the following year and shall send it to the Governing Board and to the Commission with the resource estimates plan and project plan referred to in Article 30 and adopted in the preceding year, by 31 March each year at the latest.

By the date referred to in subparagraph 1 the Director shall communicate to the ITER host state the estimated amount of its contribution together with the general guidelines underlying that estimate. The Director shall also by the same date communicate to the Members other than Euratom the estimated provisional amount of their individual annual membership contributions calculated in accordance with Annex II to the Statutes.

3. The estimate of revenue and expenditure of the Joint Undertaking shall include:
  - a) an establishment plan setting the number of permanent and temporary posts authorised within the limits of the budget appropriations, by grade and by category;
  - b) where there is a change in the number of persons in post, a statement justifying the request for new posts;
  - c) a quarterly estimate of cash payments and receipts;

- d) information on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators; evaluation results shall be consulted and referred to as evidence of the likely merits of a proposed budget amendment.
4. As part of the procedure for adopting the general budget, the Commission shall send the Joint Undertaking's statement of estimates to the budgetary authority and propose the amount of the contribution to the Joint Undertaking and the number of staff it considers that the Joint Undertaking needs.
5. The budgetary authority shall adopt the establishment plan of the Joint Undertaking and any subsequent amendment thereto in accordance with Article 34(1).
6. The Governing Board shall adopt the budget normally before the end of the previous financial year.

It becomes definitive after final adoption of the general budget setting the amount of the Community contribution and the establishment plan. If necessary the budget and the establishment plan shall be adjusted accordingly.

#### *Article 29*

Any amendment to the budget, including to the establishment plan, shall be the subject of an amending budget adopted by the same procedure as the initial budget, in accordance with the provisions of the Statutes and Article 28.

#### *Article 30*

1. In accordance with Article 11 and Annex III point 5(b) and (c) of the Statutes, the Director shall prepare and submit to the Governing Board the resource estimates plan and the project plan to be adopted together with the budget.
2. The project plan shall *inter alia* include:
  - a) a statement on the aims and activities of the Joint Undertaking for the following five years;
  - b) a description of the status of the activities and projects of the Joint Undertaking containing the necessary information on changes occurred since the last previous version;
3. The resource estimates plan shall *inter alia* include:
  - a) overall cost estimates for the entire duration of the projects of the Joint Undertaking;
  - b) forecast of annual expenditure of the Joint Undertaking for the following five financial years;

- c) estimates of income, expenditure and staffing of the Joint Undertaking for the following two financial years.

## CHAPTER 2

### STRUCTURE AND PRESENTATION OF THE BUDGET

#### *Article 31*

The budget shall comprise a statement of revenue and a statement of expenditure.

#### *Article 32*

The statement of expenditure shall be set out on the basis of a nomenclature with a classification by purpose. This nomenclature shall be determined by the Joint Undertaking and shall make a clear distinction between administrative appropriations and operational appropriations.

#### *Article 33*

The budget shall show:

1. In the statement of revenue:
  - a) the estimated revenue of the Joint Undertaking for the financial year in question;
  - b) the estimated revenue for the preceding financial year and the revenue for the second preceding year;
  - c) appropriate remarks on each revenue line.
2. In the statement of expenditure:
  - a) the commitment and payment appropriations for the financial year in question;
  - b) the commitment and payment appropriations for the preceding financial year, and the expenditure committed and the expenditure paid in the second preceding year;
  - c) appropriate remarks on each subdivision.

*Article 34*

1. The establishment plan referred to in Article 28 shall show, next to the number of posts authorised for the financial year, the number authorised for the preceding financial year and the number of posts actually filled.

It shall constitute an absolute limit for the Joint Undertaking; no appointment may be made in excess of the limit set.

However, save in the case of grades AD 13 and above, the Governing Board may modify the establishment plan by up to 10 % of posts authorised, subject to two conditions:

- a) that the volume of staff appropriations corresponding to a full financial year is not affected;
  - b) that the limit of the total number of posts authorised by the establishment plan is not exceeded.
2. By way of derogation from the second subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities<sup>9</sup> (hereinafter "the Staff Regulations") may be offset by other appointments. Where a staff member requests the withdrawal of the authorisation before expiry of the granted period, the Joint Undertaking shall take appropriate measures as soon as possible while respecting the limit referred to in paragraph 1(b).

## **TITLE IV**

### **IMPLEMENTATION OF THE BUDGET**

#### **CHAPTER 1**

##### **GENERAL PROVISIONS**

*Article 35*

The Director shall perform the duties of authorising officer. He/she shall implement the revenue and expenditure of the budget in accordance with the financial rules of the Joint Undertaking, on his/her own responsibility and within the limits of the appropriations authorised.

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<sup>9</sup> OJ L 56, 4.3.1968, p.1. Regulation as last amended by Regulation (EC, Euratom) No 1895/2006 (OJ L 397, 30.12.2006, p.6)

*Article 36*

1. The Director may delegate his/her powers of budget implementation to staff of the Joint Undertaking covered by the Staff Regulations. Those so empowered may act only within the limits of the powers expressly conferred upon them.
2. The delegatee may sub-delegate the powers received. Each act of sub-delegation shall require the explicit agreement of the Director.

*Article 37*

1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures of budget implementation which may bring their own interests into conflict with those of the Joint Undertaking. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.
2. There is a conflict of interest where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.
3. The competent authority referred to in paragraph 1 shall be the immediate superior of the member of staff concerned. If the member of staff is the Director, the competent authority shall be the Governing Board.

*Article 38*

1. The budget shall be implemented by the Director in the departments placed under his/her authority.
2. Technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgement may be entrusted by contract to external private-sector entities or bodies, where this proves to be indispensable.

*Article 39*

Entitlements of the Joint Undertaking in respect of third parties and entitlements of third parties in respect of the Joint Undertaking shall be subject to a limitation period of five years, if agreed with the third parties concerned.

## **CHAPTER 2**

### **FINANCIAL ACTORS**

#### **SECTION 1**

##### **PRINCIPLE OF SEGREGATION OF DUTIES**

###### *Article 40*

The duties of authorising officer and accounting officer shall be segregated and mutually incompatible.

#### **SECTION 2**

##### **AUTHORISING OFFICER**

###### *Article 41*

1. The authorising officer shall be responsible for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.
2. To implement expenditure, the authorising officer shall make budget commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of appropriations.
3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.
4. The authorising officer shall put in place, in compliance with the minimum standards adopted by the Governing Board on the basis of equivalent standards laid down by the Commission for its own departments, and having due regard to the risks associated with the management environment and the nature of the action financed, the organisational structure and the internal management and control systems and procedures suited to the performance of his/her duties, including where appropriate ex post verifications.

The authorising officer shall establish within his/her departments an expertise and advice function designed to help him/her control the risks involved in his/her activities.



5. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. Initiation and the *ex ante* and *ex post* verification of an operation shall be separate functions.
6. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget.

Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event as concerns the conservation of traffic data, the relevant provisions of the Regulation (EC) No 45/2001 of the European Parliament and the Council <sup>10</sup> shall apply.

#### Article 42

1. Initiation of an operation as referred to in Article 41(5) shall be understood to mean all the operations which are preparatory to the adoption of the acts implementing the budget by the authorising officers responsible referred to in Articles 35 and 36.
2. *Ex ante* verification of an operation as referred to in Article 41(5) shall be understood to mean all the *ex ante* checks put in place by the authorising officer responsible in order to verify the operational and financial aspects.
3. Each operation shall be subject of at least one *ex ante* verification. The purpose of this verification shall be to ascertain that:
  - a) the expenditure is in order and conforms to the relevant provisions;
  - b) the principle of sound financial management referred to in Article 25 has been applied.

For the purpose of *ex ante* verification, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.

In the case referred to in the second subparagraph, the authorising officer responsible shall, depending on his risk assessment, carry out an appropriate *ex post* verification, in accordance with paragraph 4.

4. The purpose of *ex post* verifications of documents and, where appropriate, on-the-spot verifications shall be to verify that operations financed by the budget have been correctly implemented and in particular that the criteria referred to in paragraph 3 have been complied with. These verifications may be organised on a sample basis using risk analysis.

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<sup>10</sup> OJ L 8, 12.1.2001, p.1

5. The officials or other staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those performing the tasks referred to in paragraph 1 and shall not be their subordinates.
6. All staff responsible for scrutinising the management of financial operations shall have the necessary professional skills. They shall respect a specific code of professional standards adopted by the Joint Undertaking and based on standards laid down by the Commission for its own departments.

#### *Article 43*

1. The authorising officer shall report to the Governing Board on the performance of his/her duties in the form of an annual activity report, together with financial and management information confirming that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined areas of revenue and expenditure.

The annual activity report shall indicate the results of his/her operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. The internal auditor referred to in Article 75 shall take note of the annual activity report and any other pieces of information identified.

2. By no later than 15 June each year, the Governing Board shall send the Council, the European Parliament and the Court of Auditors an analysis and an assessment of the authorising officer's annual report on the previous financial year. This analysis and assessment shall be included in the annual report of the Joint Undertaking, in accordance with the provisions of the Statutes.

#### *Article 44*

Any member of staff involved in the financial management and control of transactions who considers that a decision he/she is required by his/her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he/she is required to observe shall inform the Director in writing and, if the latter fails to take action within a reasonable period, the panel referred to in Article 50(5) and the Governing Board. In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he/she shall inform the authorities and bodies designated by the applicable legislation.

#### *Article 45*

Where powers of budget implementation are delegated or sub delegated in accordance with Article 36, Article 41(1), (2) and (3) shall apply *mutatis mutandis* to the authorising officers by delegation or sub-delegation.

## SECTION 3

### ACCOUNTING OFFICER

#### *Article 46*

1. The Governing Board shall appoint an accounting officer, covered by the Staff Regulations, who shall be functionally independent in the performance of his duties. He/she shall be responsible in the Joint Undertaking for:
  - a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
  - b) preparing and presenting the accounts in accordance with Title VIII;
  - c) keeping the accounts in accordance with Title VIII;
  - d) implementing, in accordance with Title VIII, the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
  - e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information.
  - f) treasury management.
2. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the Joint Undertaking's assets and of budget implementation.
3. Before the adoption of the accounts by the Director, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Joint Undertaking.

For that purpose, the accounting officer shall satisfy himself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established, and that all revenue and expenditure is entered in the accounts.

The accounting officer shall be empowered to check the information received as well as to carry out any further checks he deems necessary in order to sign off the accounts.

The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.

The accounting officer shall sign off its annual accounts and send them to the Commission's accounting officer as provided for in Article 118.

4. The authorising officers shall remain fully responsible for the proper use of the funds they manage as well as the legality and regularity of the expenditure under their control.
5. Subject to paragraph 6 and Article 47, only the accounting officer shall be empowered to manage cash and cash equivalents. He/she shall be responsible for their safekeeping.
6. The accounting officer may, in the performance of his/her duties, delegate certain tasks to subordinate staff, subject to the Staff Regulations, where this is indispensable for the performance of his/her duties.

The instrument of delegation shall lay down the tasks entrusted to the delegates and their rights and obligations.

## SECTION 4

### IMPREST ADMINISTRATOR

#### *Article 47*

1. Where it proves indispensable for the payment of small sums and for the collection of other revenue referred to in Article 5, imprest accounts may be set up which shall be endowed by the accounting officer and shall be placed under the responsibility of imprest administrators designated by him/her.
2. The maximum amount of each item of expenditure or revenue that can be paid by the imprest administrator to third parties may not exceed certain amount to be specified by the Joint Undertaking for each item of expenditure or revenue.
3. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 70 (2), cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.

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## CHAPTER 3

### LIABILITY OF THE FINANCIAL ACTORS

#### SECTION 1

#### GENERAL RULES

##### *Article 48*

1. Without prejudice to any disciplinary action, authorising officers by delegation and sub-delegation may at any time have their delegation or sub-delegation withdrawn temporarily or definitively by the authority which appointed them.

The authorising officer may at any time withdraw his/her agreement to a specific sub-delegation.

2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his/her duties by the Governing Board. The Governing Board shall appoint an interim accounting officer.
3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the accounting officer.

##### *Article 49*

1. The provisions of this chapter shall be without prejudice to any liability under criminal law which the financial actors referred to in Article 48 may incur as provided in the applicable national law and in the provisions in force on the protection of the Communities' financial interests and on the fight against corruption involving officials of the Communities or officials of Member States.
2. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 50, 51 and 52. In the event of illegal activity, fraud or corruption which may harm the interests of the Community, the matter will be referred to the authorities and bodies designated by the applicable legislation.

## SECTION 2

### **RULES APPLICABLE TO THE AUTHORISING OFFICER AND AUTHORISING OFFICERS BY DELEGATION OR SUBDELEGATION**

#### *Article 50*

1. The authorising officer shall be liable to payment of compensation as laid down in the Staff Regulations.
2. The obligation to pay compensation shall apply in particular if:
  - a) the authorising officer, whether intentionally or through gross negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation;
  - b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the Joint Undertaking liable to civil action by third parties.
3. An authorising officer by delegation or sub-delegation who considers that a decision falling under his/her responsibility is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or sub-delegation to implement the decision in question, the latter must implement it and may not be held liable.
4. In the event of delegation within his services, the authorising officer shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by delegation.
5. The specialised financial irregularities panel set up by the Commission in accordance with the relevant provisions of the general Financial Regulation shall exercise the same powers in respect of the Joint Undertaking as it does in respect of Commission departments.

On the basis of the opinion of this panel, the Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor and the internal auditor of the Joint Undertaking. If the opinion implicates the Director, the panel shall send it to the Governing Board and the Commission's internal auditor.

Any member of staff may be required to compensate, in whole or in part, any damage suffered by the Joint Undertaking as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties.

The appointing authority shall take a reasoned decision, after completing the formalities laid down by the Staff Regulations with regard to disciplinary matters.

### SECTION 3

#### **RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS**

##### *Article 51*

An accounting officer may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- a) he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;
- b) he/she alters bank accounts or postal giro accounts without notifying the authorising officer in advance;
- c) he/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- d) he/she fails to collect revenue due.

##### *Article 52*

An imprest administrator may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- a) he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;
- b) he/she cannot provide proper supporting documents for the payments he/she has made;
- c) he/she makes payments to persons other than those entitled;
- d) he/she fails to collect revenue due.

## **CHAPTER 4**

### **REVENUE OPERATIONS**

#### **SECTION 1**

##### **GENERAL PROVISIONS**

###### *Article 53*

1. The Joint Undertaking shall present to the Commission requests for payment of all or part of the Community contribution, supported by a cash-flow forecast, under the terms and the intervals agreed between the Joint Undertaking and the Commission.
2. The Joint Undertaking shall present to the ITER host state requests for payments of all or part of the ITER host state contribution, supported by a cash-flow forecast, at the same intervals as referred to in paragraph 1.
3. The Joint Undertaking shall issue to Members other than Euratom requests for payments corresponding to their annual membership contributions, at the latest three months after the date on which the budget became definitive.

###### *Article 54*

The contributions paid to the Joint Undertaking by the Commission shall bear interest for the benefit of the general budget.

All other revenues of the Joint Undertaking shall bear interest for the benefit of the budget.

#### **SECTION 2**

##### **ESTIMATE OF AMOUNTS RECEIVABLE**

###### *Article 55*

An estimate of the amount receivable shall first be made by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owing to the Joint Undertaking.



## SECTION 3

### ESTABLISHMENT OF AMOUNTS RECEIVABLE

#### *Article 56*

1. Establishment of an amount receivable is the act by which the authorising officer or authorising officer by delegation:
  - a) verifies that the debt exists;
  - b) determines or verifies the reality and the amount of the debt;
  - c) verifies the conditions in which the debt is due.
2. Any amount receivable that is identified as being certain, of a fixed amount and due shall be established by a recovery order given to the accounting officer, accompanied by a debit note sent to the debtor. Both of these documents shall be drawn up and sent by the authorising officer responsible.
3. If provided for in the contract or agreement applicable, any debt not repaid on the due date laid down in the debit note shall bear interest.
4. In duly substantiated cases, certain routine revenue items may be established provisionally.

Provisional establishment shall cover the recovery of several individual amounts which need not therefore be established individually.

Before the end of the financial year, the authorising officer shall amend the amounts established provisionally to ensure that they correspond to the amounts receivable actually established.

## SECTION 4

### AUTHORISATION OF RECOVERY

#### *Article 57*

The authorisation of recovery is the act whereby the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he/she has established.

## SECTION 5

### RECOVERY

#### *Article 58*

1. Amounts wrongly paid shall be recovered.
2. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer or authorising officer responsible. He/she shall exercise due diligence to ensure that the Joint Undertaking receives its revenue and shall see that its rights are safeguarded.
3. Where the authorising officer responsible is planning to waive or partially waive recovery of an established amount receivable, he/she shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality.

Such a waiver shall be by decision of the authorising officer, which must be substantiated. The authorising officer may not delegate such a decision.

The waiver decision shall state what action has been taken to secure recovery and the points of law and fact on which it is based.

4. The authorising officer responsible shall cancel an established amount receivable when the discovery of a mistake as to a point of law or fact reveals that the amount had not been correctly established. Such cancellation shall be by decision of the authorising officer responsible and shall be suitably substantiated.
5. The authorising officer responsible shall adjust the amount of an established debt upwards or downwards when the discovery of a factual error entails the alteration of the amount of the debt, provided that this correction does not involve the loss of the established entitlement of the Joint Undertaking. Such an adjustment shall be by decision of the authorising officer responsible and shall be suitably substantiated.

#### *Article 59*

1. Upon actual recovery of the sum due, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.
2. A receipt shall be issued in respect of all cash payments made to the accounting officer.

#### *Article 60*

1. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately

launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting.

2. The accounting officer shall recover amounts by offsetting them against equivalent claims that the Joint Undertaking has on any debtor who himself or herself has a claim on the Joint Undertaking that is certain, of a fixed amount and due, provided that offsetting is legally possible.

#### *Article 61*

The accounting officer, in collaboration with the authorising officer responsible, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, provided that the following two conditions are met:

- a) the debtor undertakes to pay interest for the entire additional period allowed, starting from the date set in the debit note;
- b) in order to safeguard the rights of the Joint Undertaking, the debtor provides a financial guarantee covering both the principal sum and the interest.

#### *Article 62*

The accounting officer shall keep a list of amounts due to be recovered, in which the Joint Undertaking's entitlements are grouped according to the date of the issue of the recovery order. The list shall be added to the Joint Undertaking's report on budgetary and financial management.

The Joint Undertaking shall establish a list of the Joint Undertaking's entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of *res judicata* and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection.

## **SECTION 6**

### **SPECIFIC PROVISION APPLICABLE TO FEES AND CHARGES**

#### *Article 63*

Where the Joint Undertaking collects fees and charges referred to in Article 5(1)(d), the following shall apply:

- (a) an overall provisional estimate of such fees and charges shall be made at the beginning of each financial year;
- (b) where fees and charges are entirely determined by legislation or decisions of the Governing Board, the authorising officer may abstain from issuing

recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Joint Undertaking's entitlement shall be registered;

(c) as a general rule, the Joint Undertaking shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety. If, by way of exception, a service has been provided without prior payment of the corresponding charge or fee, Sections 3, 4 and 5 of this Chapter shall apply.

## **CHAPTER 5**

### **EXPENDITURE OPERATIONS**

#### *Article 64*

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. Every commitment of expenditure shall be preceded by a financing decision.
3. The work programme of the Joint Undertaking adopted by the Governing Board shall constitute a financing decision for the activities it covers.
4. Administrative appropriations may be implemented without a prior financing decision.

### **SECTION 1**

#### **COMMITMENT OF EXPENDITURE**

#### *Article 65*

1. The budget commitment is the operation reserving the appropriations necessary to cover subsequent payments to honour a legal commitment.
2. The legal commitment is the act whereby the authorising officer responsible enters into or establishes an obligation which results in a charge for the budget.
3. The budget commitment is individual when the beneficiary and the amount of the expenditure are known.
4. The budget commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

5. The budget commitment is provisional when it is intended to cover routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

The provisional budget commitment shall be implemented either by the conclusion of one or more individual legal commitments giving rise to an entitlement to subsequent payments or, in exceptional cases relating to expenditure on staff management, directly by payments.

6. Budgetary commitments for actions extending over more than one financial year including administrative expenditure may be broken down over several years into annual instalments. Where the budgetary commitment is thus divided into annual instalments, the legal commitment shall stipulate this, except in the case of expenditure on staff.

In accordance with Article 15(2), the total amount of legal commitments may not exceed the relevant Euratom contribution available through the Community research and training programmes adopted pursuant to Article 7 of the Treaty, plus annual membership contributions from other members than Euratom, revenue from the contribution from ITER host state and any other revenue referred to in Article 5.

#### *Article 66*

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible shall first make a budget commitment before entering into a legal obligation with third parties.
2. Subject to Article 65(6), the global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of the following year.

Individual legal commitments relating to individual or provisional budget commitments shall be concluded by 31 December of the current year.

At the end of the periods referred to in the first and second subparagraphs, the unused balance of these budget commitments shall be decommitted by the authorising officer responsible.

3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budget commitments shall, save in the case of staff expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after that final date shall be decommitted in accordance with Article 11.

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 71 has been made in a period of three years following the signing of the legal commitment shall be decommitted, except when the Governing Board decides otherwise.

*Article 67*

When adopting a budget commitment, the authorising officer responsible shall ensure that:

- a) the expenditure has been charged to the correct item in the budget;
- b) the appropriations are available;
- c) the expenditure conforms to the applicable provisions, in particular those of the Constituent instrument, this Regulation and all acts of the Joint Undertaking adopted pursuant to them;
- d) the principle of sound financial management is complied with.

## SECTION 2

### VALIDATION OF EXPENDITURE

*Article 68*

Validation of expenditure is the act whereby the authorising officer responsible:

- a) verifies the existence of the creditor's entitlement;
- b) verifies the conditions in which payment is due;
- c) determines or verifies the reality and the amount of the claim.

*Article 69*

1. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.
2. The validation decision shall be expressed by the signing of a "passed for payment" voucher by the authorising officer responsible.
3. In a non-computerised system, "passed for payment" shall take the form of a stamp incorporating the signature of the authorising officer responsible. In a computerised system, "passed for payment" shall take the form of validation using the personal password of the authorising officer responsible.

## SECTION 3

### AUTHORISATION OF EXPENDITURE

#### *Article 70*

1. Authorisation of expenditure is the act whereby the authorising officer responsible, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he/she has validated.
2. Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to his risk analysis, the authorising officer responsible may order the application of a direct debit system.
3. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 41(6).
4. Where appropriate, the payment order sent to the accounting officer shall be accompanied by a document certifying that the goods have been entered in the inventories referred to in Article 126(1).

## SECTION 4

### PAYMENT OF EXPENDITURE

#### *Article 71*

1. Payment shall be made on production of proof that the relevant action has been carried out in accordance with the Constituent instrument or the contract or grant or other agreement, and shall cover one of the following operations:
  - a) payment of the entire amount due;
  - b) payment of the amount due in any of the following ways:
    - i. pre-financing, which may be divided into a number of payments;
    - ii. one or more interim payments;
    - iii. payment of the balance of the amounts due.

Pre-financing shall count in full or in part against the interim payments.

The entire pre-financing and interim payments shall count against the payment of balances.

2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.

*Article 72*

Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

## **SECTION 5**

### **TIME LIMITS FOR EXPENDITURE OPERATIONS**

*Article 73*

The validation, authorisation and payment of expenditure shall be carried out within the time limits specified in, and in accordance with the provisions of the detailed rules for implementing this Regulation as referred to in Article 136 (hereinafter "implementing rules").

## **CHAPTER 6**

### **IT SYSTEMS**

*Article 74*

Where revenue and expenditure operations are managed by means of computer systems, documents may be signed by a computerised or electronic procedure.

## **CHAPTER 7**

### **INTERNAL AUDITOR**

*Article 75*

The Joint Undertaking shall have an internal auditing service which must be performed in compliance with the relevant international standards.

*Article 76*

1. The internal auditor shall advise the Joint Undertaking on dealing with risks, by issuing independent opinions on the quality of management and control systems and



by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

He/she shall be responsible:

- a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them; and
  - b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budgetary implementation operation.
2. The internal auditor shall perform his/her duties on all the Joint Undertaking's activities and departments. He/she shall enjoy full and unlimited access to all information required to perform his/her duties.
  3. The internal auditor shall report to the Director and the Governing Board on his/her findings and recommendations. They shall ensure that action is taken on recommendations resulting from audits.
  4. The internal auditor shall submit to the Director and the Governing Board an annual internal audit report setting out, *inter alia*, the number and type of internal audits conducted, the recommendations made and the action taken on these recommendations. This annual report shall also mention any systemic problems detected by the specialised panel referred to in Article 50(5).
  5. Each year the Joint Undertaking shall send to the Commission and the European Parliament, a report drawn up by its Director summarising the number and type of internal audits conducted by the internal auditor, the recommendations made and the action taken on these recommendations.

#### *Article 77*

The responsibility of the internal auditor for action taken in the performance of his/her duties shall be *mutatis mutandis* as laid down in special rules applicable to the Commission's internal auditor. The special rules shall guarantee that the internal auditor is totally independent in the performances of his/her duties and shall establish his/her responsibility.

He/she shall assume responsibility as laid down in the Staff Regulations and its implementing rules.

## **TITLE V**

## **PROCUREMENT**

### **CHAPTER 1**

#### **PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY THE JOINT UNDERTAKING FOR IMPLEMENTATION OF ITS OPERATIONAL TASKS**

#### **SECTION 1**

#### **SCOPE AND AWARD PRINCIPLES**

##### *Article 78*

1. Contracts covered by this Chapter are contracts for pecuniary interest concluded in writing between one or more economic operators and the Joint Undertaking in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services for the implementation of the Joint Undertaking's operational tasks referred to in Article 1(2) of the Constituent instrument.

These contracts comprise:

- a) contracts for the purchase or rental of a building;
  - b) supply contracts;
  - c) works contracts;
  - d) service contracts.
2. Framework contracts covered by this Chapter are contracts concluded between the Joint Undertaking and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. They shall be governed by the provisions of this Chapter concerning the award procedure, including advertising.

##### *Article 79*

1. Contracts shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.
2. Contracts shall be put out to tender on the broadest possible base, except when use of the procedure referred to in Article 81(1)(d).

The Joint Undertaking may not use framework contracts improperly or in such a way that the purpose or effect is to prevent, restrict or distort competition.

## SECTION 2

### PARTICIPATION TO THE PROCUREMENT PROCEDURES

¶

#### *Article 80*

Participation in procurement procedures shall be open on equal terms to all natural persons who are nationals of a Member and legal persons who are legally established in the territory of a Member, under the conditions laid down in the implementing rules.

Participation in procurement procedures may also be open to natural and legal persons other than those referred to in sub-paragraph 1, if so decided by the Director, in accordance with and under the conditions laid down in the implementing rules.

## SECTION 3

### PROCUREMENT PROCEDURES

#### *Article 81*

1. In awarding the contracts, procurement procedures shall take one of the following forms:
  - a) open procedure;
  - b) restricted procedure;
  - c) competitive dialogue;
  - d) negotiated procedure;
  - e) contests.

Where the contract or the framework contract is necessary for the implementation of a joint action between the Joint Undertaking and another contracting authority, the procurement procedure may be carried out jointly by the Joint Undertaking and this contracting authority, as specified in the implementing rules.

2. The thresholds below which the Joint Undertaking may use a negotiated procedure shall be determined in the in the implementing rules.

3. For contracts where the value exceeds the thresholds referred to in paragraph 2, the use of the negotiated procedure may be authorised only in cases specified in the implementing rules.
4. The implementing rules shall spell out the use of the procurement procedures referred to in paragraph 1.

#### Article 82

The documents relating to the call for tenders shall give a full, clear and precise description of the subject of the contract and specify the exclusion, selection and award criteria applicable to the contract.

#### Article 83

1. Candidates or tenderers shall be excluded from participation in a procurement procedure if:
  - a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
  - b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
  - c) they have been guilty of grave professional misconduct proven by any means which the Joint Undertaking can justify;
  - d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Joint Undertaking or those of the country where the contract is to be performed;
  - e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Joint Undertaking's or the Communities financial interests;
  - f) they are currently subject to an administrative penalty imposed by the Community institutions as referred to in the general Financial Regulation;
  - g) they have been declared to be in a serious breach of their obligations under contracts covered by the budget.

Points (a) to (d) may not apply in the case of purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its

business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.

2. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraph 1. However, the Joint Undertaking may refrain from requiring such certification as specified in the implementing rules.

For the purpose of the correct application of paragraph 1, the candidate or tenderer, whenever requested by the Joint Undertaking, shall:

- a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity;
  - b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.
3. The implementing rules shall determine the maximum period during which the situations referred to in paragraph 1 give rise to the exclusion of candidates or tenderers from participation in a procurement procedure. This maximum period shall not exceed ten years.

#### *Article 84*

A Contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

- a) are subject to a conflict of interest;
- b) are guilty of misrepresentation in supplying the information required by the Joint Undertaking as a condition of participation in the procurement procedure or fail to supply this information;
- c) find themselves in one of the situations of exclusion, referred to in Article 83(1), for this procurement procedure.

#### *Article 85*

A central database set up and operated by the Commission containing details of candidates and tenderers which is in one of the situations referred to in Articles 83, 84, 86(1)(b) and (2)(a) shall be common to the Joint Undertaking and shall be used by the Joint Undertaking under the relevant rules adopted by the Commission.

#### *Article 86*

If provided for in the call for tender, the Joint Undertaking may impose financial penalties on tenderers in the cases referred to in point (b) of Article 84. Such penalties shall be proportionate to the importance of the contract and the seriousness of the misconduct.

*Article 87*

1. Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 83, 84 and 86(2)(a) has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders.
2. Contracts shall be awarded by the automatic award procedure or by the best-value-for-money procedure as referred to in the implementing rules.

*Article 88*

1. The arrangements for submitting tenders shall be such as to ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.
2. If deemed appropriate and proportionate, the Joint Undertaking may require tenderers to lodge a security in advance as a guarantee that the bids made will not be withdrawn.
3. With the exception of the contracts involving small amounts as defined in the implementing rules, applications and tenders shall be opened by an opening board appointed for this purpose. Any tender or application declared by the opening board not to satisfy the conditions laid down shall be rejected.
4. All request to participate or all tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the Joint Undertaking the award of the contract.

*Article 89*

While the procurement procedure is under way, all contacts between the Joint Undertaking and candidates or tenderers shall satisfy conditions ensuring transparency and equal treatment. They may not lead to substantial amendment of the conditions of the contract or the terms of the original tender as laid down in the implementing rules.

*Article 90*

1. The authorising officer shall decide to whom the contract is to be awarded, in compliance with the selection and award criteria laid down in advance in the documents relating to the call for tenders and the procurement rules.
2. The Joint Undertaking shall notify all the candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken, and all tenderers whose tenders are admissible and who make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

#### *Article 91*

The Joint Undertaking may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation, if provided for in the call for tender.

The decision must be substantiated and be brought to the attention of the candidates or tenderers.

### **SECTION 4**

### **ADVERTISING**

#### *Article 92*

1. Contracts shall be advertised by appropriate means as specified in the implementing rules.
2. Contract notices shall be published in advance except in the cases referred to in Article 81(1) (d), as specified in the in the implementing rules.
3. Advertising of certain information after the contract has been awarded may be dropped where it would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between them.

### **SECTION 5**

### **GUARANTEES AND CONTROL**

#### *Article 93*

1. The Joint Undertaking may require contractors to lodge a guarantee in advance.
2. The Joint Undertaking may, if it deems appropriate and proportionate, require contractors to lodge such a guarantee in order to:
  - a) ensure full performance of the contract;
  - b) limit the financial risks connected with payment of pre-financing.

#### *Article 94*

Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the Joint Undertaking shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure, if provided for in the call for tender.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the Joint Undertaking may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract, if provided for in the contract.

Where such errors, irregularities or fraud are attributable to the contractor, and if provided for in the contract, the Joint Undertaking may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.

## **CHAPTER 2**

### **PROVISIONS APPLICABLE TO ADMINISTRATIVE CONTRACTS AWARDED BY THE JOINT UNDERTAKING**

#### *Article 95*

1. For administrative contracts to be awarded by the Joint Undertaking in order to obtain the supply of movable or immovable assets, the execution of works or the provision of services for its administrative functioning and needs, the relevant provisions of the general Financial Regulation and the rules for implementing that regulation shall apply.
2. The Joint Undertaking may request to be associated, as contracting authority, with the award of the Commission or interinstitutional contracts and in the award of contracts of other Community bodies.
3. The Joint Undertaking may conclude a contract, without having recourse to a public procurement procedure, with the Commission, the interinstitutional offices, the Translation Centre and the Host state, for the supply of goods, provision of services or performance of work that the latter provide.
4. The Joint Undertaking may use joint procurement procedures with contracting authorities of the Host state to cover its administrative needs.



## TITLE VI

### GRANTS

#### CHAPTER 1

##### SCOPE AND FORM OF GRANTS

###### *Article 96*

1. Grants are direct financial contributions, by way of donation, from the budget in order to finance actions intended to help achieve the tasks and activities of the Joint Undertaking.

They shall be covered by a written agreement between the Joint Undertaking and the successful applicant. The following shall not constitute grants within the meaning of this Title:

- a) expenditure on the Members and staff of the Joint Undertaking, and contributions to the European schools;
- b) the public contracts;
- c) contributions paid by the Joint Undertaking as subscriptions to bodies of which they are members;
- d) contributions of the Joint Undertaking under international agreements or arrangements;
- e) repayment of travel and subsistence of expenses incurred by, or where appropriate any other indemnities paid to persons invited or mandated by the Joint Undertaking.

###### *Article 97*

Grant applications shall be eligible if submitted by the following:

- a) legal persons; grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf, and assume financial liability;
- b) natural persons in so far as these are required by the nature or characteristics of the action or the objective pursued by the applicant.

*Article 98*

1. Grants may take any of the following forms:
  - a) reimbursement of a specified proportion of the eligible costs actually incurred;
  - b) lump sums;
  - c) flat-rate financing;
  - d) a combination of the forms referred to in points (a), (b) and (c).
2. Grants shall not exceed an overall ceiling expressed in terms of absolute value.

## CHAPTER 2

### PRINCIPLES

*Article 99*

1. Grants shall be subject to the principles of transparency and equal treatment.  
  
They may not be cumulative or awarded retrospectively and they shall involve co-financing.  
  
On no account may the combined total costs eligible for financing be exceeded.
2. Grants may not have the purpose or effect of producing a profit for the beneficiary.
3. Paragraph 2 shall not apply to the following:
  - a) study, research or training scholarships paid to natural persons;
  - b) prizes awarded following contests.

*Article 100*

1. Grants shall be subject to the annual work programme of the Joint Undertaking,  
  
That annual work programme shall be implemented through the publication of calls for proposals, save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action.
2. All grants awarded in the course of a financial year shall be published annually with due observance of the requirements of confidentiality and security.

*Article 101*

Each action may give rise to the award of only one grant from the budget to any one beneficiary.

The Joint Undertaking shall request the applicant to immediately inform the authorising officer of any multiple applications and multiple grants relating to the same action or to the same work programme.

In no circumstances, shall the same costs be financed twice by the budget.

*Article 102*

A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the grant is awarded.

In such cases, costs eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases.

No grant may be awarded retrospectively for actions already completed.

*Article 103*

The grant may not finance the entire costs of the action.

## **CHAPTER 3**

### **AWARD PROCEDURE**

*Article 104*

1. Grant applications shall be submitted in writing.
2. Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 83(1), 84 and 86.

Applicants shall certify that they are not in one of the situations referred to in the first subparagraph. However, the authorising officer may refrain from requiring such certification for very low valued grants as provided for in the implementing rules.

3. If provided for in the call for proposals, financial penalties which are effective, proportionate and dissuasive, may be imposed on applicants by the authorising officer.

If provided for in the grant agreement, such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the

implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.

*Article 105*

1. The selection criteria shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.
2. The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

*Article 106*

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.
2. The authorising officer responsible shall then, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.
3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the Joint Undertaking shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria already announced.

## **CHAPTER 4**

### **PAYMENT AND CONTROL**

*Article 107*

The pace of payments shall be determined by the financial risks involved, the duration and progress of the action or the costs incurred by the beneficiary.

*Article 108*

The authorising officer responsible may, if he/she deems it appropriate and proportionate, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

The authorising officer shall require the beneficiary to lodge such a guarantee in advance in the cases specified in the implementing rules.

*Article 109*

1. The amount of the grant shall not become final until the Joint Undertaking has accepted the final reports and accounts, without prejudice to subsequent checks by the Joint Undertaking.
2. Should the beneficiary fail to comply with his obligations, the grant shall be suspended or reduced or terminated after the beneficiary has been given the opportunity to make his observations, in particular where:
  - a) the agreed action or work programme is not carried out at all, or is not carried out properly, in full or on time;
  - b) the amounts exceeding the financing ceilings set in the grant agreement have been paid;
  - c) the amounts paid in accordance with the grant agreement are higher than the real costs incurred by the beneficiary for the action or where the operating budget reveals a surplus *ex post*.

## CHAPTER 5

### IMPLEMENTATION

*Article 110*

1. Where implementation of the action requires the award of procurement contracts by the beneficiary, the relevant national procurement rules of the beneficiary shall apply.

Special rules may be included by the authorising officer responsible in the grant agreement.
2. Where implementation of the action requires financial support to be given to third parties, the beneficiary of a grant may give such financial support provided that the following conditions are met:
  - a) the financial support is not the primary aim of the action;
  - b) the conditions for the giving of such support are strictly defined in the grant agreement between the beneficiary and the Joint Undertaking, with no margin for discretion;
  - c) the amounts concerned are small.
3. Each grant agreement shall provide expressly for the Joint Undertaking and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors and subcontractors who have received Joint Undertaking funds.

## TITLE VII

### EXPERTS

#### *Article 111*

1. The Joint Undertaking may select, on the basis of the procedure laid down in paragraph 2, external experts for tasks involving in particular the evaluation of proposals and technical assistance. Such experts shall be paid on the basis of a fixed amount.

The Joint Undertaking may directly use experts on the lists of drawn up by the Commission or other Community bodies.

2. A call for expressions of interest shall be published in particular in the *Official Journal of the European Union* or the internet site of the Joint Undertaking in order to ensure maximum publicity among potential candidates and with a view to establishing a list of experts.

The list drawn up following the call for expressions of interest shall be valid for no more than the duration of five years.

Any interested person may submit an application at any time during the period of validity of the list, with the exception of the last three months of that period.

3. External experts shall not appear on the list referred to in paragraph 2 if they are in one of the situations of exclusion referred to in Article 83.
4. External experts appearing on the list referred to in paragraph 2 shall be selected on the basis of their ability to perform the tasks referred to in paragraph 1 and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.

## TITLE VIII

# PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

## CHAPTER 1

### PRESENTATION OF THE ACCOUNTS

#### *Article 112*

1. The annual accounts of the Joint Undertaking shall comprise:
  - a) the financial statements of the Joint Undertaking;
  - b) the reports on implementation of the budget of the Joint Undertaking;

The accounts of the Joint Undertaking shall be accompanied by a report on budgetary and financial management of the financial year.

2. The report referred to in paragraph 1 shall give an account, *inter alia*, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.

#### *Article 113*

The accounts shall comply with the rules and be accurate and comprehensive and present a true and fair view:

- a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow;
- b) as regards reports on budgetary implementation, of revenue and expenditure operations.

#### *Article 114*

The financial statements shall be drawn up in accordance with the generally accepted accounting principles, namely:

- a) going concern basis;
- b) prudence;
- c) consistent accounting methods;

- d) comparability of information;
- e) materiality;
- f) no netting;
- g) reality over appearance;
- h) accrual-based accounting.

*Article 115*

1. In accordance with the principle of accrual-based accounting, the financial statements shall show the charges and income for the financial year, regardless of the date of payment or collection.
2. The value of assets and liabilities shall be determined in accordance with the valuation rules laid down by the accounting methods provided for in Article 121.

*Article 116*

1. The financial statements shall be presented in euro and shall comprise:
  - a) the balance sheet and the economic outturn account, which represent the assets and liabilities and financial situation and the economic outturn at 31 December of the previous financial year; they shall be presented in accordance with the structure laid down by the Council Directive on the annual accounts of certain types of companies, but with account being taken of the specific nature of the Joint Undertaking's activities;
  - b) the cash-flow table showing amounts collected and disbursed during the financial year and the final treasury position;
  - c) the statement of changes in capital presenting in detail the increases and decreases during the financial year in each item of the capital accounts.
2. The annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the Joint Undertaking's activities.

*Article 117*

The budgetary implementation reports shall be presented in euro. They shall comprise:

- a) the budgetary outturn account, which sets out all budget operations for the financial year in terms of revenue and expenditure; the structure in which it is presented shall be the same as that of the budget itself;



- b) the annex to the budgetary outturn account, which shall supplement and comment on the information given in that account.

#### *Article 118*

The accounting officer shall send to the Commission's accounting officer, to the Court of Auditors and the Governing Board by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the financial year, referred to in Article 112 so that the Commission's accounting officer can consolidate the accounts as provided for in relevant provisions of the general Financial Regulation.

The accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest.

#### *Article 119*

1. In accordance with Article 15 of the Statutes, the Court of Auditors shall, by 15 June of the following year at the latest, make its observations on the provisional accounts of the Joint Undertaking.
2. On receiving the Court of Auditors' observations on the provisional accounts of the Joint Undertaking, the Director shall draw up the final accounts of the Joint Undertaking in accordance with Article 46, under his/her own responsibility and send them to the Governing Board for approval.
3. The Director shall send the approved final accounts to the Commission's accounting officer, the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.
4. The final accounts of the Joint Undertaking, consolidated with those of the Commission, shall be published in the Official Journal of the European Union on 15 November of the following year.
5. The Director shall send the Court of Auditors a reply to the observations made in its annual report by 30 September of the following year at the latest. These replies of the Joint Undertaking shall be sent to the Commission at the same time.

## **CHAPTER 2**

### **ACCOUNTING**

#### **SECTION 1**

##### **COMMON PROVISION**

###### *Article 120*

1. The accounting system of the Joint Undertaking is the system serving to organise the budgetary and financial information in such a way that figures can be input, filed and registered.
2. The accounts shall consist of general accounts and budgetary accounts. These accounts shall be kept in euro on the basis of the calendar year.
3. The figures in the general accounts and the budgetary accounts shall be adopted at the close of the financial year so that the accounts referred to in Chapter 1 can be drawn up.
4. Notwithstanding paragraphs 2 and 3, the authorising officer may keep analytical accounts.

###### *Article 121*

The accounting rules and methods and the harmonised chart of accounts to be applied by the Joint Undertaking shall be adopted by the Commission's accounting officer in accordance with the applicable provisions of the general Financial Regulation.

#### **SECTION 2**

##### **GENERAL ACCOUNTS**

###### *Article 122*

The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the Joint Undertaking.

*Article 123*

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.
2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system shall be such as to leave a trail for all accounting entries.

*Article 124*

The accounting officer of the Joint Undertaking shall, after the close of the financial year and up to the date of presentation of the final accounts, make any adjustments which, without involving disbursement or collection in respect of that financial year, are necessary for a true and fair presentation of the accounts in compliance with the rules.

**SECTION 3****BUDGETARY ACCOUNTS***Article 125*

1. The budget accounts shall provide a detailed record of budgetary implementation.
2. For the purposes of paragraph 1, the budgetary accounts shall record all budgetary revenue and expenditure operations provided for in Title IV of this Regulation.

**CHAPTER 3****PROPERTY INVENTORIES***Article 126*

1. The Joint Undertaking shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting the Joint Undertaking property in accordance with a model drawn up by the accounting officer of the Commission.

The Joint Undertaking shall check that entries in the inventory correspond to the actual situation.

2. The sale of movable property shall be advertised in an appropriate manner.

## **TITLE IX**

### **EXTERNAL AUDIT AND DISCHARGE**

#### **CHAPTER 1**

##### **EXTERNAL AUDIT**

###### *Article 127*

The Court of Auditors shall scrutinise the accounts of the Joint Undertaking in accordance with Article 160(c) of the Euratom Treaty.

###### *Article 128*

1. The Joint Undertaking shall send the Court of Auditors the budget, as finally adopted. It shall inform the Court of Auditors, as soon as possible, of all decisions and acts adopted pursuant to Articles 10, 14, 19 and 23.
2. The Joint Undertaking shall send the Court of Auditors the internal financial rules it adopts.
3. The Court of Auditors shall be informed of the appointment of authorising officers, accounting officers and imprest administrators and of delegation decisions under Article 37, Article 46(1) and (6) and Article 47.

###### *Article 129*

The scrutiny carried out by the Court of Auditors shall be governed by the relevant provisions of the general Financial Regulation.

#### **CHAPTER 2**

##### **DISCHARGE**

###### *Article 130*

1. The European Parliament, upon a recommendation from the Council shall, before 30 April of year  $n + 2$ , give a discharge to the Director in respect of the implementation of the budget for year  $n$ .

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Director of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the Director shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

#### *Article 131*

1. The discharge decision shall cover the accounts of all the revenue and expenditure of the Joint Undertaking, the resulting balance and the assets and liabilities of the Joint Undertaking shown in the financial statement.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements of the Joint Undertaking. It shall also examine the annual report made by the Court of Auditors, together with the replies of the Director of the Joint Undertaking, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
3. The Director shall submit to the European Parliament, at the latter's request, in accordance with Article 180(b) of the Euratom Treaty, any information required for the smooth application of the discharge procedure for the financial year in question.

#### *Article 132*

1. The Director shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.
2. At the request of the European Parliament, the Council or the Governing Board, the Director shall report on the measures taken in the light of these observations and comments. He/she shall send a copy thereof to the Commission, the Court of Auditors and the Governing Board.

### **TITLE X**

## **TRANSITIONAL AND FINAL PROVISIONS**

#### *Article 133*

The time limits referred to in Article 118, 119 shall apply for the first time in respect of budgetary year 2009 and the time limit referred to in Article 130 shall apply for the first time in respect of budgetary year 2010.

*Article 134*

Annual membership contributions referred to in Article 28(2) shall be calculated in respect of the budgetary year 2008 on the basis of the administrative expenditures committed in the budgetary year 2007 and resources required for the administration of the Joint Undertaking for 2008.

*Article 135*

The European Parliament, the Council and the Commission shall be empowered to obtain any necessary information or explanations regarding budgetary matters within their fields of competence.

*Article 136*

The Governing Board shall, as necessary, adopt detailed rules for implementing this Regulation, on a proposal from the Director.

The Governing Board may delegate the adoption of these implementing rules to the Executive Committee.

The Director shall transmit these implementing rules to the Commission for information.

*Article 137*

This Decision shall enter into force on 1 November 2007 subject to the adoption by the Commission of a positive opinion on this Regulation.

It can be amended following the same procedure as for its adoption.

Done at Barcelona, 22 October 2007

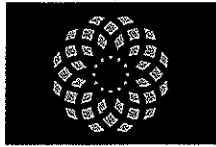
For the Governing Board



**Carlos Varandas**

Chair of the Governing Board

CRD



## FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy  
THE GOVERNING BOARD

### **DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ADOPTING THE AMENDMENTS TO THE FINANCIAL REGULATION**

THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER  
AND THE DEVELOPMENT OF FUSION ENERGY,

Having regard to the Decision of the Governing Board of 22 October 2007 adopting the  
Financial Regulation of the Joint Undertaking<sup>1</sup>,

Having regard to the final opinion of the Commission of 6 November 2007 on the draft  
Financial Regulation of the Joint Undertaking<sup>2</sup>,

Whereas:

- (1) The Governing Board adopted the Financial Regulation subject to the positive opinion  
of the Commission;
- (2) It is necessary to amend the Financial Regulation taking into account the final opinion  
of the Commission.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The amendments to the Financial Regulation of the Joint Undertaking set out in the Annex of  
this Decision are hereby adopted.

#### *Article 2*

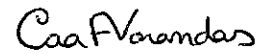
This Decision shall have immediate effect.

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<sup>1</sup> F4E(07)-GB03-11 of 22/10/2007  
<sup>2</sup> C(2007)5200 of 06/11/2007

Done at Barcelona, 18 December 2007

For the Governing Board

A handwritten signature in black ink, appearing to read 'Caa Varandas'.

**Carlos Varandas**

Chair of the Governing Board



**ANNEX**

**Amendments proposed by the Commission to the draft Financial Regulation of the  
European Joint Undertaking for ITER and the Development of Fusion Energy as  
approved by its Governing Board on 28 June 2007**

- (1) Recital (11), third subparagraph shall be amended as follows:

"For the award of administrative contracts, the relevant provisions of the general Financial Regulation and its implementing rules should apply."
- (2) Article 15(2) shall be amended as follows:

"Commitment appropriations may not exceed the relevant Euratom annual contributions available through the Community research and training programmes adopted pursuant to Article 7 of the Treaty, plus annual membership contributions from other members than Euratom, revenue from the contribution from ITER Host State and any other revenue referred to in Article 5."
- (3) Article 81(2), first subparagraph shall be amended as follows:

"[...] in the [...]" shall be deleted.
- (4) Article 83(1)(g) shall be deleted.
- (5) Article 85 shall be amended as follows:

"A central database set up and operated by the Commission under relevant provisions of the general Financial Regulation containing details of candidates and tenderers which are in the situations of exclusion shall be common to the Joint Undertaking and shall be used by the Joint Undertaking in accordance with the relevant rules adopted by the Commission."
- (6) Article 86 shall be deleted.
- (7) The numbering of Articles 87 – 137 shall be adapted accordingly.
- (8) Article 87(1) (now Article 86(1)) shall be amended as follows:

"Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 83, 84 and 85 has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders."
- (9) Article 92 (2) (now Article 91(2)) shall be amended as follows:

"[...] in the [...]" shall be deleted.
- (10) Title VI, Chapter 1, the title of chapter 1 shall be amended as follows:

"Scope, eligibility and form of grants"

(11) Article 96 (now Article 95) shall be divided in two paragraphs as follows:

1. "Grants are direct financial contributions, by way of donation, from the budget in order to finance actions intended to help achieve the tasks and activities of the Joint Undertaking.

They shall be covered by a written agreement between the Joint Undertaking and the successful applicant.

2. The following shall not constitute grants within the meaning of this Title:

- a) expenditure on the Members and staff of the Joint Undertaking, and contributions to the European schools;
- b) the public contracts;
- c) contributions paid by the Joint Undertaking as subscriptions to bodies of which they are members;
- d) contributions of the Joint Undertaking under international agreements or arrangements;
- e) repayment of travel and subsistence of expenses incurred by, or where appropriate any other indemnities paid to persons invited or mandated by the Joint Undertaking."

(12) Article 103 (now article 102) shall be amended as follows:

- (a) Article 103(2), first subparagraph shall be amended as follows:

"Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 83(1), 84 and 85."

- (b) Article 103(3), shall be deleted.

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА  
TRIBUNAL DE CUENTAS EUROPEO  
EVROPSKÝ ÚČETNÍ DVŮR  
DEN EUROPÆISKE REVISIONSRET  
EUROPÄISCHER RECHNUNGSHOF  
EUROOPA KONTROLLIKODA  
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ  
EUROPEAN COURT OF AUDITORS  
COUR DES COMPTES EUROPÉENNE  
CÚIRT INIÚCHÓIRÍ NA HEORPA



CORTE DEI CONTI EUROPEA  
EIROPAS REVĪZIJAS PALĀTA  
EUROPOS AUDITO RŪMAI

EURÓPAI SZÁMVEVŐSZÉK  
IL-QORTI EWROPEA TA' L-AWDITURI  
EUROPESE REKENKAMER  
EUROPEJSKI TRYBUNAŁ OBRACHUNKOWY  
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EURÓPSKY DVOR AUDÍTOROV  
EVROPSKO RAČUNSKO SODIŠČE  
EUROOPAN TILINTARKASTUSTUOMIOISTUIN  
EUROPEISKA REVISIONSRÄTTEN

## Opinion No 4/2008

(pursuant to Article 248(4) of the EC Treaty and Article 160c of the Euratom Treaty)

on the Financial Regulation of the European Joint Undertaking for ITER  
and the Development of Fusion Energy (Fusion for Energy)

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**THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Community and in particular Articles 248(4) and 279 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular Articles 160c(4) and 183 thereof,

Having regard to Council Decision No 2007/198/Euratom of 27 March of 2007 establishing the European Joint Undertaking for ITER and the development of Fusion Energy<sup>1</sup>, and in particular Article 5(1) thereof,

Having regard to the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy adopted by Decision of its Governing Board on 22 October 2007<sup>2</sup>,

Having regard to the Implementing Rules of the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy adopted by Decision of its Governing Board on 22 October 2007<sup>3</sup>,

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>4</sup>,

Having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on

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<sup>1</sup> OJ L 90, 30.3.2007.

<sup>2</sup> [http://fusionforenergy.europa.eu/documents/F4E\(07\)-GB03-11.pdf](http://fusionforenergy.europa.eu/documents/F4E(07)-GB03-11.pdf).

<sup>3</sup> [http://fusionforenergy.europa.eu/documents/F4E\(07\)-GB03-12.pdf](http://fusionforenergy.europa.eu/documents/F4E(07)-GB03-12.pdf).

<sup>4</sup> OJ L 248, 16.9.2002. Corrigendum published in OJ L 25, 30.1.2003.

the Financial Regulation applicable to the general budget of the European Communities<sup>5</sup>,

Having regard to Commission Regulation (EC, Euratom) No 652/2008 amending Commission Regulation (EC, Euratom) No 2343/2002 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>,

Having regard to the Court's Opinion No 4/2006 on the draft Council Regulation amending Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>7</sup>,

Having regard to the Court's Opinion No 8/2007 on a proposal for a Commission Regulation (EC, Euratom) amending Commission Regulation (EC, Euratom) No 2343/2002 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>8</sup>,

Having regard to the request of the Director of the European Joint Undertaking for ITER and the development of Fusion Energy for an opinion on the Financial Regulation of the European Joint Undertaking for ITER and the development of Fusion Energy, which was submitted to the Court of Auditors on 28 February 2008,

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

<sup>6</sup> OJ L 181, 10.7.2008.

<sup>7</sup> OJ C 273, 9.11.2006.

**HAS ADOPTED THE FOLLOWING OPINION:****INTRODUCTION**

1. Article 1 of Council Decision (Euratom) No 2007/198/Euratom of 27 March 2007 (the ITER Council Decision) establishes the European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy) (the Joint Undertaking) for a period of 35 years from 19 April 2007.
2. Article 4 of the ITER Council Decision states that the indicative total contribution from Euratom to the indicative total resources deemed necessary for the Joint Undertaking to perform its tasks shall be 7 649 million euro, representing 79,2 % of the total indicative resources of 9 653 million euro of the Joint Undertaking.
3. Article 5 of the ITER Council Decision states that the Joint Undertaking shall have a distinct financial regulation based on the principles of the Framework Financial Regulation<sup>9</sup> ('the ITER Financial Regulation'), which may depart from the Framework Financial Regulation where the specific operating needs of the Joint Undertaking so require and subject to prior consultation with the Commission.
4. Article 15 of the Statutes of the Joint Undertaking (Annex I of the ITER Council Decision) states that within two months after the end of each financial year the provisional accounts of the Joint Undertaking shall be submitted to the Commission and the Court of Auditors of the European Communities ('the Court of Auditors'). The Court of Auditors shall, by 15 June after the end of

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<sup>8</sup> OJ C 23, 28.1.2008.

<sup>9</sup> Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 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.

each financial year, make its observations on the provisional accounts of the Joint Undertaking.

5. The ITER Financial Regulation and its Implementing Rules were adopted by Decision of its Governing Board on 22 October 2007.

6. The European Commission delivered a favourable opinion on the ITER Financial Regulation on 6 November 2007.

7. The Director of the European Joint Undertaking for ITER and the Development of Fusion Energy requested the opinion of the Court of Auditors on the ITER Financial Regulation on 28 February 2008.

8. The Framework Financial Regulation on which the ITER Financial Regulation is based has recently been amended<sup>10</sup> to align it with the amendments to the General Financial Regulation<sup>11</sup>. The Court adopted the Opinion No 4/2006<sup>12</sup> on the amendments to the General Financial Regulation and Opinion No 8/2007<sup>13</sup> on the amendments to the Framework Financial Regulation.

### **GENERAL REMARKS**

9. The Court draws attention to the fact that the request to give an opinion on the ITER Financial Regulation was sent to the Court after the adoption of the Financial Regulation by the Governing Board.

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<sup>10</sup> Commission Regulation (EC, Euratom) No 652/2008 amending Commission Regulation (EC, Euratom) No 2343/2002. OJ L 181 (10.7.2008).

<sup>11</sup> Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

<sup>12</sup> OJ C 273, 9.11.2006.

<sup>13</sup> OJ C 23, 28.1.2008.



10. The Court notes that the ITER Financial Regulation is largely based on the principles of the Framework Financial Regulation and of the general Financial Regulation although it differs on certain points which are the subject of analysis in this Opinion.

11. The Court has also taken the recent amendments to the Framework Financial Regulation into consideration for this Opinion and recommends the Governing Board of the European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy) to amend its Financial Regulation accordingly.

### **SPECIFIC REMARKS**

12. The Court identified a number of specific issues for which it considers that amendments to the ITER Financial Regulation are necessary in order to strengthen the financial framework of the Joint Undertaking. These are dealt with below.

#### ***Exceptions to budgetary principles***

##### **Cancelled appropriations**

13. Articles 10 and 11 of the ITER Financial Regulation relate to the re-use of cancelled appropriations in case of unused appropriations and of decommitted amounts. Both Articles stipulate: *"Given the needs of the Joint Undertaking, the cancelled appropriations shall be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28"*. The Court recommends that the term "shall" is replaced by "may", so that this deviation from the Framework Regulation is not considered as automatic. The Court also recommends that the Implementing Rules of the Financial Regulation define the conditions under which this prerogative may be applied.

**Conditions to raise and grant loans**

14. Unlike the EC Treaty, Article 172 of the Euratom Treaty states that the Community may raise loans for the financing of research or investments on terms fixed by the Council.

15. The ITER Council Decision<sup>14</sup> states that the ITER Joint Undertaking shall have the possibility to take out loans, following the approval of the Governing Board and under the conditions set out in the Financial Regulation.

16. However, neither the ITER Financial Regulation nor the Implementing Rules sufficiently specify the conditions for the raising and granting of loans.

17. The Court is also of the opinion that the explicit approval of the Governing Board should be required for the raising and granting of loans, as stated in point 4 of Annex III to the Statutes of the ITER Joint Undertaking. Therefore, Article 5 of the Implementing Rules of the ITER Financial Regulation which stipulates that the raising or granting of loans shall be deemed accepted if the Governing Board fails to take a decision within one month on a request from the Director should be amended accordingly.

18. The Court further considers that arrangements for reporting to the Commission and the Budgetary Authority on the loans granted and raised by the Joint Undertaking should be laid down in the Financial Regulation of the Joint Undertaking.

**Transfer of appropriations**

19. The Court is of the view that the time limit set in Article 23(2) of the ITER Financial Regulation, for the Governing Board to oppose transfers of appropriations between titles beyond the limit of 10 % of the budgetary line

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<sup>14</sup> Annex III, point 4, to the Statutes of the ITER Joint Undertaking.

could be reduced from four weeks to three weeks, in line with the recent amendments to Article 23 of the Framework Financial Regulation.

20. However, the Court is of the opinion that the final sentence of Article 23(2) (*"In cases of urgency, the Director may shorten the time-limit to at least five working days"*) may reduce the control exercised by the Governing Board over the transfers of appropriations. Whilst the operating needs of the ITER Joint Undertaking have to be facilitated, the Court suggests that for urgent cases, the Governing Board may agree to reduce the time-limit to at least five working days. The Implementing Rules should specify which cases may be treated as urgent.

### ***The role of the Internal Audit Service of the Commission***

21. As a general rule, according to Article 71(2) of the Framework Financial Regulation, the Commission's internal auditor exercises the same powers with respect to the Community bodies as with respect to Commission departments.

22. The ITER Financial Regulation does not refer to the powers of the Commission's internal auditor to perform audits of the Joint Undertaking. The Court considers that there are no specific circumstances justifying the exclusion of any role for the Internal Audit Service (IAS) of the Commission. On the contrary, there are strong arguments in favour of allowing the same powers for the IAS as exercised in respect of other Community Bodies. These include *inter alia* :

- the high amount of Community funding allocated to the Joint Undertaking (nearly 80 % of the total estimated budget of 9 653 million euro);
- the fact that (unlike other Community Joint Undertakings) the ITER Joint Undertaking is supported entirely from public funds;
- the close relationship with the Commission and the EU general budget – as demonstrated by the requirement to reimburse to the Commission any surplus balance of the economic outturn account;

- the consolidation of the accounts of the Joint Undertaking with the accounts of the Community institutions and the duty of the Joint Undertaking to send financial information to the Commission.

23. Furthermore, in view of the size of the budget and the complexity of the tasks to be performed by the Joint Undertaking, the Court is of the opinion that the Joint Undertaking should set up an Audit Committee, reporting directly to the Governing Board.

### ***Conditions to award grants***

24. Article 104(3) of the ITER Financial Regulation states that, only if provided for in the call for proposals, financial penalties, may be imposed on applicants and also on beneficiaries who, at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.

25. The Court draws attention to the high risks associated with the legality and regularity of payments related to research grants, as reported by the Court in its Annual Reports<sup>15</sup>.

26. The Court is of the opinion that the provisions referring to the administrative and financial penalties that may be imposed on applicants and beneficiaries of grants shall apply as a general rule. Therefore the Court recommends to amend Article 104(3) of the ITER Financial Regulation accordingly.

### ***Transitional provisions***

27. The Court considers that the text of the transitional provision in Article 133, referring to the time limits for the presentation of the accounts set out in Articles

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<sup>15</sup> See for example paragraph 7.30 of the 2006 Annual Report.

118 and 119 and to the discharge procedure set out in Article 130, is misleading. The Court proposes an amendment to Article 133, to make clear that the first set of accounts is to be submitted in 2009 and that the first discharge procedure takes place in 2010, both in respect of the accounts for the financial year 2008.

### **ANNEX**

28. The table shown below includes the Court's comments to the ITER Financial Regulation for those points on which it has an observation to make<sup>16</sup>.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 9 October 2008.

*For the Court of Auditors*

Vítor Manuel da Silva Caldeira

*President*

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<sup>16</sup> For clarity the table has three columns, comparing the ITER Financial Regulation with the Framework Financial Regulation and giving the Court's remarks.

TEXT IN BOLD IN FIRST COLUMN SHOWS THE DIFFERENCES IN THE FRAMEWORK FINANCIAL REGULATION COMPARED WITH THE ITER FINANCIAL REGULATION.  
TEXT UNDERLINED IN SECOND COLUMN SHOWS THE DIFFERENCES IN THE ITER FINANCIAL REGULATION COMPARED TO THE FRAMEWORK FINANCIAL REGULATION.

FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
COMMISSION REGULATION (EC, Euratom) No 2343/2002 of 23 December 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. (CONSOLIDATED TEXT)	DECISION OF 22 OCTOBER 2007 OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ADOPTING THE FINANCIAL REGULATION (CONSOLIDATED TEXT)	
TITLE II	TITLE II	
BUDGETARY PRINCIPLES	BUDGETARY PRINCIPLES	
Article 10	Article 10	
1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled.	1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled. <u>Given the needs of the Joint Undertaking, the cancelled appropriations shall be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.</u>	The second sentence of Article 10.1 is derogation to the general procedure laid down in the Framework Financial Regulation. The Court recommends defining the conditions under which this prerogative may be applied, replacing the term "shall" by "may" in order to limit the application of a derogation of the general principle.
3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure, <b>to be defined in the rules implementing the financial regulation of each Community body</b> , have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.	3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.	The Court recommends to add, in line with the Framework Financial Regulation:  <i>"to be defined in the rules implementing the financial regulation " after "...of the commitment procedure"</i>
6. Appropriations carried over which have not been committed by 31 March of year N+1 shall be automatically cancelled.	6. Appropriations carried over which have not been committed by 31 March of the following year shall be automatically cancelled. <u>Given the needs of the Joint Undertaking, the cancelled appropriations shall be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.</u>	The second sentence of Article 10.6 is derogation to the general procedure laid down in the Framework Financial Regulation. The Court recommends defining the conditions under which this prerogative may be applied, replacing the term "shall" by "may" in order to limit the application of a derogation of the general principle.

TEXT IN BOLD IN FIRST COLUMN SHOWS THE DIFFERENCES IN THE FRAMEWORK FINANCIAL REGULATION COMPARED WITH THE ITER FINANCIAL REGULATION.  
TEXT UNDERLINED IN SECOND COLUMN SHOWS THE DIFFERENCES IN THE ITER FINANCIAL REGULATION COMPARED TO THE FRAMEWORK FINANCIAL REGULATION.

FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<p>7. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically.</p> <p><b>By 1 June of the year N+1 at the latest, the Community body shall inform the Commission about the implementation of the assigned revenues carried over.</b></p>	<p>8. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically.</p>	<p>The Court recommends to add, in line with the recent amendments incorporated in the Framework Financial Regulation, the following paragraph:</p> <p><i>"By 1 June of the following year at the latest, the Joint Undertaking shall inform the Commission and the Budgetary Authority about the implementation of the assigned revenue carried over"</i></p>
<p><i>Article 11</i></p>	<p><i>Article 11</i></p>	
<p>Where amounts are decommitted, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were committed, the appropriations concerned shall be cancelled.</p>	<p>Where amounts are decommitted, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were committed, the appropriations concerned shall be cancelled. <u>Given the needs of the Joint Undertaking, the cancelled appropriations shall be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.</u></p>	<p>The second sentence of Article 11 is derogation to the general procedure laid down in the Framework Financial Regulation. The Court recommends defining the conditions under which this prerogative may be applied, replacing the term "shall" by "may" in order to limit the application of a derogation of the general principle.</p>
<p><i>Article 15</i></p>	<p><i>Article 15</i></p>	
<p>3. The Community body may not raise loans.</p>	<p><u>3. The Joint Undertaking may grant or raise loans in accordance with Article 4 and Annex III point 4 of the Statutes.</u></p>	<p>The Court recommends to add to this point, as stated in Point 4 of Annex III of the Statutes.": and <i>with the necessary approval of the Governing Board</i>".</p> <p>The Court also recommends to include in the text of the Financial Regulation that the conditions and the limits to take out and grant loans shall be defined in the Implementing Rules of the Financial Regulation. Arrangements for reporting to the Commission and the Budgetary Authority on the loans granted and raised should be defined.</p>
<p>4. <b>Community funds paid to the Community body shall constitute for its budget a balancing subsidy which shall count as pre-financing within the meaning of Article 81(1)(b)(i) of the general Financial Regulation.</b></p>		<p>Point 4 of Article 15 of the Framework Financial Regulation should, <i>mutatis mutandis</i>, be included in the ITER Financial Regulation.</p>

TEXT IN BOLD IN FIRST COLUMN SHOWS THE DIFFERENCES IN THE FRAMEWORK FINANCIAL REGULATION COMPARED WITH THE ITER FINANCIAL REGULATION.  
TEXT UNDERLINED IN SECOND COLUMN SHOWS THE DIFFERENCES IN THE ITER FINANCIAL REGULATION COMPARED TO THE FRAMEWORK FINANCIAL REGULATION.

FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
5. The Community body shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests, it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.		Point 5 of Article 15 of the Framework Financial Regulation should, <i>mutatis mutandis</i> , be included in the ITER Financial Regulation.
<i>Article 16</i>	<i>Article 16</i>	
<p>1. If the balance of the outturn account within the meaning of Article 81 is positive, it shall be repaid to the Commission up to the amount of the Community subsidy paid during the year. The part of the balance exceeding the amount of the Community subsidy paid during the year shall be entered in the budget for the following financial year as revenue. <b>The Communities bodies shall provide, by 31 March of the year N at the latest, an estimate of the operating surplus from the year N-1, which is to be returned to the Community budget later in year n, in order to complete the information already available concerning the surplus of the year N-2.</b></p> <p><b>This information shall be duly taken into account by the Commission when assessing the financial needs of Community bodies for the year N+1.</b></p>	<p>1. If the balance of the outturn account within the meaning of Article <u>116</u> is positive, it shall be repaid to the Commission up to the amount of the Community <u>contribution</u> paid during the <u>financial</u> year. The part of the balance exceeding the amount of the Community <u>contribution</u> paid during the <u>financial</u> year shall be entered in the budget for the following financial year as revenue.</p>	<p>The third sentence of point 1 of Article 16 of the Framework Financial Regulation and the second paragraph of the same Article should, <i>mutatis mutandis</i>, be included in the ITER Financial Regulation.</p>



TEXT IN BOLD IN FIRST COLUMN SHOWS THE DIFFERENCES IN THE FRAMEWORK FINANCIAL REGULATION COMPARED WITH THE ITER FINANCIAL REGULATION.  
TEXT UNDERLINED IN SECOND COLUMN SHOWS THE DIFFERENCES IN THE ITER FINANCIAL REGULATION COMPARED TO THE FRAMEWORK FINANCIAL REGULATION.

FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<i>Article 20</i>	<i>Article 20</i>	
	<u>2. The value of voluntary contributions in-kind shall be determined by the Joint Undertaking.</u>	The Court recommends that the Implementing Rules of the Financial Regulation should define the conditions to determine the value of contributions in kind.
<i>Article 23</i>	<i>Article 23</i>	
2. Beyond the limit referred in the first paragraph, the director may propose to the management board transfers of appropriations from one title to another. The management board shall have <u>three</u> weeks in which to oppose such transfers. After this time-limit they shall be deemed to be adopted.	2. Beyond the limit referred in the first paragraph, the Director may propose to the <u>Governing Board</u> transfers of appropriations from one title to another. The Governing Board shall <u>have four weeks in</u> which to oppose such transfers; after this time-limit they shall be deemed to be adopted. <u>In cases of urgency, the Director may shorten the time-limit to at least five working days.</u>	The general time limit may be reduced to three weeks in line with Article 23 of the Framework Financial Regulation. The final sentence of Article 23 impairs the control by the Governing Board over the transfers of appropriations, and is contrary to Article 23 of the Framework Financial Regulation. The Court proposes that the last sentence of Article 23 may be drafted as follows: " <i>In cases of urgency the Governing Board may agree to reduce the time-limit to at least five working days.</i> "
4. The Director shall inform the management board as soon as possible of all transfers made. <b>He shall inform the budgetary authority of all transfers carried out under paragraph 2.</b>	4. The Director shall inform the <u>Governing Board</u> as soon as possible of all transfers made.	The Court recommends to add: " <i>He shall inform the budgetary authority of all transfers carried out under paragraph 2</i> ", in line with the Framework Financial Regulation.
<i>Article 26</i>	<i>Article 27</i>	
2. A summary of the budget and amending budgets, <b>as finally adopted</b> , shall be published in the <i>Official Journal of the European Union</i> within three months of their adoption.  <b>The summary shall show the five main revenue budget lines, the five main expenditure budget lines for the administrative and operational budget, the establishment plan and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the figures for the previous year.</b>	2. A summary of the budget and of amending budgets shall be published in the <i>Official Journal of the European Union</i> within three months <u>following the date on which they become definitive.</u>	The Court recommends to add the following paragraph, in line with the Framework Financial Regulation and the Court's recommendation in Opinion 4/2007, paragraph 2.  " <i>The summary shall show the five main revenue budget lines, the five main expenditure budget lines for the administrative and operational budget, the establishment plan and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the figures for the previous year.</i> "

FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<p>3. The budget <b>including the establishment plan</b> and amending budgets, <b>as finally adopted, as well as an indication of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts</b>, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the website of the Community body concerned within <b>four weeks</b> of their adoption.</p>	<p>3. The budget and amending budgets, as became definitive, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission and shall be published on the <u>official internet</u> website of the Joint Undertaking <u>within two months following the date on which they become definitive</u>.</p>	<p>The Court recommends to amend this point, in line with the amendments introduced in the Framework Financial Regulation:</p> <p><i>"The budget <u>including the establishment plan</u> and amending budgets, <u>as finally adopted, as well as an indication of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts</u>, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the website of the <u>Joint Undertaking</u> within <u>four weeks</u> of their adoption."</i></p>
<p>4. The Community body shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, <b>including experts contracted pursuant to Article 74b. The published information shall be easily accessible, transparent and comprehensive</b>. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council.</p> <p><b>Where information is published only in anonymous form, the Community body shall, upon request, provide information on the beneficiaries concerned to the European Parliament in an appropriate manner.</b></p>	<p>4. The Joint Undertaking shall make available, <u>in an appropriate manner</u>, information on the beneficiaries of funds deriving from its budget. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data as laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council of <u>18 December 2001</u><sup>1</sup>.</p>	<p>The Court recommends to amend this point, in line with the amendments introduced in the Framework Financial Regulation:</p> <p><i>"The Joint Undertaking shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, <u>including experts contracted</u>. <u>The published information shall be easily accessible, transparent and comprehensive</u>. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council".</i></p> <p><i>"Where information is published only in anonymous form, the Joint Undertaking shall, upon request, provide information <u>on the beneficiaries concerned to the European Parliament in an appropriate manner</u>".</i></p>

<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
TITLE III	TITLE III	
ESTABLISHMENT AND STRUCTURE OF THE BUDGET	ESTABLISHMENT AND STRUCTURE OF THE BUDGET	
Article 27	Article 28	
<p>4. The Community body shall also send to the Commission and the budgetary authority by 31 March each year at the latest the following:</p> <p>(a) its draft work programme;</p> <p>(b) its updated multi-annual staff policy plan, established in line with the guidelines set by the Commission;</p> <p>(c) information on the number of officials, temporary and contract staff as defined in the Staff Regulations and the Conditions of Employment of Other Servants (hereinafter "Staff Regulations") for the years n-1 and n as well as an estimate for the year n+1;</p> <p>(d) information on contributions in kind granted by the host Member State to the Community body.</p> <p>(e) an estimate of the balance of the outturn account within the meaning of Article 81 for the year n-1.</p>		<p>The Court recommends to add a new point to this Article, in line with the Framework Financial Regulation, as follows:</p> <p><i>"The Joint Undertaking shall also send to the Commission and the budgetary authority by 31 March each year at the latest the following:</i></p> <p><i>(a) its draft work programme;</i></p> <p><i>(b) its updated multi-annual staff policy plan.</i></p> <p><i>(c) information on the number of officials, temporary and contract staff as defined in the Staff Regulations and the Conditions of Employment of Other Servants (hereinafter "Staff Regulations") for the years n-1 and n as well as an estimate for the year n+1;</i></p> <p><i>(d) information on contributions in kind granted by the host Member State to the Community body.</i></p> <p><i>(e) an estimate of the balance of the outturn account within the meaning of Article 81 for the year n-1.</i></p>

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<p>5. As part of the procedure for adoption of the general budget, the Commission shall send the Community body's statement of estimates to the budgetary authority and propose the amount of the subsidy for the Community body and the number of staff it considers that the body needs.</p> <p><b>The Commission shall provide for the draft establishment plans of the Community bodies and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are proposed.</b></p>	<p>4. As part of the procedure for adopting the general budget, the Commission shall send the Joint Undertaking's statement of estimates to the budgetary authority and propose the amount of the contribution to the Joint Undertaking and the number of staff it considers that the Joint Undertaking needs.</p>	<p>The Court recommends to add to this paragraph, in line with the Framework Financial Regulation :</p> <p><i>"The Commission shall provide for the draft establishment plans of the Joint Undertaking and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are proposed".</i></p>
<p>6. The budgetary authority shall adopt the establishment plan of the Community body and any subsequent amendment thereto in accordance with Article 32(1).</p> <p><b>The establishment plan shall be published in an annex to Section III – Commission – of the general budget.</b></p>	<p>5. The budgetary authority shall adopt the establishment plan of the Joint Undertaking and any subsequent amendment thereto in accordance with Article 34(1).</p>	<p>The Court recommends to add to this paragraph, following the elements introduced in the Framework Financial Regulation :</p> <p><i>"The establishment plan shall be published in an annex to Section III – Commission – of the general budget".</i></p>
<p><b>7. The budget and the establishment plan shall be adopted by the management board.</b> They become definitive after final adoption of the general budget setting the amount of the subsidy and the establishment plan and if necessary the budget and the establishment plan shall be adjusted accordingly.</p>	<p><u>6. The Governing Board</u> shall adopt the <u>budget normally before the end of the previous financial year.</u> It becomes definitive after final adoption of the <b>general budget</b> setting the amount of the <u>Community contribution</u> and the establishment plan. If necessary the budget and the establishment plan shall be adjusted accordingly</p>	<p>The Court recommends to amend this point as follows:</p> <p><i>"The Governing Board shall adopt the budget <b>and the establishment plan</b> before the end of the previous financial year. It becomes definitive after final adoption of the <b>general budget</b> setting the amount of the Community contribution and the establishment plan. If necessary the budget and the establishment plan shall be adjusted accordingly."</i></p>
<p><i>Article 31</i></p>	<p><i>Article 33</i></p>	
<p><b>(c) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;</b></p>		<p>The Court recommends to add the following point "c", as included in the Framework Financial Regulation:</p> <p><i>"(c) A summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;"</i></p>

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
TITLE IV	TITLE IV	
IMPLEMENTATION OF THE BUDGET	IMPLEMENTATION OF THE BUDGET	
<i>Article 33</i>	<i>Article 35</i>	
<b>Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the Community body shall participate in fraud prevention activities of the European Anti-fraud Office.</b>		The Court recommends to add the following point, as included in the Framework Financial Regulation:  <i>"Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the Joint Undertaking shall participate in fraud prevention activities of the European Anti-fraud Office"</i>
<i>Article 43</i>	<i>Article 46</i>	
<b>2.a third sentence. The authorising officers shall forward all information that the accounting officer needs in order to fulfil his duties.</b>		The Court recommends to add the following point, as included in the Framework Financial Regulation:  <i>"The authorising officers shall forward all information that the accounting officer needs in order to fulfil his duties."</i>
<i>Article 47</i>	<i>Article 50</i>	
On the basis of the opinion of this panel, the Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the Director, the panel shall send it to the management board and the Commission's internal auditor. <b>The director shall refer, in anonymous form, to opinions of the panel in his annual activity report and indicate the follow-up measures taken.</b>	On the basis of the opinion of this panel, the Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor <u>and the internal auditor of the Joint Undertaking</u> . If the opinion implicates the Director, the panel shall send it to the Governing Board and the Commission's internal auditor.	The Court recommends to add the following point, as included in the Framework Financial Regulation:  <i>"The director shall refer, in anonymous form, to opinions of the panel in his annual activity report and indicate the follow-up measures taken".</i>

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<i>Article 51</i>	<i>Article 54</i>	
	<u>All other revenues of the Joint Undertaking shall bear interest for the benefit of the budget.</u>	The Court recommends to amend this point as follows:  <i>"All other revenues of the Joint Undertaking shall bear interest for the benefit of <b>its</b> budget"</i>
<i>Article 53</i>	<i>Article 56</i>	
3. <b>The contracts and grant agreements concluded by the Community body shall provide that</b> any debt not repaid on the due date laid down in the debit note shall bear interest <b>in accordance with Regulation (EC, Euratom) No 2342/2002. The condition whereby interest on late payment is due to the Community body, including the rate for default interests, shall be explicitly referred to in the contracts and grant agreements.</b>	3. If provided for in the contract or agreement applicable, any debt not repaid on the due date laid down in the debit note shall bear interest.	The Court recommends to define the conditions under which interest shall be payable, with explicit reference to the General Principles laid down in the Framework Financial Regulation and in the General Financial Regulation.
<i>Article 57</i>	<i>Article 60</i>	
1. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting <b>and, if this is not possible, by enforced recovery.</b>	1.If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting.	The Court recommends to add:  <u>"and, if this is not possible, by enforced recovery"</u>

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<i>Article 58a</i>	<i>Article 62</i>	
The accounting officer shall keep a list of amounts due to be recovered, in which the Community body's entitlements are grouped according to the date of issue of the recovery order. <b>He shall also indicate decisions to waive or partially waive recovery of established amounts.</b> The list shall be added to the Community body's report on budgetary and financial management.	The accounting officer shall keep a list of amounts due to be recovered, in which the Joint Undertaking's entitlements are grouped according to the date of the issue of the recovery order. The list shall be added to the Joint Undertaking's report on budgetary and financial management.	The Court recommends to make reference to the waived or partially waived recovery orders, in line with the Framework Financial Regulation.
<i>Article 58b</i>		
Entitlements of the Community body in respect of third parties and entitlements <b>of third parties in respect of the Community body shall be subject to a limitation period of five years,</b> which shall be laid down in the contracts and grant agreements concluded by the Community body.		
<i>Article 59</i>	<i>Article 63</i>	
Where fees and charges are entirely determined by legislation or decisions of the management board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Community body's entitlement shall be registered. <b>The accounting officer shall keep a list of all debit notes and provide the number of the debit notes and the global amount in the Community body's report on budgetary and financial management.</b>	<u>(b)</u> where fees and charges are entirely determined by legislation or decisions of the Governing Board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Joint Undertaking's entitlement shall be registered;	The Court recommends to add, in line with the Framework Financial Regulation:  <i>"The accounting officer shall keep a list of the debit notes and provide the number of the debit notes and the global amount in the Joint Undertaking's report on budgetary and financial management."</i>

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<b>Where the Community body uses a separate invoicing system, the accounting officer shall regularly and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts.</b>		The Court recommends to add, in line with the Framework Financial Regulation:  <i>"Where the Joint Undertaking uses a separate invoicing system, the accounting officer shall regularly and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts"</i>
<i>Article 60</i>	<i>Article 64</i>	
3. The work programme of the Community body shall be equivalent to a financing decision for the activities it covers, <b>provided that they are clearly identified and the underlying criteria are spelled out precisely. The work programme shall comprise detailed objectives and performance indicators.</b>	3. The work programme of the Joint Undertaking <u>adopted by the Governing Board shall constitute</u> a financing decision for the activities it covers.	The Court recommends to add, in line with the Framework Financial Regulation:  <i>"provided that they are clearly identified and the underlying criteria are spelled out precisely. The work programme shall comprise detailed objectives and performance indicators"</i>
<i>Article 71</i>	<i>Article 75</i>	
1. The Community body shall have an internal auditing function which must be performed in compliance with the relevant international standards.	The Joint Undertaking shall have an internal auditing service which must be performed in compliance with the relevant international standards.	The Court recommends to use the word "function" instead of "service", to avoid confusion with the internal audit service of the Commission.



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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
2. <b>Without prejudice to Article 38(4) the Commission's internal auditor shall exercise, the same powers with respect to the Community bodies as with respect to Commission departments.</b>		<p>The Court is of the view that point 2 of Article 71 of the Framework Financial Regulation, but referring to the Joint Undertaking, should be included.</p> <p><i>"Without prejudice to Article 41(4) the Commission's internal auditor shall exercise the same powers with respect to the Joint Undertaking as with respect to Commission departments".</i></p>
TITLE V	TITLE V	
PROCUREMENT	PROCUREMENT	SEVERAL PROVISIONS OF THE GENERAL FINANCIAL REGULATION SHALL APPLY DIRECTLY TO SEVERAL CHAPTERS OF THE ITER FINANCIAL REGULATION.
	<u>Article 80</u>	
	<u>Participation in procurement procedures shall be open on equal terms to all natural persons who are nationals of a Member and legal persons who are legally established in the territory of a Member, under the conditions laid down in the implementing rules.</u>	The Court recommends to define the procedure for reporting on a regular basis to the Governing Board and the Budgetary Authority on the procurement procedures carried out and the conditions under which the Director may decide to contract with natural and legal persons other than those referred to in sub-paragraph 1.

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<i>Article 95 CR 1605/2002</i>	<i>Article 85</i>	
<p>A central database shall be set up and operated by the Commission in compliance with Community rules on the protection of personal data.</p> <p>The database shall contain details of candidates and tenders which is in one of the situations referred to in Articles 93, 94, 96(1)(b) and (2) (a). It shall be common to the institutions, executive agencies and the bodies referred to in Article 185.</p> <p>2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 53 and 54, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in Article 93(1) (e), where the conduct of the operator concerned was detrimental to the Communities' financial interest. The authorising officer shall receive this information and request the accounting officer to enter it into the database.</p> <p>The authorities and bodies mentioned in the first subparagraph shall have access to the information contained in the database and may take it into account, as appropriate and on their own responsibility for the award of contracts associated with the implementation of the budget.</p> <p>3. Transparent and coherent criteria to ensure proportionate application of the exclusion criteria shall be laid down in the implementing rules. The Commission shall define standardised procedures and technical specifications for the operation of the database.</p>	<p><u>A central database set up and operated by the Commission under relevant provisions of the general Financial Regulation containing details of candidates and tenders which are in the situations of exclusion shall be common to the Joint Undertaking and shall be used by the Joint Undertaking in accordance with the relevant rules adopted by the Commission.</u></p>	<p>The Court underlines that the relevant provisions of the General Financial Regulation apply on this point.</p>

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
Article 98 CR 1605/2002	<u>Article 88</u>	
4. All requests to participate or tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the contracting authority the award of the contract <b>or to proceed with an electronic auction.</b>	4. All requests to participate or all tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the Joint Undertaking the award of the contract.	The Court recommends to add in line with the Financial Regulation: " <u>or to proceed with an electronic auction.</u> "
<u>Article 90 CR 1605/2002</u>	<u>Article 92</u>	
1. <b>All contracts exceeding the thresholds provided for in Article 105 or Article 167 shall be published in the Official Journal of the European Union.</b>	<u>1.Contracts shall be advertised by appropriate means as specified in the implementing rules.</u>	The Court recommends to add, as laid down in Article 90 of the General Financial Regulation, that contracts exceeding the thresholds provided for in Article 105 or Article 167 of the General Financial Regulation shall be published in the Official Journal of the European Union.
2. Contract notices shall be published in advance except in the cases referred to in Article 91(2) of this Regulation, as specified in the implementing rules, <b>and for the service contracts covered by Annex IIB to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.</b>	2. Contract notices shall be published in advance except in the cases referred to in Article 81(1) (d), as specified in the implementing rules.	The Court recommends, as laid down in Article 90 of General Financial Regulation, to add " <u>and for the service contracts covered by Annex IIB to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts</u> "
<u>Article 102 CR 1605/2002</u>	<u>Article 93</u>	
1. The contracting authority shall require contractors to lodge a guarantee in advance in the cases specified in the implementing rules.	1. The Joint Undertaking may require contractors to lodge a guarantee in advance.	The Court recommends to define in the Implementing Rules the conditions under which lodging a guarantee in advance may be required.

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<i>Article 103 CR 1605/200)2</i>	<i>Article 94</i>	
Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the institutions shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.	Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the Joint Undertaking shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure, <u>if provided for in the call for tender</u> .	The Court recommends to delete " <u>if provided for in the call for tender</u> "
Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the institutions may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.	Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the Joint Undertaking may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract, <u>if provided for in the contract</u> .	The Court recommends to delete " <u>if provided for in the contract</u> ."
	<i>Article 95</i>	
	<u>1.For administrative contracts to be awarded by the Joint Undertaking in order to obtain the supply of movable or immovable assets, the execution of works or the provision of services for its administrative functioning and needs, the relevant provisions of the general Financial Regulation and the rules for implementing that regulation shall apply.</u>	The Court underlines that the relevant provisions of the General Financial Regulation apply on this point.

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
TITLE VI	TITLE VI	
<u>GRANTS AWARDED BY THE COMMUNITY BODY</u>	<u>GRANTS</u>	
<u>Article 75</u>		
1. Where the Community body may award grants in accordance with its constituent instrument or by delegation of the Commission pursuant to Article 54(2)(b) of the general Financial Regulation, the relevant provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply subject to paragraphs 2 and 3 of this Article.		The Court is of the view that the general provisions laid down in Articles 75 of the Framework Financial Regulation, should, <i>mutatis mutandis</i> , apply to the Joint Undertaking.
<u>Article 114 CR 1605/2002</u>	<u>Article 104</u>	
<p>4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96.</p> <p>Such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.</p>	<p>3. <u>If provided for in the call for proposals</u>, financial penalties which are effective, proportionate and dissuasive, may be imposed on applicants by the authorising officer.</p> <p><u>If provided for in the grant agreement</u>, such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.</p>	<p>The Court recommends to add, <i>mutatis mutandis</i>, as laid down in Article 114.4 of the General Financial Regulation, the following:</p> <p><i>"Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96.</i></p> <p><i>Such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information"</i></p>

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FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
<u>Article 120 CR 1605/2002</u>	<u>Article 110</u>	
(c) the amounts concerned are small.  For the purpose of point (c), the maximum amount of financial support that can be paid to a third party by a beneficiary shall be determined in the implementing rules.	c) the amounts concerned are small.	The Court recommends to add to bullet (c), in line with the General Financial Regulation.  <i>"For the purpose of point (c), the maximum amount of financial support that can be paid to a third party by a beneficiary shall be determined in the Implementing Rules"</i>
<u>TITLE Vb</u>	<u>TITLE VII</u>	
<u>EXPERTS</u>	<u>EXPERTS</u>	
Article 74b	<u>Article 111</u>	
Article 265a of the Regulation (EC, Euratom) No 2342/2002 shall apply <i>mutatis mutandis</i> for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting the Community body, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of projects. The Community body may use the lists drawn up by the Commission or other Community bodies.	<u>1.The Joint Undertaking may select, on the basis of the procedure laid down in paragraph 2, external experts for tasks involving in particular the evaluation of proposals and technical assistance. Such experts shall be paid on the basis of a fixed amount.</u>	The Court recommends to add to this Title , <i>mutatis mutandis</i> , the following text, in line with the Framework Financial Regulation:  <i>"Article 265a of the Regulation (EC, Euratom) No 2342/2002 shall apply mutatis mutandis for the selection of experts. "</i>

TEXT IN BOLD IN FIRST COLUMN SHOWS THE DIFFERENCES IN THE FRAMEWORK FINANCIAL REGULATION COMPARED WITH THE ITER FINANCIAL REGULATION.  
TEXT UNDERLINED IN SECOND COLUMN SHOWS THE DIFFERENCES IN THE ITER FINANCIAL REGULATION COMPARED TO THE FRAMEWORK FINANCIAL REGULATION.

FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
TITLE VIII	TITLE IX	
EXTERNAL AUDIT AND DISCHARGE	EXTERNAL AUDIT AND DISCHARGE	
<i>Article 94</i>	<i>Article 130</i>	
The European Parliament, upon a recommendation from the Council, shall, <b>before 15 May of year N+2 save where otherwise provided in the constituent instrument</b> , give a discharge to the director in respect of the implementation of the budget for year N. <b>The director shall inform the management board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.</b>	1.The European Parliament, upon a recommendation from the Council shall, before 30 April of year <i>n</i> + 2, give a discharge to the Director in respect of the implementation of the budget for year <i>n</i> .	The Court recommends to add, in line with Article 94.1 of the Framework Financial Regulation,:  <i>"The director shall inform the Governing Board of the observations of the European Parliament contained in the resolution accompanying the discharge decision."</i>
2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the director of the reasons for the postponement.	2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Director of the reasons for the postponement.	
If the European Parliament postpones the decision giving a discharge, the director, <b>in cooperation with the management board</b> , shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.	3. If the European Parliament postpones the decision giving a discharge, the Director shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.	The Court recommends to add, in line with Article 94.3 of the Framework Financial Regulation:  <i>"If the European Parliament postpones the decision giving a discharge, the director, in cooperation with the Governing Board , shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision."</i>

TEXT IN BOLD IN FIRST COLUMN SHOWS THE DIFFERENCES IN THE FRAMEWORK FINANCIAL REGULATION COMPARED WITH THE ITER FINANCIAL REGULATION.  
TEXT UNDERLINED IN SECOND COLUMN SHOWS THE DIFFERENCES IN THE ITER FINANCIAL REGULATION COMPARED TO THE FRAMEWORK FINANCIAL REGULATION.

FRAMEWORK FINANCIAL REGULATION	ITER FINANCIAL REGULATION	COURT'S REMARKS
TITLE IX	TITLE X	
TRANSITIONAL AND FINAL PROVISIONS	TRANSITIONAL AND FINAL PROVISIONS	
	Article 133	
	<u>The time limits referred to in Article 118, 119 shall apply for the first time in respect of budgetary year 2009 and the time limit referred to in Article 130 shall apply for the first time in respect of budgetary year 2010.</u>	The Court is of the opinion that the text of this Article is misleading. The Court proposes the following draft: " <u>Articles 118, 119 and 130 shall apply for the first time in respect of the budgetary year 2008</u> ". It must be understood as meaning that the first set of accounts will be sent in 2009 in respect of the financial year 2008 and that the first discharge procedure will be in 2010 in respect of the financial year 2008.
	Article 136	
	<u>The Governing Board may delegate the adoption of these implementing rules to the Executive Committee.</u>	The Court considers that this provision should be withdrawn and that the adoption of the Implementing Rules should remain within the mandate of the Governing Board.



**2008 discharge: European Joint Undertaking for ITER and the Development of Fusion Energy**

**1. European Parliament decision of 5 May 2010 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 2008 (C7-0261/2009 – 2009/2187(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 2008,
  - 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 ended 31 December 2008, together with the replies of the Joint Undertaking<sup>1</sup>,
  - having regard to the Council's recommendation of 16 February 2010 (5829/2010 – C7-0060/2010),
  - having regard to Article 276 of the EC Treaty and Article 319 of the Treaty on the Functioning of the European Union,
  - 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>2</sup>, and in particular Article 185 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>3</sup>, and in particular Article 5 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 Regulation (EC, Euratom) No 1605/2002<sup>4</sup>, and in particular Article 94 thereof,
  - having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A7-0094/2010),
1. Grants 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 2008,
  2. Sets out its observations in the resolution below;

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<sup>1</sup> OJ C 310, 18.12.2009, p. 1.

<sup>2</sup> OJ L 248, 16.9.2002, p. 1.

<sup>3</sup> OJ L 90, 30.3.2007, p. 58.

<sup>4</sup> OJ L 357, 31.12.2002, p. 72.

3. Instructs its President to forward this Decision and the resolution that forms 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).

**2. European Parliament decision of 5 May 2010 on the closure of the accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2008 (C7-0261/2009 – 2009/2187(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 2008,
  - 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 ended 31 December 2008 , together with the replies of the Joint Undertaking<sup>1</sup>,
  - having regard to the Council's recommendation of 16 February 2010 (5829/2010 – C7-0060/2010),
  - having regard to Article 276 of the EC Treaty and Article 319 of the Treaty on the Functioning of the European Union,
  - 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>2</sup>, and in particular Article 185 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>3</sup>, and in particular Article 5 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 Regulation (EC, Euratom) No 1605/2002<sup>4</sup>, and in particular Article 94 thereof,
  - having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A7-0094/2010),
1. Approves the closure of the accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2008;
  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 C 310, 18.12.2009, p. 1.

<sup>2</sup> OJ L 248, 16.9.2002, p. 1.

<sup>3</sup> OJ L 90, 30.3.2007, p. 58.

<sup>4</sup> OJ L 357, 31.12.2002, p. 72.

**3. European Parliament resolution of 5 May 2010 with observations forming an integral part of 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 2008 (C7-0261/2009 – 2009/2187(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 2008,
  - 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 ended 31 December 2008, together with the replies of the Joint Undertaking<sup>1</sup>,
  - having regard to the Council's recommendation of 16 February 2010 (5829/2010 – C7-0060/2010),
  - having regard to Article 276 of the EC Treaty and Article 319 of the Treaty on the Functioning of the European Union,
  - 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>2</sup>, and in particular Article 185 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>3</sup>, and in particular Article 5 thereof,
  - having regard to the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy, adopted by decision of 22 October 2007 of the Joint Undertaking's Governing Board (hereinafter 'ITER Financial Regulation'),
  - 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 Regulation (EC, Euratom) No 1605/2002<sup>4</sup>, and in particular Article 94 thereof,
  - having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A7-0094/2010),
- A. whereas the Court of Auditors states that it has obtained reasonable assurances that the annual accounts for the financial year 2008 are reliable and that the underlying transactions are legal and regular,

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<sup>1</sup> OJ C 310, 18.12.2009, p. 1

<sup>2</sup> OJ L 248, 16.9.2002, p. 1.

<sup>3</sup> OJ L 90, 30.3.2007, p. 58.

<sup>4</sup> OJ L 357, 31.12.2002, p. 72.

- B. whereas the Joint Undertaking is in a start-up phase and had not fully established its internal control and financial reporting systems by the end of 2008,
- C. whereas under Article 75 of the ITER Financial Regulation the Joint Undertaking is required to have an internal audit service that complies with international audit standards,
- D. whereas the ITER Financial Regulation is based on the framework Financial Regulation, which was recently amended to bring it into line with changes made to the general Financial Regulation,
- E. whereas on 28 February 2008 the Joint Undertaking's Director sought the Court of Auditors' opinion on the ITER Financial Regulation,
- F. whereas in October 2008 the Court of Auditors delivered Opinion No 4/2008 on that Regulation,

#### ***Carryover of appropriations***

- 1. Notes that the Court of Auditors identified a surplus of EUR 57 600 000 in the budget outturn account, which represents 38% of the EUR 149 700 000 of accrued revenue; stresses, in particular, that part of that surplus (EUR 32 200 000) was carried over to the 2009 financial year; notes, nonetheless, the Joint Undertaking's reply to the effect that the under-spending to which the Court of Auditors refers stemmed from the fact that this was the Joint Undertaking's first year of financial autonomy from the Commission, and from delays in the start-up of the ITER International Organisation and the Euratom fusion programme as a whole;

#### ***Commitment irregularities***

- 2. Notes that, in six cases considered by the Court of Auditors, the Joint Undertaking made budget commitments only after it had already entered into legal obligations; calls accordingly on the Joint Undertaking to comply with the Financial Regulation in this respect as well;

#### ***ITER Financial Regulation***

- 3. Welcomes the Court of Auditors' finding that the ITER Financial Regulation is, in the main, founded on the principles laid down in the framework Financial Regulation and the general Financial Regulation; notes, nonetheless, that a number of specific changes need to be made, including as regards exceptions to the budgetary principles, the role of the Commission's Internal Audit Service, late payment of members' contributions, the rules on the award of grants and the transitional provisions set out in Article 133 of the ITER Financial Regulation;

#### ***Annual activity report***

- 4. Expressly recommends that the Joint Undertaking meet the deadline agreed with the Court of Auditors for submission of its annual activity report;

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

5. Expressly recommends that the Joint Undertaking carry out further work on documenting IT processes and activities and analysing IT risks;
6. Notes that the Joint Undertaking's internal auditor did not take up his duties until 1 July 2009; commends ITER, nonetheless, on having now drawn up an action plan for the implementation of internal control standards and set up a working group to coordinate and monitor the plan's implementation; stresses, furthermore, that ITER has appointed a Data Protection Officer and the necessary steps have been taken to further develop the Business Continuity and Data Recovery Plan;
7. Notes the Joint Undertaking's statement to the effect that all underlying business processes are currently being mapped;
8. Notes that the Joint Undertaking reported EUR 216 304,89 in income from interest in 2008; concludes from the financial statements and from the level of the interest payments that the Joint Undertaking has a permanently high level of cash holdings; notes that on 31 December 2008 the Joint Undertaking's cash holdings amounted to EUR 58 980 569,87; asks the Commission to examine what scope there is for introducing needs-orientated management of cash holdings at the Joint Undertaking, and what changes of approach are necessary in order to keep the Joint Undertaking's cash holdings permanently as low as possible.

# **FINAL ANNUAL ACCOUNTS**

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## **FINANCIAL STATEMENTS & BUDGET IMPLEMENTATION**

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## **REPORT ON BUDGETARY AND FINANCIAL MANAGEMENT**

**Second financial year – 2009**

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### **REPORT ON BUDGETARY AND FINANCIAL MANAGEMENT 2009**

*Art 111 Fusion for Energy Financial Regulation*

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## CERTIFICATION & STATEMENT OF THE DIRECTOR

### Certification

The annual accounts of the EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY (Fusion for Energy) for the year 2009 have been prepared in accordance with its Financial Regulation and its Implementing Rules<sup>1</sup> and the accounting rules adopted by the Commission's Accounting Officer, as are to be applied by all the institutions, agencies and joint undertakings.

I acknowledge my responsibility for the preparation and presentation of the annual accounts of Fusion for Energy in accordance with article 46 of the Financial Regulation.

I hereby certify that based on the information provided by the Authorising Officer, I have reasonable assurance that the accounts present, in all material respects, a true and fair view of the financial position of Fusion for Energy.



**Mr Abad Villanueva Roberto**

Accounting Officer

### Statement of the Director

I, the undersigned, Franck Briscoe, Director of the EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY (Fusion for Energy), in my capacity as Authorising Officer,

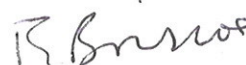
- Declare that the information contained in this report gives a true and fair view.

- State that I have reasonable assurance that the resources assigned to the activities described in this report have been used for their intended purpose and in accordance with the principles of sound financial management. This reasonable assurance is based on my own judgment and on the information at my disposal since taking up my duties on 16<sup>th</sup> February 2010 including my predecessor's hand-over note.

- Based on the preliminary observations of the Court of Auditors and the conclusions of the Internal Auditor in his audit report on the financial circuits of Fusion for Energy (completed May 2010), make the following reservations: the internal control systems in place at Fusion for Energy are not yet fully implemented and do not provide reasonable assurance regarding the achievement of the objectives assigned to financial circuits. Measures are being taken by Fusion for Energy to address the weaknesses identified by these audits.

- Confirm that I am not aware of anything not reported here which could harm the interests of Fusion for Energy and the European Institutions in general.

Barcelona, 30 June 2010



**Mr Frank Briscoe**

Director

<sup>1</sup> Fusion for Energy Financial Regulation (adopted by Fusion for Energy Governing Board on 22/10/2007 – F4E(07)-GB03-11, amended on 18/12/2007 – F4E(07)-GB04-06) and its implementing rules (adopted by Fusion for Energy Governing Board on 22/10/2007 – F4E(07)-GB03-12, amended on 08/07/2008 – F4E(08)-GB06-06a)

## INTRODUCTION

Fusion for Energy is a Joint Undertaking created under the Euratom Treaty by a decision of the Council of Ministers of the European Union<sup>2</sup>.

Fusion for Energy is established for a period of 35 years from 19th April 2007 and is located in Barcelona, Spain.

The main tasks of the Joint Undertaking are as follows:

- In relation to ITER : to provide the contribution of the European Atomic Energy Community (Euratom) to the ITER International Fusion Energy Organisation.
- In relation to the Broader Approach : to provide components, equipment, materials and other resources for Broader Approach Activities and to prepare and coordinate Euratom's participation in the implementation of Broader Approach Activities.
- In relation to DEMO : to prepare and coordinate a programme of research, development and design activities other than ITER and Broader Approach Activities, in preparation for the construction of a demonstration fusion reactor and related facilities, including the IFMIF.

The 2009 financial statements of Fusion for Energy and its reports on budget implementation for 2009 were prepared in conformity with :

- Council Decision establishing Fusion for Energy<sup>2</sup>,
- Fusion for Energy Financial Regulation and its implementing rules
- « Inventory directive » (CE n° 643/2005),
- Financial Regulation applicable to the general budget of the European Communities<sup>3</sup>,
- The European Commission's consolidation manual version 6.0 for the 2009 closure.

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<sup>2</sup> Council decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (2007/198/Euratom – O.J. : L 90/58).

<sup>3</sup> Financial Regulation (EC, Euratom) n°1605/2002 of the Council of 25 June 2002, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006 and (EC) n° 1525/2007 of 17 December 2007.

The accounts have also been drawn up in accordance with the accounting rules adopted by the Accounting Officer of the Commission.

Article 133 of the general financial regulation states that the Accounting Officer of the Commission adopts the accounting rules and methods to be applied by all EU bodies and institutions. These rules were adopted on 28 December 2004 and last updated on 6th January 2010. They are accrual based accounting policies derived from International Public Sector Accounting Standard (IPSAS) or by default, International Financial Reporting Standards (IFRS).

## FINANCIAL STATEMENTS 2009

### I. Balance sheet 2009 - Assets

Consolidation account		Note n°	31.12.2009	31.12.2008	Variation
	<b>ASSETS</b>				
	<b>A. NON CURRENT ASSETS</b>	<b>2.1.</b>			
210000	Intangible fixed assets		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
200000	Tangible fixed assets		<b>1 469 592.00</b>	<b>483 472.00</b>	<b>986 120.00</b>
230000	Plant and equipment		1 412.00	0.00	1 412.00
241000	Computer hardware		938 193.00	109 759.00	828 434.00
240000	Furniture and vehicles		423 560.00	299 690.00	123 870.00
242000	Other fixtures and fittings		106 427.00	74 023.00	32 404.00
<b>TOTAL NON CURRENT ASSETS</b>			<b>1 469 592.00</b>	<b>483 472.00</b>	<b>986 120.00</b>
	<b>B. CURRENT ASSETS</b>				
310000	Stocks		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
405000	Short-term pre-financing	<b>2.2.</b>	<b>45 581 310.23</b>	<b>6 513 159.60</b>	<b>39 068 150.63</b>
range	Short-term pre-financing		45 581 310.23	6 513 159.60	39 068 150.63
400000	Short-term receivables	<b>2.3.</b>	<b>78 769 196.84</b>	<b>41 711 738.27</b>	<b>37 057 458.57</b>
401000	Current receivables		30 884 333.92	384 900.00	30 499 433.92
410900	Sundry receivables		23 691.38	42 579.70	-18 888.32
490000	Other		47 859 173.77	41 171 589.75	6 687 584.02
490010	Accrued income		21 850.82	67 621.95	-45 771.13
490011	Deferred charges		11 561.95	0.00	11 561.95
490012	Other		0.00	0.00	0.00
490090	Deferrals/Accruals with consolidated EU entities		47 825 761.00	41 103 967.80	6 721 793.20
400009	Short-term receivables with consolidated EU entities		1 997.77	112 668.82	-110 671.05
500000	Cash and cash equivalents	<b>2.4.</b>	<b>42 006 329.34</b>	<b>58 980 569.87</b>	<b>-16 974 240.53</b>
<b>TOTAL CURRENT ASSETS</b>			<b>166 356 836.41</b>	<b>107 205 467.74</b>	<b>59 151 368.67</b>
<b>TOTAL</b>			<b>167 826 428.41</b>	<b>107 688 939.74</b>	<b>60 137 488.67</b>

## Balance sheet 2009 – Liabilities

Consolidation account		Note n°	31.12.2009	31.12.2008	Variation
	<b>LIABILITIES</b>				
	<b>A. NET ASSETS</b>	<b>2.5.</b>	<b>141 334 701.94</b>	<b>66 534 076.61</b>	<b>74 800 625.33</b>
100000	Reserves		0.00	0.00	0.00
140000	Accumulated surplus/deficit		66 534 076.61	0.00	66 534 076.61
141000	Economic result of the year - profit+/loss-		74 800 625.33	66 534 076.61	8 266 548.72
	<b>B. NON CURRENT LIABILITIES</b>		<b>59 141.81</b>	<b>977 500.00</b>	<b>-918 358.19</b>
162000	Provisions for risks and charges	<b>2.6.</b>	<b>59 141.81</b>	<b>0.00</b>	<b>59 141.81</b>
172000	Other long-term liabilities		0.00	977 500.00	-977 500.00
172009	Other LT liabilities with consolidated EU entities		0.00	977 500.00	-977 500.00
172019	Pre-financing received from consolidated EU entities		0.00	977 500.00	-977 500.00
<b>TOTAL A+B</b>			<b>141 393 843.75</b>	<b>67 511 576.61</b>	<b>73 882 267.14</b>
	<b>C. CURRENT LIABILITIES</b>	<b>2.7.</b>	<b>26 432 584.66</b>	<b>40 177 363.13</b>	<b>-13 744 778.47</b>
482000	Provisions for risks and charges		0.00	0.00	0.00
440000	Accounts payable		26 432 584.66	40 177 363.13	-13 744 778.47
441000	Current payables	<b>2.7.1.</b>	22 013.68	187 019.94	-165 006.26
443000	Sundry payables		117 798.19	645.65	117 152.54
491000	Other	<b>2.7.2.</b>	15 737 971.04	13 088 518.54	2 649 452.50
491010	Accrued charges		15 729 174.97	12 961 554.46	2 767 620.51
491090	Deferrals/accruals with consolidated EU entities		8 796.07	126 964.08	-118 168.01
440009	Accounts payable with consolidated EU entities		10 554 801.75	26 901 179.00	-16 346 377.25
440019	Pre-financing received from consolidated EU entities	<b>2.7.3.</b>	977 500.00	25 406 415.22	-24 428 915.22
440029	Other accounts payable against consolidated EU entities	<b>2.7.4.</b>	9 577 301.75	1 494 763.78	8 082 537.97
<b>TOTAL C. CURRENT LIABILITIES</b>			<b>26 432 584.66</b>	<b>40 177 363.13</b>	<b>-13 744 778.47</b>
<b>TOTAL</b>			<b>167 826 428.41</b>	<b>107 688 939.74</b>	<b>60 137 488.67</b>

## II. Economic outturn account 2009

Consolidation account		Note n°	2009	2008	Variation
744000	Revenues from administrative operations	3.1.	127 753.25	562 323.48	-434 570.23
745000	Other operating revenue	3.1.	173 051 744.81	123 739 884.44	49 311 860.37
777777	<b>TOTAL OPERATING REVENUE</b>		<b>173 179 498.06</b>	<b>124 302 207.92</b>	<b>48 877 290.14</b>
610000	Administrative expenses		-23 269 644.09	-11 821 558.13	-11 448 085.96
6201,,	All Staff expenses	3.2.	-16 700 197.54	-8 635 888.07	-8 064 309.47
630100	Fixed asset related expenses	2.1.	-536 857.86	-125 464.55	-411 393.31
611000	Other administrative expenses	3.3.	-6 032 588.69	-3 060 205.51	-2 972 383.18
600000	Operational expenses		-75 368 074.02	-46 162 378.07	-29 205 695.95
606000	Other operational expenses	3.4.	-75 368 074.02	-46 162 378.07	-29 205 695.95
666666	<b>TOTAL OPERATING EXPENSES</b>		<b>-98 637 718.11</b>	<b>-57 983 936.20</b>	<b>-40 653 781.91</b>
<b>SURPLUS/(DEFICIT) FROM OPERATING ACTIVITIES</b>			<b>74 541 779.95</b>	<b>66 318 271.72</b>	<b>8 223 508.23</b>
750000	Financial revenues	2.4.	263 223.14	216 304.89	46 918.25
650000	Financial expenses		-4 377.76	-500.00	-3 877.76
<b>SURPLUS/ (DEFICIT) FROM NON OPERATING ACTIVITIES</b>			<b>258 845.38</b>	<b>215 804.89</b>	<b>43 040.49</b>
<b>SURPLUS/(DEFICIT) FROM ORDINARY ACTIVITIES</b>			<b>74 800 625.33</b>	<b>66 534 076.61</b>	<b>8 266 548.72</b>
<b>SURPLUS/(DEFICIT) FROM EXTRAORDINARY ITEMS</b>			<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>ECONOMIC RESULT OF THE YEAR</b>			<b>74 800 625.33</b>	<b>66 534 076.61</b>	<b>8 266 548.72</b>

### III. Cash flow statement 2009 (indirect method)

		2009	2008
<b>Cash Flows from ordinary activities</b>			
<b>Surplus/(deficit) from ordinary activities</b>		<b>74 800 625.33</b>	<b>66 534 076.61</b>
<b>Operating activities</b>	Amortization (intangible fixed assets) +	0.00	0.00
<u>Adjustments</u>	Depreciation (tangible fixed assets) +	640 366.66	263 472.70
	Increase/(decrease) in Provisions for risks and liabilities	59 141.81	0.00
	Increase/(decrease) in Value reduction for doubtful debts	0.00	0.00
	(Increase)/decrease in Stock	0.00	0.00
	(Increase)/decrease in Long term Pre-financing	0.00	0.00
	(Increase)/decrease in Short term Pre-financing	-39 068 150.63	-6 513 159.60
	(Increase)/decrease in Long term Receivables	0.00	
	(Increase)/decrease in Short term Receivables	-37 168 129.62	-41 599 069.45
	(Increase)/decrease in Receivables related to consolidated EU entities	110 671.05	-112 668.82
	Increase/(decrease) in Other Long term liabilities	0.00	0.00
	Increase/(decrease) in Accounts payable	2 719 766.79	13 276 184.13
	Increase/(decrease) in Liabilities related to consolidated EU entities	-17 442 045.26	27 878 679.00
<b>Net cash Flow from operating activities</b>		<b>-15 347 753.87</b>	<b>59 727 514.57</b>
<b>Cash Flows from investing activities</b>			
	Increase of tangible and intangible fixed assets (-)	-1 630 463.66	-746 944.70
	Proceeds from tangible and intangible fixed assets (+)	3 977.00	0.00
<b>Net cash flow from investing activities</b>		<b>-1 626 486.66</b>	<b>-746 944.70</b>
Net increase/(decrease) in cash and cash equivalents		-16 974 240.53	58 980 569.87
<b>Cash and cash equivalents at the beginning of the period</b>		58 980 569.87	0.00
<b>Cash and cash equivalents at the end of the period</b>		<b>42 006 329.34</b>	<b>58 980 569.87</b>

#### IV. Statement of Changes in Net assets - 2009

Net assets	Accumulated Surplus / Deficit	Economic result of the year	Net assets (total)
<b>Balance as of 31 December 2008</b>		66 534 076.61	66 534 076.61
<b>Balance as of 1 January 2009 (if restated)</b>	<b>0.00</b>	<b>66 534 076.61</b>	<b>66 534 076.61</b>
Fair value movements			0.00
Allocation of the Economic Result of Previous Year	66 534 076.61	-66 534 076.61	0.00
Economic result of the year		74 800 625.33	74 800 625.33
<b>Balance as of 31 December 2009</b>	<b>66 534 076.61</b>	<b>74 800 625.33</b>	<b>141 334 701.94</b>
Account	140000	141000	



## **V. Notes to the Financial statements**

### **1. Accounting principles**

Financial statements provide information about the financial position, performance and cash flow of an entity that is useful to a wide range of users. For a public sector entity such as Fusion for Energy, the objectives are more specifically to provide information useful for decision-making, and to demonstrate the accountability of the entity for the resources entrusted to it.

The accounts of the Joint Undertaking comprise the general accounts and budget accounts. These are kept in euro on the basis of the calendar year. The budget accounts give a detailed picture of the implementation of the budget. They are based on the modified cash accounting principle. The general accounts allow for the preparation of the financial statements which consist in an Economic Outturn account, showing all income and expenditure for the financial year, and a Balance Sheet designed to establish the financial position of Fusion for Energy at 31 December.

Article 113 of Fusion for Energy Financial Regulation sets out the accounting principles to be applied in drawing up the financial statements:

- Going concern basis
- prudence
- consistent accounting method
- comparability of information
- materiality
- no netting
- reality over appearance
- accrual based accounting

## 2. Notes to the Balance sheet

### 2.1. Fixed assets

Tangible fixed assets are identifiable non-monetary assets with physical substance. Fusion for Energy books as fixed tangible assets only items with a purchase price above EUR 420. Items with a lower value, such as monitors, digital cameras, etc., are treated as expenses of the year but are however registered in the physical inventory.

All tangible fixed assets are depreciated monthly, with zero residual value, over a variable useful lifetime :

Asset type	Annual depreciation rate
<b><u>Plant and equipment</u></b>	
Lifting and mechanical handling equipment	12,5%
Control and transmission devices, motors, compression, vacuum and pumping equipment	12,5%
Equipment for the supply and treatment of electric power	12,5%, 25%
Specific electric equipment	25%
<b><u>Furniture and vehicles</u></b>	
Office furniture	10%
Electrical office equipment, printing and mailing equipment	25%
Printshop and postroom equipment	12,5%
Equipment for kitchen	12,5%
Transport equipment (vehicles and accessories)	25%
<b><u>Computer hardware</u></b>	
Computers, servers, accessories, data transfer equipment, printers, screens	25%
Copying equipment, digitising and scanning equipment	25%
<b><u>Other fixtures and fittings</u></b>	
Telecommunications equipment	25%
Audiovisual equipment	25%
Computer, scientific and general books, documentation	
Computer books, CDs, DVDs	33%
Scientific books, general books, CDs, DVDs	25%
Health, safety and protective equipment, medical equipment, fire-fighting equipment, equipment for surveillance and security services	12,5%

Under the Host agreement with Spain, the building used by Fusion for Energy is free of charge except some additional office space rented by Fusion for Energy (annual cost estimated to EUR 0.32 million). Some assets owned by Fusion for Energy as of 31/12/2009 were donated by the Spanish government (in 2008 and 2009) and the European Commission (in 2008).

Based on information and/or supporting documents (mainly invoices and offers) provided by CIEMAT<sup>4</sup>, the net value of the fixed assets received in 2009 amounts to **EUR 126 364.25**.

The total depreciation for 2009 amounts to **EUR 640 366.66**, resulting in a net book value of **EUR 1 469 592.00** as of 31.12.2009.

The variation of the tangible fixed assets in 2009 is composed of:

2009		Plant and Equipment	Computer hardware	Furniture and vehicles	Other Fixtures and Fittings	Total
<b>Gross carrying amounts 01.01.2009</b>	+	<b>0.00</b>	<b>233 071.45</b>	<b>365 831.25</b>	<b>148 042.00</b>	<b>746 944.70</b>
Additions	+	1 743.67	1 361 789.66	186 287.27	80 643.06	<b>1 630 463.66</b>
Disposals	-		-15 910.45(*)			<b>-15 910.45</b>
Transfer between headings	+/-					<b>0.00</b>
Other changes (1)	+/-					<b>0.00</b>
<b>Gross carrying amounts 31.12.2009</b>		<b>1 743.67</b>	<b>1 578 950.66</b>	<b>552 118.52</b>	<b>228 685.06</b>	<b>2 361 497.91</b>
<b>Accumulated amortization and impairment 01.01.2009</b>	-		<b>-123 312.45</b>	<b>-66 141.25</b>	<b>-74 019.00</b>	<b>-263 472.70</b>
Depreciation	-	-331.67	-529 378.66	-62 417.27	-48 239.06	<b>-640 366.66</b>
Write-back of depreciation	+					<b>0.00</b>
Disposals	+		11 933.45(*)			<b>11 933.45</b>
Impairment (1)	-					<b>0.00</b>
Write-back of impairment	+					<b>0.00</b>
Transfer between headings	+/-					<b>0.00</b>
Other changes (1)	+/-					<b>0.00</b>
<b>Accumulated amortization and impairment 31.12.2009</b>		<b>-331.67</b>	<b>-640 757.66</b>	<b>-128 558.52</b>	<b>-122 258.06</b>	<b>-891 905.91</b>
<b>Net carrying amounts 31.12.2009</b>		<b>1 412.00</b>	<b>938 193.00</b>	<b>423 560.00</b>	<b>106 427.00</b>	<b>1 469 592.00</b>
Accounts		230000	241000	240000	242000	200000

(\*) corresponds to a drive originally received from the European Commission and donated back (net value = 4 KEUR).

<sup>4</sup> The Centro de Investigaciones Energéticas, Medioambientales y Tecnológicas has been nominated by the Host state government as the entity entrusted to discharge the Host state for some commitments under the Host Agreement.

Fusion for Energy has introduced the module ABAC Assets in 2008. ABAC Assets has been developed to meet the requirements of the EC “Inventory Directive” (CE n° 643/2005) and its content is replicated in SAP Assets Accounting module.

## 2.2. Short-term pre-financing

Pre-financing is a payment intended to provide the beneficiary with a cash advance, i.e. a float. It may be split into a number of payments over a period defined in the specific pre-financing agreement. The float or advance is repaid or used for the purpose for which it was provided during the period defined in the agreement. If the beneficiary does not incur eligible expenditures, he has the obligation to return the pre-financing advance to Fusion for Energy.

The amount of the pre-financing is reduced (wholly or partially) by the acceptance of eligible costs and amounts returned.

At year-end, outstanding pre-financing amounts are valued at the original amount(s) paid less: amounts returned, eligible amounts cleared, estimated eligible amounts not yet cleared at year-end, and value reductions.

Account	Pre-financing without interest for F4E <1 yr	31.12.2009	31.12.2008
405290	Pre-financing (PF) given to third parties(TP)	50 397 691.51	6 660 961.54
405297	Accrued charges on PF TP	-4 816 381.28	-147 801.94
405200	<b>Total</b>	<b>45 581 310.23</b>	<b>6 513 159.60</b>

These pre-financings are related to two annexes to Procurement arrangements signed with the Japan Atomic Energy Agency (EUR 23.90 million - Cf. note 4.1.2.) and to operational contracts : mainly for the procurement contracts “*F4E-2009-OPE-005-01\_OXFORD INST.*” (EUR 11.89 million), “*F4E-2008-OPE-005-02\_BRUKER EAS*” (EUR 7.35 million) and for the grant “*F4E-2009-GRT-032-01\_CONSORZIO RFX*” (EUR 1.80 million).

## 2.3. Short-term receivables

2.3.1. Current receivables : **EUR 30 884 333.92** referring to the following amounts due by Member states as of 31.12.2009 : ITER host state contribution (EUR 30.40 million), two Member States contributions (EUR 0.48 million) and recoverable V.A.T.

2.3.2. Sundry receivables : **EUR 23 691.38** composed mainly of advances on missions and amounts due by other EC entities related to the transfer of staff.

2.3.3. Other – deferrals and accruals : **EUR 47 859 173.77** composed of:

- EUR 47 825 761.00 : deferred charges corresponding to the 2010 cash contribution to ITER Organisation
- EUR 21 850.82 : December 2009 bank interests to be received in 2010 from BBVA on current account and “ITER Host state” account (Cf. note 2.4.)
- EUR 11 722.55 : December 2009 bank interests to be received in 2010 from BBVA on “Euratom contribution” bank account (Cf. note 2.4.)

2.3.4. Short-term receivables with consolidated EC entities totalling **EUR 1 997.77** corresponding to amounts due by the European Translation Center and ECHA (in relation to transfer of staff).

## 2.4. Cash and cash equivalents

Account	Description	31.12.2009	31.12.2008
505000	<i>Unrestricted cash:</i>		
505300	Current accounts (bank accounts)	79 406.70	10 625 437.42
505400	Imprest accounts	0.00	0.00
505500	Cash in hand ("Caisses")	0.00	0.00
505700	Short-term deposits ("Euratom account")	21 138 919.91	32 325 147.20
505700	Short-term deposits ("ITER Host State account")	20 788 002.73	16 029 985.25
500000	<b>Total</b>	<b>42 006 329.34</b>	<b>58 980 569.87</b>

The important cash position at the end of 2009 is composed of one current account and two short-term deposits (for the Euratom and ITER-Host state contribution).

The bank interests generated by the current account (EUR 42 162.21) and the “ITER-Host state” account (EUR 221 060.93) amounts to EUR 263 223.14 for 2009 (the interests for December 2009, EUR 21 850.82, are due in January 2010).

The bank interests generated by the Euratom contribution amounts to EUR 274 160.33 (the interests for December 2009, EUR 11 722.55, are due in January 2010).

Those interests generated on the Euratom contribution are to be reimbursed to the Commission in 2010.

## 2.5. Net assets

Fusion for Energy net assets are increased by the positive economic outturn of the year (EUR 74 800 625.33) totalling **EUR 141 334 701.94** as of 31 December 2009.

The resources of Fusion for Energy consist of a contribution from Euratom, annual membership contributions and voluntary contributions from the Members other than Euratom, contributions from the ITER host State and from additional resources.

It is to be noted that according to Fusion for Energy Financial regulation, if the balance of the outturn account is positive, it shall be repaid to the Commission up to the amount of the Euratom contribution paid during the financial year (Cf. point VI.5. Budget outturn account).

## 2.6. Provisions for risks and charges

Provisions are recognised when Fusion for Energy has a legal or constructive obligation towards third parties as a result of past events, for which it is more likely than not that an outflow of resources will be required to settle the obligation, and the amount can be reliably estimated. Provisions are not recognised for future operating losses. The amount of the provision is the best estimate of the expenditures expected to be required to settle the present obligation at the reporting date.

The Council decided in December 2009 to increase the salaries of officials and other servants of the European Union by 1.85%. Following the "method" laid down in the staff regulation the salary increase should have been 3,7% which corresponds to the original Commission proposal. In the time, the Commission lodged an action for annulment against the Council decision in the European Court of Justice.

According to the Commission it is considered probable that the refused 1.85 % salary adjustment will, in the end, have to be paid to the staff. Therefore, in compliance with the accounting rules, an amount of **EUR 59 141.81** is booked in the 2009 accounts as long term provision for these outstanding salary payments relating to July-December 2009.

## 2.7. Short-term liabilities

2.7.1. Current and sundry payables are **EUR 139 811.87** and are composed of a reimbursement due to CERN for a seconded national expert (EUR 74 495,57), supplier's invoices received but not paid at year end (EUR 34 285.67) and reimbursements to staff (EUR 31 030.63).

2.7.2. Deferrals and accruals : **EUR 15 737 971.04** which represent mainly invoices to be received in 2010 for services rendered in 2009, including ;

- EUR 12 195 431.64 for services rendered in 2009 on operational activities and not invoiced at 31/12/2009 (of which EUR 3.5 million are related to services provided by CEA ITER France).
- EUR 3 097 800.27 for services rendered in 2009 on administrative expenditures and not invoiced at 31/12/2009.
- EUR 432 381.84 for Fusion for Energy staff's untaken leave as at the end of December 2009. In conformity with IAS 19, an entity shall recognize the cost of holidays carried over to the following years during the year the services were rendered by the staff member.

2.7.3. Pre-financing received from consolidated EC entities reached **EUR 977 500.00** corresponding to 3 long term pre-financings received from ITER Organisation and falling due within the year (Cf. note 4.1.3.).

2.7.4. Other accounts payable against consolidated EC entities totalling **EUR 9 577 301.75** include the balance on the invoice for the 2010 cash contribution to be paid to ITER Organisation (EUR 9 266 940.81), the bank interests generated by the Euratom contribution (EUR 274 160.33), to be paid back to the Commission in 2010 (Cf. note 2.4), and other debts towards the Commission and EU bodies.

## 2.8. Post balance sheet events

No significant post balance sheet event occurred between 31<sup>st</sup> December 2009 and the final closing of the accounting year.

### 3. Notes to the Economic Outturn Account

#### 3.1. Revenue

The revenues from administrative operations amount to **EUR 127 753.25**, which include asset donations (EUR 126 364.25 - Cf. note 2.1.) and a revenue from de Translation Center (EUR 1 389.00).

The operating revenues, **EUR 173 051 744.81**, include mainly :

- The Euratom contribution : EUR 139 758 000.00 requested and cashed in 2009 (totally booked as revenue under this heading)
- The 2009 Membership contributions : EUR 2 890 000.00.  
All members, except two, paid their contribution by 31.12.2009 (Cf. note 2.3.1.).
- The 2009 ITER Host state contribution : EUR 30 400 000.00 requested and not cashed as of 31.12.2009.

#### 3.2. Staff expenses - EUR 16 700 197.54

Includes the total gross salaries (including allowances, social contributions, taxes and pension contributions), employer's contribution for social security, allowances for seconded national experts and other staff related costs (mainly relocation services).

#### 3.3. Other administrative expenses

The amount of **EUR 6 032 588.69** includes mainly the following items :

- |  |                  |
|--|------------------|
| • IT support   | EUR 1 428 907.05 |
| • Office supplies & maintenance  | EUR 1 327 624.11 |
| • Missions   | EUR 1 145 966.24 |
| • Experts with contracts   | EUR 540 000.00   |
| • Communications & publications  | EUR 232 606.54   |
| • Expenses with consolidated entities (mainly<br>"service level agreements" with the EC) | EUR 257 803.46   |



- Training EUR 221 934.95
- Rental of office space EUR 210 202.00
- Maintenance & security for the building EUR 205 293.40
- Experts and related expenditure EUR 200 916.95
- Interim staff EUR 152 972.57
- Selection EUR 103 083.97

### 3.4. Operational expenses

The amount of **EUR 75 368 074.02** includes mainly the following items :

- 2009 Cash contribution to ITER Organisation EUR 41 011 940.17
- Voluntary contribution to ITER Organisation EUR 5 974 179.68
- IFMIF\_EVEDA – 2009 Cash contribution EUR 132 047.28

The remaining expenditures are linked to procurement contracts (including EUR 22.4 million for ITER site preparation (CEA – ITER France) and grant agreements.

## 4. Off balance sheet items and notes

### 4.1. Contingent liabilities and Commitments for future fundings

There are no contingent liabilities to disclose for the year ended 31<sup>st</sup> December 2009.

A commitment for future funding represents a legal or constructive commitment, usually contractual, that Fusion for Energy has entered into and which may require a future outflow of resources.

Account	Commitments for future fundings	31.12.2009	31.12.2008
902500	Commitments against appropriations not yet consumed	123 356 355.21	59 604 397.63
903200	Operating lease	0.00	0.00
903300	Contractual commitment (for which budget commitments have not yet been made)	644 951 183.82	202 718 477.67
903100	Other	0.00	0.00
	<b>TOTAL</b>	<b>768 307 539.03</b>	<b>262 322 875.30</b>

The contractual commitments for which budget commitments have not yet been place refers to the Procurement Arrangements which establish a detailed common understanding of each Party on the in-kind contribution to be provided to ITER Organisation for each domain of activities in accordance with the procurement allocation and values (in ITER Unit of Accounts - IUA) as defined in the ITER Agreement.

Regarding the update of the conversion rate between IUA and EUR, the ITER Council (IC-1, November 2007), decided that the annual average change in the Harmonised Indices of Consumer Prices (HICP) for the Euro area as published by EUROSTAT should be used.

#### 4.1.1. Procurement Arrangement (ITER Organisation)

2009 Exchange rate (Euro/IUA) : 1 547.59

(1 000)

Procurement Arrangement (ITER Organisation)	Value signed PA	
	IUA	EURO
Supply of Toroidal Field Coils	89.74	138 880.73
Supply of Poloidal Field Coils	41.40	64 070.23
Cable-In-Conduit Conductor UL	43.39	67 149.93
Cable-In-Conduit Conductor	11.23	17 377.59
Power supply	19.52	30 208.96
Building design and construction	12.80	19 809.15
Architectural and Engineering Services	54.70	84 653.17
Excavation	31.00	47 975.29
Supply of Anti-seismic bearings	6.20	9 595.06
<b>TOTAL</b>	<b>309.98</b>	<b>479 720.11</b>

For the Procurement Arrangements signed with ITER Organisation, Fusion for Energy only enters into a legal obligation which results in a budgetary commitment by signing contracts or grant agreements with third parties in accordance with its financing decision.

#### 4.1.2. Annex to Procurement Arrangement (JAEA)

2009 Exchange rate (Euro/IUA) : 1 547.59

(1 000)

Procurement Arrangement (JAEA)	Value signed PA		Budgetary commitment		Balance	
	IUA	EURO	IUA	EURO	IUA	EURO
Transfer of financial contributions for the implementation of Procurement Arrangement	7.74	11 972.47	-	-	7.74	11 972.47
	3.10	4 798.30	-	-	3.10	4 798.30
	21.50	33 273.19	3.87	5 797.88	17.63	27 284.01
	90.00	139 283.10	11.70	18 106.80	78.30	121 176.30
<b>TOTAL</b>	<b>122.34</b>	<b>189 327.05</b>	<b>15.57</b>	<b>23 904.68</b>	<b>106.77</b>	<b>165 231.08</b>

Regarding the arrangements signed between Fusion for Energy, the Japan Atomic Energy Agency (JAEA) and ITER Organisation, the transfer of procurement responsibilities from Europe to Japan is implemented through annual cash contributions. The corresponding budgetary commitment is established at the reception of the annual call for funds. The exact amount of the contribution (in EUR) is decided annually (in year n-1) based on the updated Credit Allocation Scheme of the Procurement Arrangement agreed between JAEA and ITER Organisation and endorsed by Fusion for Energy.

#### 4.1.3. ITER Tasks Agreement

(EUR 1 000)

ITER IC Antenna R&D programme	Value signed ITA's	PF received by F4E
Faraday Shield	740.00	370.00
Vacuum Window	990.00	495.00
Exploitation of Antenna Low Power Mock-ups	225.00	112.50
<b>TOTAL</b>	<b>1 955.00</b>	<b>977.50</b>

2009 Exchange rate (Euro/PPY) : 154 759

ITER Tasks Agreement	Value signed ITA's	
	PPY	EURO (1 000)
Codes_ITER NB&DNB injectors	1.00	154.76
Design_ITER NB injectr	18.70	2 893.99
Exploitation of Antenna Low Power Mock-ups	2.50	386.90
R&D/Design Remote Handling	10.00	1 547.59
<b>TOTAL</b>	<b>32.20</b>	<b>4 983.24</b>

Fusion for Energy only enters into a legal obligation which results in a budgetary commitment by signing contracts or grant agreements with third parties in accordance with its financing decision.

## 4.2. Contingent assets

A contingent asset is a possible asset that arises from past events and of which the existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of Fusion for Energy. A contingent asset is disclosed when an inflow of economic benefits or service potential is probable. Contingent assets are assessed at each balance sheet date to ensure that developments are appropriately reflected in the financial statements. If it has become virtually certain that an inflow of economic benefits or service potential will arise and the asset's value

can be measured reliably, the asset and the related revenue are recognised in the financial statements of the period in which the change occurs.

Guarantees are possible assets (or obligations) that arise from past events and whose existence will be confirmed by the occurrence or non-occurrence of the object of the guarantee. Guarantees can thus qualify as contingent assets (or liabilities). A guarantee is settled when the object of the guarantee no longer exists. It is crystallised when the conditions are fulfilled for calling a payment from the guarantor.

Account	Description	31.12.2009	31.12.2008
901120	Guarantees for pre-financing (nominal-on going)	8 697 271.46	0.00
901180	Performance guarantees	7 021 737.11	0.00
901100	<b>TOTAL - Guarantees received</b>	<b>15 719 008.57</b>	<b>0.00</b>

Guarantees received in respect of pre-financing:

These are guarantees that Fusion for Energy in certain cases requests from beneficiaries when paying out advance payments (pre-financing). There are two values to disclose for this type of guarantee, the “nominal” and the “on-going” values. For the “nominal” value, the generating event is linked to the existence of the guarantee. For the “on-going” value, the guarantee’s generating event is the pre-financing payment and/or subsequent clearings.

Performance guarantees are sometimes requested to ensure that beneficiaries of Fusion for Energy funding meet the obligations of their contracts with Fusion for Energy.

## 2009 BUDGET IMPLEMENTATION

### VI. Budgetary implementation

The budget is the instrument which, for each financial year, forecasts and implements the revenue and expenditure considered necessary for the Joint Undertaking.

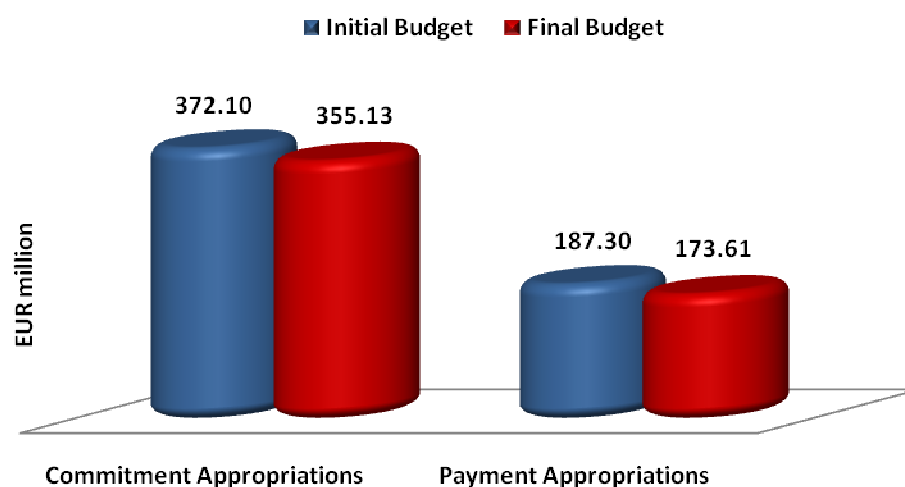
The budget is established and implemented in compliance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency.

- **unity and budget accuracy:** all Fusion for Energy's expenditure and revenue must be incorporated in a single budget document, must be booked on a budget line and expenditure must not exceed authorised appropriations;
- **annuality:** the appropriations entered are authorised for a single year and must therefore be used during that year;
- **equilibrium:** the revenue and expenditure shown in the budget must be in balance (estimated revenue must equal payment appropriations);
- **unit of account:** the budget is drawn up and implemented in euro (EUR) and the accounts are presented in euro;
- **universality:** this principle comprises two rules: – the rule of non-assignment, meaning that budget revenue must not be earmarked for specific items of expenditure (total revenue must cover total expenditure); – the gross budget rule, meaning that revenue and expenditure are entered in full in the budget without any adjustment against each other;
- **specification:** each appropriation is assigned to a specific purpose and a specific objective;
- **sound financial management:** budget appropriations are used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness;
- **transparency:** the budget is established and implemented and the accounts presented in compliance with the principle of transparency - the budget and amending budgets are published in the website of Fusion for Energy.

## 1. Initial budget and amending budgets

The Fusion for Energy budget for 2009<sup>5</sup> was initially adopted for the global amount of EUR 372.10 million in commitment appropriations and EUR 187.30 million in payment appropriations.

This budget was successively amended at the March meeting<sup>6</sup>, the July meeting<sup>7</sup> and the November meeting<sup>8</sup> of the Governing Board. Some budgetary transfers within the administrative titles of the budget were authorised by Fusion for Energy Director as well. The final authorised Fusion for Energy budget for 2009 was made of EUR 355.13 million in commitment appropriations and EUR 173.61 million in payment appropriations.



## 2. Budget implementation

The results of the implementation of the first full year are as follow:

**82.4%** of the revenues foreseen in the budget were collected by the 31/12/09

**98.9%** of the overall budget in commitment appropriations was implemented, of which **99.0%** of the operational budget appropriations (Title III of the expenditure) and **97.5%** of the administrative expenditures (Title I & II)

**65.3%** of the overall budget was implemented in payment appropriations, of which **65.5%** of the operational budget appropriations and **64.2%** of the administrative expenditure

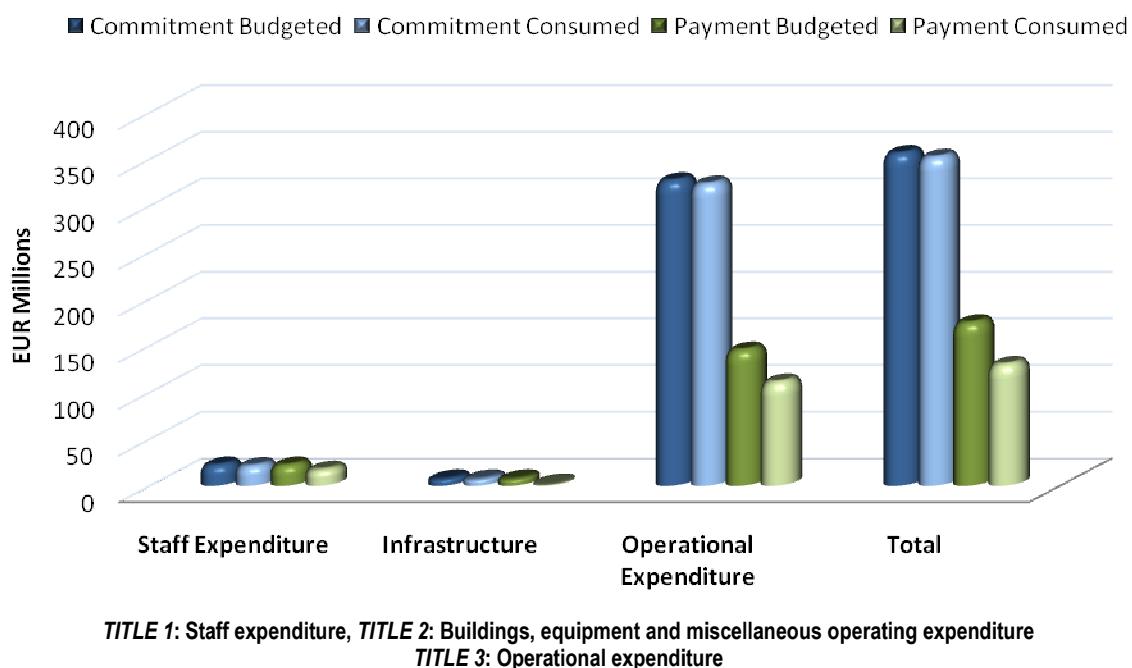
<sup>5</sup> Decision of the F4E Governing Board F4E(08)-GB08-09 of the 04/12/08

<sup>6</sup> Decision of the F4E Governing Board F4E(09)-GB09-10 of the 12/03/09

<sup>7</sup> Decision of the F4E Governing Board F4E(09)-GB10-11 of the 09/07/09

<sup>8</sup> Decision of the F4E Governing Board F4E(09)-GB12-14 of the 27/11/09

## Implementation of Budget 2009

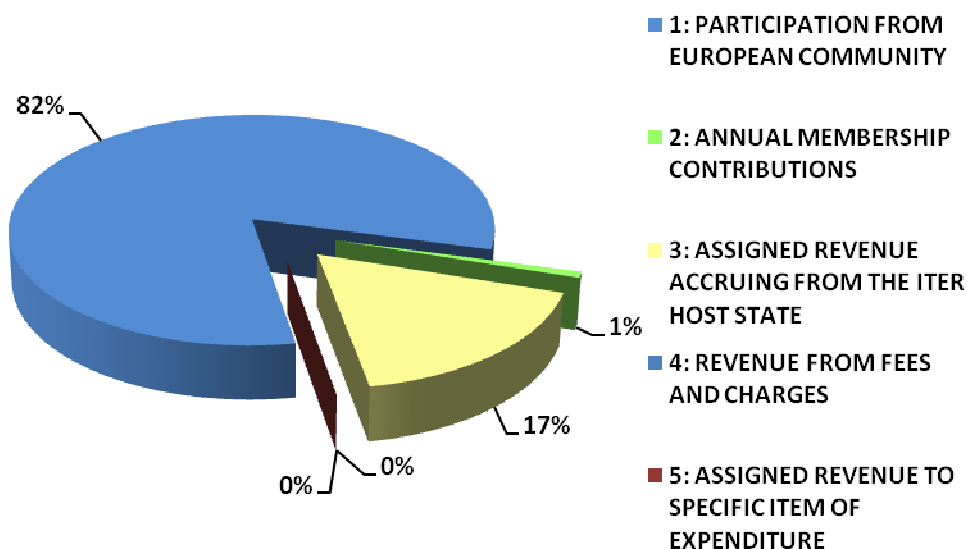


### 3. Statement of Revenue

#### 3.1. Evolution of the Statement of revenue

##### Commitment Appropriations (EUR)

Heading	Initial budget 2009 (1)	Amendments to the budget (2)	Final adopted Budget 2009 (3)=(1)+(2)
<b>1: PARTICIPATION FROM EUROPEAN COMMUNITY</b>	308 000 000.00	-16 972 000.00	291 028 000.00
<b>2: ANNUAL MEMBERSHIP CONTRIBUTIONS</b>	2 900 000.00	0.00	2 900 000.00
<b>3: ASSIGNED REVENUE ACCRUING FROM THE ITER HOST STATE</b>	61 200 000.00	0.00	61 200 000.00
<b>4: REVENUE FROM FEES AND CHARGES</b>	p.m.	p.m.	p.m.
<b>5: ASSIGNED REVENUE TO SPECIFIC ITEM OF EXPENDITURE</b>	p.m.	p.m.	p.m.
<b>Total Revenue 2009</b>	<b>372 100 000.00</b>	<b>-16 972 000.00</b>	<b>355 128 000.00</b>



#### Payment appropriations (EUR)

Heading	Initial budget 2009 (1)	Amendments to the budget (2)	Final adopted Budget 2009 (3)=(1)+(2)
1: PARTICIPATION FROM EUROPEAN COMMUNITY	154 000 000.00	-14 072 000.00	139 928 000.00
2: ANNUAL MEMBERSHIP CONTRIBUTIONS	2 900 000.00	385 000.00	3 285 000.00
3: ASSIGNED REVENUE ACCRUING FROM THE ITER HOST STATE	30 400 000.00	0.00	30 400 000.00
4: REVENUE FROM FEES AND CHARGES	p.m.	p.m.	p.m.
5: ASSIGNED REVENUE TO SPECIFIC ITEM OF EXPENDITURE	p.m.	p.m.	p.m.
<b>Total Revenue 2009</b>	<b>187 300 000.00</b>	<b>-13 687 000.00</b>	<b>173 613 000.00</b>

As already mentioned the Fusion for Energy budget for 2009 was amended 3 times:

- The amendment adopted in March 2009 aimed to reach the full accordance between the initial Fusion for Energy budget and the EU general budget for 2009, taking into account the modifications introduced during the budgetary procedure of the latter.

In addition the budgetary outturn for the administrative expenditure 2008 was recovered, according to the 2008 annual accounts.

The detailed amendment was made of:

- The decrease by EUR 0.28 million of the Euratom administrative contribution due to the EU budgetary procedure



- The increase by EUR 8.31 million of the Euratom administrative contribution due to the partial recovery of the outturn account 2008
- The increase of EUR 2.90 million of the Euratom operational contribution in payment appropriations due a technical correction.
- The amendment adopted in July 2009 did not bring any modification to the statement of revenue
- The amendment adopted in November 2009 establishing the Final budget was made of a decrease of the Euratom contribution, based on European Commission request plus a technical adjustment on membership contributions :
  - The decrease by EUR 25.00 million of the Euratom operational contribution in both commitment and payment appropriations
  - The increase by EUR 0.39 million of the membership contribution in payment appropriations to introduce in the budget a contribution from 2008 but received in 2009.

### 3.2.Implementation of the Statement of Revenue

#### Commitment Appropriations (EUR)

Heading	Final adopted Budget 2009  (1)	Carry over from 2008 (Assigned Revenue) (2)	Commitment appropriations available for implementation (3)=(1)+(2)
<b>1: PARTICIPATION FROM EUROPEAN COMMUNITY</b>	291 028 000.00	0.00	<b>291 028 000.00</b>
<b>2: ANNUAL MEMBERSHIP CONTRIBUTIONS</b>	2 900 000.00	0.00	<b>2 900 000.00</b>
<b>3: ASSIGNED REVENUE ACCRUING FROM THE ITER HOST STATE</b>	61 200 000.00	47 800 000.00	<b>109 000 000.00</b>
<b>4: REVENUE FROM FEES AND CHARGES</b>	p.m.	0.00	<b>310 383.27</b>
<b>5: ASSIGNED REVENUE TO SPECIFIC ITEM OF EXPENDITURE</b>	p.m.	977 500.00	<b>977 500.00</b>
<b>Total Revenue 2009</b>	<b>355 128 000.00</b>	<b>48 777 500.00</b>	<b>404 215 883.27</b>

**Payment appropriations (EUR)**

Heading	Final adopted Budget 2009  (1)	Final actual revenue (Debit note cashed) (2)	Carry over from 2008 (Assigned Revenue) (3)	Payment appropriations available for implementation (4)=(2)+(3)
<b>1: PARTICIPATION FROM EUROPEAN COMMUNITY</b>	139 928 000.00	<b>139 758 000.00</b>	0.00	<b>139 758 000.00</b>
<b>2: ANNUAL MEMBERSHIP CONTRIBUTIONS</b>	3 285 000.00	<b>2 797 298.55</b>	0.00	<b>2 797 298.55</b>
<b>3: ASSIGNED REVENUE ACCRUING FROM THE ITER HOST STATE</b>	30 400 000.00	<b>0.00</b>	24 000 000.00	<b>24 000 000.00</b>
<b>4: REVENUE FROM FEES AND CHARGES</b>	p.m.	<b>308 994.27</b>	0.00	<b>308 994.27</b>
<b>5: ASSIGNED REVENUE TO SPECIFIC ITEM OF EXPENDITURE</b>	p.m.	<b>112 500.00</b>	865 000.00	<b>977 500.00</b>
<b>Total Revenue 2009</b>	<b>173 613 000.00</b>	<b>142 976 792.82</b>	<b>24 865 000.00</b>	<b>167 841 792.82</b>

The following points should be noted:

- The Carry Over of appropriations for assigned revenues is automatic and made of the 2008 French contribution as ITER Host State and 3 specific contracts received from ITER organisation.
- ITER Host State Contribution: A debit note for the full amount foreseen in the budget (EUR 30.4 million) was issued for the payment of the 2009 French contribution but the effective payment was postponed in agreement between Fusion for Energy and the French Authorities, taking into consideration the relatively high amount still available for payment from the 2008 contribution.
- Euratom Contribution: The Commission was not in the position to pay the full amount requested in accordance with the budget due to its obligation for direct payment on an old contract related to ITER activities and established before Fusion for Energy financial autonomy (EUR -170 000).
- Membership contributions: Fusion for Energy received the complement to the 2008 membership contributions, but 2 members did not pay their contributions related to the 2009 budget, despite several reminders.
- Other additional revenues were made of bank interests on the French contribution (EUR 251 976.03) and interests on the “current” bank account (EUR 57 018 .24)

## 4. Statement of expenditure

### 4.1. Evolution of the Statement of Expenditure

The statement of Expenditure was adjusted in accordance with the regular forecasts for the implementation of the Budget and the amendments to the Work Programme.

A new Budget Item for Traineeships was introduced with the July amendment to the budget.

The evolution of the statement of expenditure is detailed in the tables below:

#### 4.1.1. Amendments to the Budget (EUR)

Heading	F4E Initial budget 2009	F4E amended budget March 2009	F4E amended budget June 2009	Final F4E amended budget November 2009
<b>TITLE 1 - Commitment and Payment</b>	<b>23 554 000.00</b>	<b>25 512 000.00</b>	<b>22 712 000.00</b>	<b>22 712 000.00</b>
CH 11 - STAFF EXPENDITURE IN THE ESTABLISHMENT PLAN	14 534 000.00	15 734 000.00	13 475 000.00	<b>13 475 000.00</b>
CH 12 - EXTERNAL STAFF EXPENDITURE ( CA, IS AND SNE)	5 684 000.00	5 746 000.00	5 033 000.00	<b>5 033 000.00</b>
CH 13 - MISSIONS AND DUTY TRAVEL	1 627 000.00	1 627 000.00	1 695 000.00	<b>1 695 000.00</b>
CH 14 - MISCELLANEOUS EXPENDITURE ON STAFF RECRUITMENT AND TRANSFER	1 219 000.00	1 856 000.00	1 811 000.00	<b>1 811 000.00</b>
CH 15 - REPRESENTATION	20 000.00	20 000.00	20 000.00	<b>20 000.00</b>
CH 16 - TRAINING	351 000.00	384 000.00	414 000.00	<b>414 000.00</b>
CH 17 - OTHER STAFF MANAGEMENT EXPENDITURE	119 000.00	145 000.00	220 000.00	<b>220 000.00</b>
CH 18 - TRAINEESHIPS			44 000.00	<b>44 000.00</b>
<b>TITLE 2 - Commitment and Payment</b>	<b>5 346 000.00</b>	<b>7 416 000.00</b>	<b>6 626 000.00</b>	<b>6 626 000.00</b>
CH 21 - BUILDINGS AND ASSOCIATED COSTS	702 000.00	855 000.00	855 000.00	<b>881 000.00</b>
CH 22 - INFORMATION AND COMMUNICATION TECHNOLOGIES	2 447 000.00	3 918 000.00	3 918 000.00	<b>4 000 000.00</b>
CH 23 - MOVABLE PROPERTY AND ASSOCIATED COSTS	308 000.00	215 000.00	215 000.00	<b>355 000.00</b>
CH 24 - EVENTS AND COMMUNICATION	500 000.00	1 090 000.00	300 000.00	<b>200 000.00</b>
CH 25 - CURRENT ADMINISTRATIVE EXPENDITURE	892 000.00	701 000.00	701 000.00	<b>706 000.00</b>
CH 26 - POSTAGE AND TELECOMMUNICATIONS	159 000.00	248 000.00	248 000.00	<b>256 000.00</b>
CH 27 - EXPENDITURE ON FORMAL AND OTHER MEETINGS	338 000.00	389 000.00	389 000.00	<b>228 000.00</b>
<b>Total TITLE 1 &amp; 2 - Commit &amp; Pay</b>	<b>28 900 000.00</b>	<b>32 928 000.00</b>	<b>29 338 000.00</b>	<b>29 338 000.00</b>

<b>TITLE 3 - Commitment</b>	<b>343 200 000.00</b>	<b>347 200 000.00</b>	<b>350 790 000.00</b>	<b>325 790 000.00</b>
CH 31 - ITER CONSTRUCTION INCLUDING ITER SITE PREPARATION	256 840 000.00	260 840 000.00	263 640 000.00	<b>238 095 000.00</b>
CH 32 - TECHNOLOGY FOR ITER	14 200 000.00	14 200 000.00	14 200 000.00	<b>15 285 000.00</b>
CH 33 - TECHNOLOGY FOR BROADER APPROACH AND DEMO	10 210 000.00	10 210 000.00	10 210 000.00	<b>10 210 000.00</b>
CH 34 - OTHER EXPENDITURE	750 000.00	750 000.00	1 540 000.00	<b>1 000 000.00</b>
CH 35 - ITER CONSTRUCTION - APPROPRIATIONS ACCRUING FROM THE HOST STATE CONTRIBUTION	61 200 000.00	61 200 000.00	61 200 000.00	<b>61 200 000.00</b>
CH 36 - APPROPRIATION ACCRUING FROM THIRD PARTIES TO SPECIFIC ITEM OF EXPENDITURE	p.m.	p.m.	p.m.	p.m.

<b>Total BUDGET in Commitment</b>	<b>372 100 000.00</b>	<b>380 128 000.00</b>	<b>380 128 000.00</b>	<b>355 128 000.00</b>
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<b>TITLE 3 - Payment</b>	<b>158 400 000.00</b>	<b>165 300 000.00</b>	<b>168 890 000.00</b>	<b>144 275 000.00</b>
CH 31 - ITER CONSTRUCTION INCLUDING ITER SITE PREPARATION	115 599 000.00	122 499 000.00	125 299 000.00	<b>110 192 950.00</b>
CH 32 - TECHNOLOGY FOR ITER	7 441 000.00	7 441 000.00	7 441 000.00	<b>2 550 000.00</b>
CH 33 - TECHNOLOGY FOR BROADER APPROACH AND DEMO	4 210 000.00	4 210 000.00	4 210 000.00	<b>132 050.00</b>
CH 34 - OTHER EXPENDITURE	750 000.00	750 000.00	1 540 000.00	<b>1 000 000.00</b>
CH 35 - ITER CONSTRUCTION - APPROPRIATIONS ACCRUING FROM THE HOST STATE CONTRIBUTION	30 400 000.00	30 400 000.00	30 400 000.00	<b>30 400 000.00</b>
CH 36 - APPROPRIATION ACCRUING FROM THIRD PARTIES TO SPECIFIC ITEM OF EXPENDITURE	p.m.	p.m.	p.m.	<b>0.00</b>

<b>Total BUDGET in Payment</b>	<b>187 300 000.00</b>	<b>198 228 000.00</b>	<b>198 228 000.00</b>	<b>173 613 000.00</b>
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#### 4.1.2. Final budget for implementation

In addition to the amending budgets, some transfers have been approved by the Director within the limits foreseen in Art 23 FR.

The appropriations accruing from assigned revenue from 2008 were automatically carried over to 2009.

The final statement of expenditure is as follow (EUR):

Heading	Final F4E amended budget November 2009 (1)	Transfers adopted by F4E Director or add. revenue (2)	F4E Final 2009 budget (3)=(1)+(2)	Carry over from 2008 (Assigned Revenue) (4)	F4E Final budget for implementation (5)=(4)+(3)
<b>TITLE 1 – Commitment and Payment</b>	<b>22 712 000.00</b>	<b>-763 000.00</b>	<b>21 949 000.00</b>	<b>0.00</b>	<b>21 949 000.00</b>
CH 11 - STAFF EXPENDITURE IN THE ESTABLISHMENT PLAN	13 475 000.00	-50 000.00	13 425 000.00		13 425 000.00
CH 12 - EXTERNAL STAFF EXPENDITURE ( CA, IS AND SNE)	5 033 000.00	-500 000.00	4 533 000.00		4 533 000.00
CH 13 - MISSIONS AND DUTY TRAVEL	1 695 000.00	-135 000.00	1 560 000.00		1 560 000.00
CH 14 - MISCELLANEOUS EXPENDITURE ON STAFF RECRUITMENT AND TRANSFER	1 811 000.00	-174 000.00	1 637 000.00		1 637 000.00
CH 15 - REPRESENTATION	20 000.00		20 000.00		20 000.00
CH 16 -TRAINING	414 000.00	-70 000.00	344 000.00		344 000.00
CH 17 - OTHER STAFF MANAGEMENT EXPENDITURE	220 000.00	166 000.00	386 000.00		386 000.00
CH 18 - TRAINEESHIPS	44 000.00		44 000.00		44 000.00
<b>TITLE 2 – Commitment and Payment</b>	<b>6 626 000.00</b>	<b>763 000.00</b>	<b>7 389 000.00</b>	<b>0.00</b>	<b>7 389 000.00</b>
CH 21 - BUILDINGS AND ASSOCIATED COSTS	881 000.00	-109 000.00	772 000.00		772 000.00
CH 22 - INFORMATION AND COMMUNICATION TECHNOLOGIES	4 000 000.00	715 000.00	4 715 000.00		4 715 000.00
CH 23 - MOVABLE PROPERTY AND ASSOCIATED COSTS	355 000.00	144 000.00	499 000.00		499 000.00
CH 24 - EVENTS AND COMMUNICATION	200 000.00	-55 000.00	145 000.00		145 000.00
CH 25 - CURRENT ADMINISTRATIVE EXPENDITURE	706 000.00	16 000.00	722 000.00		722 000.00
CH 26 - POSTAGE AND TELECOMMUNICATIONS	256 000.00	2 000.00	258 000.00		258 000.00
CH 27 - EXPENDITURE ON FORMAL AND OTHER MEETINGS	228 000.00	50 000.00	278 000.00		278 000.00
<b>Total TITLE 1 &amp; 2 – Commitment and Payment</b>	<b>29 338 000.00</b>	<b>0.00</b>	<b>29 338 000.00</b>	<b>0.00</b>	<b>29 338 000.00</b>

<b>TITLE 3 - Commitment</b>	<b>325 790 000.00</b>	<b>251 976.03</b>	<b>326 041 976.03</b>	<b>48 777 500.00</b>	<b>374 819 476.03</b>
CH 31 - ITER CONSTRUCTION INCLUDING ITER SITE PREPARATION	238 095 000.00		238 095 000.00		238 095 000.00
CH 32 - TECHNOLOGY FOR ITER	15 285 000.00		15 285 000.00		15 285 000.00
CH 33 - TECHNOLOGY FOR BROADER APPROACH AND DEMO	10 210 000.00		10 210 000.00		10 210 000.00
CH 34 - OTHER EXPENDITURE	1 000 000.00		1 000 000.00		1 000 000.00
CH 35 - ITER CONSTRUCTION - APPROPRIATIONS ACCRUING FROM THE HOST STATE CONTRIBUTION	61 200 000.00	251 976.03	61 451 976.03	47 800 000.00	109 251 976.03
CH 36 - APPROPRIATION ACCRUING FROM THIRD PARTIES TO SPECIFIC ITEM OF EXPENDITURE	0.00		0.00	977 500.00	977 500.00

<b>Total BUDGET in Commitment</b>	<b>355 128 000.00</b>	<b>251 976.03</b>	<b>355 379 976.03</b>	<b>48 777 500.00</b>	<b>404 157 476.03</b>
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<b>TITLE 3 - Payment</b>	<b>144 275 000.00</b>	<b>251 976.03</b>	<b>144 526 976.03</b>	<b>24 977 500.00</b>	<b>169 504 476.03</b>
CH 31 - ITER CONSTRUCTION INCLUDING ITER SITE PREPARATION	110 192 950.00		110 192 950.00		110 192 950.00
CH 32 - TECHNOLOGY FOR ITER	2 550 000.00		2 550 000.00		2 550 000.00
CH 33 - TECHNOLOGY FOR BROADER APPROACH AND DEMO	132 050.00		132 050.00		132 050.00
CH 34 - OTHER EXPENDITURE	1 000 000.00		1 000 000.00		1 000 000.00
CH 35 - ITER CONSTRUCTION - APPROPRIATIONS ACCRUING FROM THE HOST STATE CONTRIBUTION	30 400 000.00	251 976.03	30 651 976.03	24 000 000.00	54 651 976.03
CH 36 - APPROPRIATION ACCRUING FROM THIRD PARTIES TO SPECIFIC ITEM OF EXPENDITURE	0.00		0.00	977 500.00	977 500.00

<b>Total BUDGET in Payment</b>	<b>173 613 000.00</b>	<b>251 976.03</b>	<b>173 864 976.03</b>	<b>24 977 500.00</b>	<b>198 842 476.03</b>
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## 4.2. Implementation of the Statement of Expenditure

### 4.2.1. Implementation of the Budget in Commitment Appropriations (EUR)

Heading	F4E Final 2009 budget for implementation (1)	Final implementation 31/12/09 (2)	% implementation (3) = (2)/(1)%
<b>TITLE 1 - STAFF EXPENDITURE Commitment</b>	<b>21 949 000.00</b>	<b>21 311 520.44</b>	<b>97.1%</b>
<b>TITLE 2 - OTHER OPERATING EXPEND. Commitment</b>	<b>7 389 000.00</b>	<b>7 288 541.73</b>	<b>98.6%</b>
<b>Total TITLE 1 &amp; 2 Commitment</b>	<b>29 338 000.00</b>	<b>28 600 062.17</b>	<b>97.5%</b>
<b>TITLE 3 - OPERATIONAL EXPENDITURECommitment</b>	<b>374 819 476.03</b>	<b>371 160 685.00</b>	<b>99.0%</b>
CH 31 - ITER CONSTRUCTION INCLUDING ITER SITE PREPARATION	238 095 000.00	238 095 000.00	100.0%
CH 32 - TECHNOLOGY FOR ITER	15 285 000.00	15 285 000.00	100.0%
CH 33 - TECHNOLOGY FOR BROADER APPROACH AND DEMO	10 210 000.00	10 210 000.00	100.0%
CH 34 - OTHER EXPENDITURE	1 000 000.00	1 000 000.00	100.0%
CH 35 - ITER CONSTRUCTION - APPROPRIATIONS ACCRUING FROM THE HOST STATE CONTRIBUTION	109 251 976.03	106 570 685.00	97.5%
CH 36 - APPROPRIATION ACCRUING FROM THIRD PARTIES TO SPECIFIC ITEM OF EXPENDITURE	977 500.00	0.00	0.0%
<b>Total BUDGET in Commitment</b>	<b>404 157 476.03</b>	<b>399 760 747.17</b>	<b>98.9%</b>

Note: Chapter 35 include the open commitment carried over from 2008 to 2009

#### 4.2.2. Implementation of the Budget in Payment Appropriations (EUR)

Heading	F4E Final 2009 budget for implementation (1)	Final implementation 31/12/09 (2)	% implementation (3) = (2)/(1)%
<b>TITLE 1 - STAFF EXPENDITURE Payment</b>	<b>21 949 000.00</b>	<b>17 274 747.27</b>	<b>78.7%</b>
<b>TITLE 2 - OTHER OPERATING EXPEND. Payment</b>	<b>7 389 000.00</b>	<b>1 564 361.71</b>	<b>21.2%</b>
<b>Total TITLE 1 &amp; 2 Payment</b>	<b>29 338 000.00</b>	<b>18 839 108.98</b>	<b>64.2%</b>
<b>TITLE 3 - OPERATIONAL EXPENDITUREPayment</b>	<b>169 504 476.03</b>	<b>111 037 211.15</b>	<b>65.5%</b>
CH 31 - ITER CONSTRUCTION INCLUDING ITER SITE PREPARATION	110 192 950.00	105 673 550.87	95.9%
CH 32 - TECHNOLOGY FOR ITER	2 550 000.00	1 228 621.99	48.2%
CH 33 - TECHNOLOGY FOR BROADER APPROACH AND DEMO	132 050.00	132 047.28	100.0%
CH 34 - OTHER EXPENDITURE	1 000 000.00	539 017.71	53.9%
CH 35 - ITER CONSTRUCTION - APPROPRIATIONS ACCRUING FROM THE HOST STATE CONTRIBUTION	54 651 976.03	3 463 973.30	6.3%
CH 36 - APPROPRIATION ACCRUING FROM THIRD PARTIES TO SPECIFIC ITEM OF EXPENDITURE	977 500.00	0.00	0.0%
<b>Total BUDGET in Payment</b>	<b>198 842 476.03</b>	<b>129 876 320.13</b>	<b>65.3%</b>

Note: Chapter 35 include the payment appropriations carried over from 2008 to 2009

It should be noted that the Chapter 35 ITER Construction (Host State contribution) is only made of assigned revenues, which represent an exception to the annuality principle: both commitment and payment appropriations are automatically carried over to the following year as well as the corresponding open commitments.

Therefore the figures for the Chapter 35 as detailed in the statement of expenditure represent the total implementation 2008 and 2009.



### 4.3. Open commitments from the 2009 budget, carried forward to 2010

At the closure of the 2009 budgetary year, the following commitments were carried forward to 2010 for execution with the following budget (EUR):

Heading	Open Commitments from 2008 budget (1)	Open Commitments from 2009 budget (2)	Total open Commitments 31/12/09 (3)=(1)+(2)
<b>TITLE 1 - STAFF EXPENDITURE Commitment</b>	<b>1 507 419.73</b>	<b>4 036 773.17</b>	<b>5 544 192.90</b>
<b>TITLE 2 - OTHER OPERATING EXPEND. Commitment</b>	<b>2 276 092.75</b>	<b>5 724 180.02</b>	<b>8 000 272.77</b>
<b>Total TITLE 1 &amp; 2 Commitment</b>	<b>3 783 512.48</b>	<b>9 760 953.19</b>	<b>13 544 465.67</b>
<b>TITLE 3 - OPERATIONAL EXPENDITURE Commitment</b>	<b>70 601 501.63</b>	<b>346 035 542.87</b>	<b>416 637 044.50</b>
CH 31 - ITER CONSTRUCTION INCLUDING ITER SITE PREPARATION	66 927 955.03	217 014 855.60	283 942 810.63
CH 32 - TECHNOLOGY FOR ITER	3 582 404.00	15 002 979.21	18 585 383.21
CH 33 - TECHNOLOGY FOR BROADER APPROACH AND DEMO	0.50	10 077 952.72	10 077 953.22
CH 34 - OTHER EXPENDITURE	91 142.10	833 043.64	924 185.74
CH 35 - ITER CONSTRUCTION - APPROPRIATIONS ACCRUING FROM THE HOST STATE CONTRIBUTION	-	103 106 711.70	103 106 711.70
CH 36 - APPROPRIATION ACCRUING FROM THIRD PARTIES TO SPECIFIC ITEM OF EXPENDITURE	-	-	0.00
<b>Total BUDGET in Commitment</b>	<b>74 385 014.11</b>	<b>355 796 496.06</b>	<b>430 181 510.17</b>

To be noted:

- The open commitments from the 2008 administrative budget are to be de-committed and entered in the Budget Outturn Account 2009.
- The total open commitment on Title I amounts to EUR 4 036 773.17 on the 2009 Budget. A part of those commitments for salaries and directly associated costs are to be de-committed (EUR 2 193 376.54) and entered in the Budget Outturn Account.

The actual amount carried over to 2010 on Title I is therefore EUR 1 843 396.63.

#### 4.4. Cancelled Payment appropriations

According to Fusion for Energy Financial Regulation, referring in particular to the principle of annuality, all appropriations unused at the end of the year are cancelled.

Regarding the administrative expenditure, the cancelled commitment and payment appropriations amount to EUR 2 931 314.37.

Regarding the operational appropriations, there is no cancellation in commitment appropriation for the 2009 financial year and the cancellation of payment appropriations amount to EUR 6 301 762.15.

It is to be noted that the bank interests on Fusion for Energy current bank account amounts to EUR 57 018.24. Those revenues are not included in the statement of expenditure and therefore cancelled.

Heading	In Payment appropriations (EUR)		
	Unused Appropriations (1)	Appropriations carried over to 2010 (2)	Cancelled appropriations (3)=(1)-(2)
<b>TITLE 1 - Payment</b>	<b>4 674 252.73</b>	<b>1 843 396.63</b>	<b>2 830 856.10</b>
<b>TITLE 2 - Payment</b>	<b>5 824 638.29</b>	<b>5 724 180.02</b>	<b>100 458.27</b>
<b>Total TITLE 1 &amp; 2 Payment</b>	<b>10 498 891.02</b>	<b>7 567 576.65</b>	<b>2 931 314.37</b>
<b>TITLE 3 - Payment</b>	<b>58 467 264.88</b>	<b>52 165 502.73</b>	<b>6 301 762.15</b>
CH 31 - ITER CONSTRUCTION INCLUDING ITER SITE PREPARATION	4 519 399.13	0.00	4 519 399.13
CH 32 - TECHNOLOGY FOR ITER	1 321 378.01	0.00	1 321 378.01
CH 33 - TECHNOLOGY FOR BROADER APPROACH AND DEMO	2.72	0.00	2.72
CH 34 - OTHER EXPENDITURE	460 982.29	0.00	460 982.29
CH 35 - ITER CONSTRUCTION - APPROPRIATIONS ACCRUING FROM THE HOST STATE CONTRIBUTION	51 188 002.73	51 188 002.73	0.00
CH 36 - APPROPRIATION ACCRUING FROM THIRD PARTIES TO SPECIFIC ITEM OF EXPENDITURE	977 500.00	977 500.00	0.00
<b>Total BUDGET in Payment</b>	<b>68 966 155.90</b>	<b>59 733 079.38</b>	<b>9 233 076.52</b>

## 5. Budget Outturn account 2009

The Outturn for the financial year corresponds to the total revenues actually cashed minus the total payment incurred during the year, minus the appropriations carried over to the following year.

For the financial year 2009, the balance of the budget outturn amounts to EUR -17 991 304.88.

This corresponds to the Budget Outturn Account plus the unused payment appropriations carried over from 2008, adjustment for carry-over from 2008 of appropriations arising from assigned revenue and the exchange difference.

Budget Outturn Account		2009	2008
<b>REVENUE</b>			
Euratom contribution	+	139 758 000.00	122 457 297.35
ITER Host state and Membership contributions	+	2 797 298.55	26 298 100.00
Other revenue	+	421 494.27	1 013 682.94
<b>TOTAL REVENUE (a)</b>		<b>142 976 792.82</b>	<b>149 769 080.29</b>
<b>EXPENDITURE</b>			
<i>Title I: Staff</i>			
Payments	-	17 274 747.27	9 050 469.06
Appropriations carried over	-	1 843 396.63	2 063 062.49
<i>Title II: Infrastructure Expenditure</i>			
Payments	-	1 564 361.71	223 048.21
Appropriations carried over	-	5 724 180.02	5 288 722.23
<i>Title III: Operational Expenditure</i>			
Payments	-	111 037 211.15	82 873 869.37
Appropriations carried over	-	52 165 502.73	24 865 000.00
<i>Total Payments (b)</i>		<i>129 876 320.13</i>	<i>92 147 386.64</i>
<i>Total Appropriations carried over (c)</i>		<i>59 733 079.38</i>	<i>32 216 784.72</i>
<b>TOTAL EXPENDITURE (d)=(b)+(c)</b>		<b>189 609 399.51</b>	<b>124 364 171.36</b>
<b>OUTTURN FOR THE FINANCIAL YEAR (a-d)</b>		<b>-46 632 606.69</b>	<b>25 404 908.93</b>
Cancellation of unused payment appropriations carried over from previous year	+	3 783 512.48	0.00
Adjustment for carry-over from the previous year of appropriations available at 31.12 arising from assigned revenue	+	24 865 000.00	0.00
Exchange differences for the year (gain +/- loss -)	+/-	-7 210.67	1 506.29
<b>BALANCE OF THE OUTTURN ACCOUNT FOR THE FINANCIAL YEAR</b>		<b>-17 991 304.88</b>	<b>25 406 415.22</b>

## **5.1. Revenue**

The revenues actually cashed in 2009 amount to EUR 142 976 792.82.

Compared to the statement of revenue previously described, the ITER Host State contribution and two Membership contributions were not received, corresponding to a total amount not cashed of EUR 31 048 990.45.

## **5.2. Expenditure**

The payments actually made in 2009 amount to EUR 129 876 320.13 and the amount carried over to 2010 is EUR 59 733 079.38.

Regarding the carryover, it is to be noted that as exception to the principle of annuality foreseen in Fusion for Energy Financial Regulation, some unused appropriations from the 2009 budget are automatically carried over to the 2010 budget and assigned to the same activities as in the 2009 budget.

In this year's exercise, this concerns:

- the assigned revenue made of the contribution of the ITER Host State and the three ITER Task Agreements signed at the end of 2008.
  - On Title 3, Chapter 3.5: EUR 51 188 002.73 in payment appropriation,
  - On Title 3, Chapter 3.6: EUR 977 500 in payment appropriations.
- the payment appropriations necessary to cover the 2009 open administrative commitments to be paid until the end of 2010 (EUR 7 567 576.65).

## 6. Annexes

### 6.1. Reconciliation between budgetary and accrual based accounts (EUR)

<b>Economic result (- for loss)</b>	<b>74 800 625.33</b>
<i>Adjustment for accrual items (items not in the budgetary result but included in the economic result)</i>	
Adjustments for Accrual Cut-off (reversal 31.12.N-1)	27 843 241.47
Adjustments for Accrual Cut-off (cut- off 31.12.N )	-27 305 616.79
Unpaid invoices at year end but booked in charges (class 6)	9 325 155.10
Depreciation of intangible and tangible fixed assets	536 857.86
Provisions	59 141.81
Recovery Orders issued in 2009 in class 7 and not yet cashed	-30 878 389.00
Prefinancing given in previous year and cleared in the year	76 291.84
Prefinancing received in previous year and cleared in the year	0.00
Payments made from carry over of payment appropriations	3 568 272.24
Other (Income from fixed asset donated by Spanish authorities)	-126 364.25
Exchange rate differences	7 210.67
<i>Adjustment for budgetary items (item included in the budgetary result but not in the economic result)</i>	
Asset acquisitions (less unpaid amounts)	-1 310 506.05
New pre-financing paid in the year 2009 and remaining open as at 31.12.2009	-43 884 531.91
Budgetary recovery orders issued before 2009 and cashed in the year	384 298.55
Payment appropriations carried over to 2010	-59 733 079.38
Cancellation of unused carried over payment appropriations from previous year	3 783 512.48
Adjustment for carry-over from the previous year of appropriations available at 31.12 arising from assigned revenue	24 865 000.00
<b>Total</b>	<b>-17 988 880.03</b>
<b>Budgetary result (+ for surplus)</b>	<b>-17 991 304.88</b>
Delta not explained	-2 424.85

## 6.2. Budget implementation – Details by fund source

**Fund Source : C1 - Credits of the year**

Budget Line Position	Budget Line Description	Commit. Approp. (1)	Commitment Amount Accepted (2)	% Committed (2/1)	Paym.Approp. Amount (4)	Payment Amnt. Accepted (5)	% Paid (5/4)
A-1100	Staff expenditure in the establishment plan	13 425 000.00	13 331 000.00	99.30 %	13 425 000.00	12 705 287.24	94.64 %
A-1200	External staff expenditure (Contracts agents, interim staff and national experts)	4 533 000.00	4 224 280.44	93.19 %	4 533 000.00	2 371 155.05	52.31 %
A-1300	Missions and duty travel	1 560 000.00	1 442 000.00	92.44 %	1 560 000.00	870 960.04	55.83 %
A-1400	Miscellaneous expenditure on staff recruitment and transfer	1 637 000.00	1 527 000.00	93.28 %	1 637 000.00	1 069 897.92	65.36 %
A-1500	Representation	20 000.00	20 000.00	100.00 %	20 000.00	11 629.18	58.15 %
A-1600	Training	344 000.00	338 100.00	98.28 %	344 000.00	137 438.93	39.95 %
A-1700	Other staff management expenditure	386 000.00	385 140.00	99.78 %	386 000.00	77 900.58	20.18 %
A-1800	Traineeships	44 000.00	44 000.00	100.00 %	44 000.00	30 478.33	69.27 %
<b>Total Title 1</b>		<b>21 949 000.00</b>	<b>21 311 520.44</b>	<b>97.10 %</b>	<b>21 949 000.00</b>	<b>17 274 747.27</b>	<b>78.70 %</b>

Budget Line Position	Budget Line Description	Commit. Approp. (1)	Commitment Amount Accepted (2)	% Committed (2/1)	Paym.Approp. Amount (4)	Payment Amnt. Accepted (5)	% Paid (5/4)
A-2100	Buildings and associated costs	772 000.00	772 000.00	100.00 %	772 000.00	53 174.99	6.89 %
A-2200	Information and communication technologies	4 715 000.00	4 707 516.33	99.84 %	4 715 000.00	946 316.31	20.07 %
A-2300	Movable property and associated costs	499 000.00	495 516.40	99.30 %	499 000.00	3 464.40	0.69 %
A-2400	Events and communication	145 000.00	120 309.00	82.97 %	145 000.00	21 029.42	14.50 %
A-2500	Current administrative expenditure	722 000.00	715 700.00	99.13 %	722 000.00	380 086.02	52.64 %
A-2600	Postage and Telecommunications	258 000.00	258 000.00	100.00 %	258 000.00	0.00	0.00 %
A-2700	Expenditure on Formal and other meetings	278 000.00	219 500.00	78.96 %	278 000.00	160 290.57	57.66 %
<b>Total Title 2</b>		<b>7 389 000.00</b>	<b>7 288 541.73</b>	<b>98.64 %</b>	<b>7 389 000.00</b>	<b>1 564 361.71</b>	<b>21.17 %</b>

Budget Line Position	Budget Line Description	Commit. Approp. (1)	Commitment Amount Accepted (2)	% Committed (2/1)	Paym.Approp. Amount (4)	Payment Amnt. Accepted (5)	% Paid (5/4)
B3-100	ITER Construction including the ITER site preparation	238 095 000.00	238 095 000.00	100.00 %	110 192 950.00	105 673 550.87	95.90 %
B3-200	Technology for ITER and DEMO	15 285 000.00	15 285 000.00	100.00 %	2 550 000.00	1 228 621.99	48.18 %
B3-300	Technology for Broader Approach and Demo	10 210 000.00	10 210 000.00	100.00 %	132 050.00	132 047.28	100.00 %
B3-400	Other expenditure	1 000 000.00	1 000 000.00	100.00 %	1 000 000.00	539 017.71	53.90 %
<b>Total Title 3</b>		<b>264 590 000.00</b>	<b>264 590 000.00</b>	<b>100.00 %</b>	<b>113 875 000.00</b>	<b>107 573 237.85</b>	<b>94.47 %</b>

<b>TOTAL C1</b>		<b>293 928 000.00</b>	<b>293 190 062.17</b>	<b>99.75 %</b>	<b>143 213 000.00</b>	<b>126 412 346.83</b>	<b>88.27 %</b>
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**Fund Source : C8 - Carried over credits from previous years**

Budget Line Position	Budget Line Description	Commit. Approp. (1)	Commitment Amount Accepted (2)	% Committed (2/1)	Paym.Approp. Amount (4)	Payment Amnt. Accepted (5)	% Paid (5/4)
A-1200	External staff expenditure (Contracts agents, interim staff and national experts)	91 496.90	91 496.90	100.00 %	91 496.90	84 496.85	92.35 %
A-1300	Missions and duty travel	1 423 774.81	1 423 774.81	100.00 %	1 423 774.81	347 711.90	24.42 %
A-1400	Miscellaneous expenditure on staff recruitment and transfer	197 904.07	197 904.07	100.00 %	197 904.07	31 072.86	15.70 %
A-1500	Representation	15 106.17	15 106.17	100.00 %	15 106.17	660.49	4.37 %
A-1600	Training	102 013.40	102 013.40	100.00 %	102 013.40	26 610.66	26.09 %
A-1700	Other staff management expenditure	232 767.14	232 767.14	100.00 %	232 767.14	65 090.00	27.96 %
<b>Total Title 1</b>		<b>2 063 062.49</b>	<b>2 063 062.49</b>	<b>100.00 %</b>	<b>2 063 062.49</b>	<b>555 642.76</b>	<b>26.93 %</b>

Budget Line Position	Budget Line Description	Commit. Approp. (1)	Commitment Amount Accepted (2)	% Committed (2/1)	Paym.Approp. Amount (4)	Payment Amnt. Accepted (5)	% Paid (5/4)
A-2100	Buildings and associated costs	697 800.00	697 800.00	100.00 %	697 800.00	324 990.19	46.57 %
A-2200	Information and communication technologies	2 747 550.66	2 747 550.66	100.00 %	2 747 550.66	1 759 993.29	64.06 %
A-2300	Movable property and associated costs	572 510.95	572 510.95	100.00 %	572 510.95	403 768.23	70.53 %
A-2400	Events and communication	69 208.53	69 208.53	100.00 %	69 208.53	30 464.15	44.02 %
A-2500	Current administrative expenditure	725 803.75	725 803.75	100.00 %	725 803.75	254 603.42	35.08 %
A-2600	Postage and Telecommunications	293 613.98	293 613.98	100.00 %	293 613.98	112 451.50	38.30 %
A-2700	Expenditure on Formal and other meetings	182 234.36	182 234.36	100.00 %	182 234.36	126 358.70	69.34 %
<b>Total Title 2</b>		<b>5 288 722.23</b>	<b>5 288 722.23</b>	<b>100.00 %</b>	<b>5 288 722.23</b>	<b>3 012 629.48</b>	<b>56.96 %</b>



Budget Line Position	Budget Line Description	Commit. Approp. (1)	Commitment Amount Accepted (2)	% Committed (2/1)	Paym.Approp. Amount (4)	Payment Amnt. Accepted (5)	% Paid (5/4)
B3-100	ITER Construction including the ITER site preparation	103 897 443.50	103 897 443.50	100.00 %	Payment appropriations under C1 Fund source		
B3-200	Technology for ITER and DEMO	4 427 830.00	4 427 830.00	100.00 %			
B3-300	Technology for Broader Approach and Demo	0.50	0.50	100.00 %			
B3-400	Other expenditure	415 450.00	415 450.00	100.00 %			
<b>Total Title 3</b>		<b>108 740 724.00</b>	<b>108 740 724.00</b>	<b>100.00 %</b>			
<b>TOTAL C8</b>		<b>116 092 508.72</b>	<b>116 092 508.72</b>	<b>100.00 %</b>	<b>7 351 784.72</b>	<b>3 568 272.24</b>	<b>48.54 %</b>

**Fund Source : R0 - Assigned revenues**

Budget Line Position	Budget Line Description	Commit. Approp. (1)	Commitment Amount Accepted (2)	% Committed (2/1)	Paym.Approp. Amount (4)	Payment Amnt. Accepted (5)	% Paid (5/4)
B3-500	ITER construction- Appropriation accruing from the ITER host state contribution	109 251 976.03	106 570 685.00	97.55 %	54 651 976.03	3 463 973.30	6.34 %
B3-600	Appropriation accruing from third parties to specific item of expenditure	977 500.00	0.00	0.00 %	977 500.00	0.00	0.00 %
<b>TOTAL R0</b>		<b>110 229 476.03</b>	<b>106 570 685.00</b>	<b>96.68 %</b>	<b>55 629 476.03</b>	<b>3 463 973.30</b>	<b>6.23 %</b>

## VII. Establishment plan 2009

Function group and grade	2009			
	Authorised under the EU Budget		Filled as of 31/12/2009 (including job offers done)	
	Permanent posts	Temporary Posts	Permanent posts	Temporary Posts
AD 16				
AD 15				
AD 14		1		1
AD 13	1	1		
AD 12	8	8	15	3
AD 11	12		7	
AD 10	4	10		
AD 9	10	38	4	31
AD 8	4		1	
AD 7		10	1	1
AD 6	2	47		57
AD 5		4	3	3
<b>AD total</b>	<b>41</b>	<b>119</b>	<b>31</b>	<b>96</b>
AST 11	1			
AST 10	1		1	
AST 9	1		2	
AST 8			1	
AST 7	1		1	
AST 6	1		2	
AST 5	6			
AST 4	2		1	
AST 3	1	25		17
AST 2				
AST 1			1	
<b>AST total</b>	<b>14</b>	<b>25</b>	<b>9</b>	<b>17</b>
<b>TOTAL</b>	<b>55</b>	<b>144</b>	<b>40</b>	<b>113</b>
	<b>199</b>		<b>153</b>	

# REPORT ON BUDGETARY AND FINANCIAL MANAGEMENT 2009

## VIII. Legal Framework – Accrual accounting standards in Fusion for Energy

Fusion for Energy being fully consolidated in the EU accounts, the 2009 Fusion for Energy financial statement has been established by using the consolidation package provided by the European Commission. The accounting rules and regulations used in this report are edicted by the European Commission, are on an accrual basis and are compliant with the International Public Sector Accounting Standards (IPSAS).

The representation letter related to the accounts 2009 has been transmitted to the President of the European Court of Auditors in a separate note. It includes no reservation from Fusion for Energy Accounting Officer.

## IX. Financial Information System

### 1. The different financial actors

The **Director** assumes the responsibility of the implementation. He can delegate these tasks to individual staff members subject to the Financial Regulation and the Staff Regulations. The staff concerned – generally Heads of Departments - are known as “Authorising Officers by delegation”. They in turn may further delegate budget implementation tasks to “Authorising Officers by sub-delegation”.

The responsibility of the Authorising Officer covers the entire management process, from determining what needs to be done to achieve the objectives set to managing the activities launched from both an operational and budgetary standpoint, including signing legal commitments, monitoring performance, making payments and even recovering funds, if necessary.

In order to implement activities within the organisation, the Authorising Officer has put in place financial circuits which incorporate three main functions: Authorising Officer, financial officer (initiating and verifying agent) and operational/technical officer (initiating and verifying agent).

The Financial Regulation foresees the concept of the four-eyes principle, meaning that before an operation is authorised, all aspects of the operation have to be verified by

members of staff other than the one who initiated the operation. The person dealing with the verification cannot be subordinated to the initiator of the transaction.

All staff members have to attend appropriate training before acting as actor within the financial circuits.

Sound financial management and proper accountability are assured by the separation of management control (in the hands of the Authorising Officers) from internal audit and compliance control with internal control standards (inspired by COSO international standards), ex-ante and ex-post controls, independent internal auditing on the basis of risk assessments, and regular reporting.

The **Accounting Officer** executes payment and recovery orders drawn up by Authorising Officers and is responsible for managing the treasury, laying down accounting rules and methods, validating accounting systems, keeping the accounts and drawing up the annual accounts. Furthermore, the Accounting Officer is required to sign the accounts declaring that they provide a true and fair view of the financial position.

The **Internal Auditor**, who is not a financial actor in the strict sense of the term, is appointed to verify the proper operation of budgetary implementation systems and procedures and to advise the institution on risk management issues. The Internal Auditor issues independent opinions on the quality of management and control systems and provides recommendations on how to improve operational procedures and promote sound financial management.

## **2. Accrual Based Accounting system**

Fusion for Energy has implemented the ABAC system (Accrual Based Accounting) owned by the European Commission and used by many EU bodies.

Thanks to the ABAC/SAP full outsourcing scheme, Fusion for Energy has benefited from a high standard financial system for a small fraction of its potential acquisition price (2009 ABAC contribution to the Commission has been EUR 125 000). With the exception of the maintenance of the Testa II router, Fusion for Energy IT department has been able to focus on its core business and avoid spending time on financial applications maintenance. The ABAC Service Level Agreement between DG BUDG and Fusion for Energy has been signed in September 2007.

2009, as the first full year of financial autonomy, has been a year of consolidation in the use of the ABAC modules implemented in 2008 (ABAC-SAP, ABAC Workflow and ABAC Assets).

The complete use of ABAC Assets to register all purchases and donations was critical to establish the 2009 Financial Statement.

By being directly linked to the SAP central accounting system for either acquisition or retirement procedures, ABAC Assets ensures the cohesiveness of the overall ABAC system.

Other positives elements include a good control of the supply chain (ABAC Assets requires to place the order and record the goods reception via the system) and some modern means to manage inventory (infra red bar code readers, etc.).

Regarding the ABAC Contract module, a working group has been set up in order to assess the implementation of this module in relation to Fusion for Energy needs in terms of contract management.

### **3. Validation of accounting systems by the Accounting Officer**

While the financial system is now close to the completion stage, it must be noted that the underlying business processes have not been fully formalised and therefore have not been formally validated by the Accounting Officer.

This formalisation of business processes is in progress and piloted by a working group on Internal Control Standards.

Based on the financial circuits and controls in place, the experience and trainings of financial actors, the extensive use and checks made on SAP/ABAC and the execution by the Accounting Officer of most of the financial transactions having an impact on the accounts, the Accounting Officer has a reasonable assurance that Fusion for Energy current accounting systems are reliable and compliant with Fusion for Energy Financial Regulation, its implementing rules and the accounting rules adopted by the Accounting Officer of the Commission .

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА  
TRIBUNAL DE CUENTAS EUROPEO  
EVROPSKÝ ÚČETNÍ DVŮR  
DEN EUROPÆISKE REVISIONSRET  
EUROPÄISCHER RECHNUNGSHOF  
EUROOPA KONTROLLIKODA  
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ  
EUROPEAN COURT OF AUDITORS  
COUR DES COMPTES EUROPÉENNE  
CÚIRT INIÚCHÓIRÍ NA HEORPA



CORTE DEI CONTI EUROPEA  
EIROPAS REVĪZIJAS PALĀTA  
EUROPOS AUDITO RŪMAI

EURÓPAI SZÁMVEVŐSZÉK  
IL-QORTI EWROPEA TAL-AWDITURI  
EUROPESE REKENKAMER  
EUROPEJSKI TRYBUNAŁ OBRACHUNKOWY  
TRIBUNAL DE CONTAS EUROPEU  
CURTEA DE CONTURI EUROPEANĂ  
EURÓPSKY DVOR AUDÍTOROV  
EVROPSKO RAČUNSKO SODIŠČE  
EUROOPAN TILINTARKASTUSTUOMIOISTUIN  
EUROPEISKA REVISIONSRÄTTEN

Report on the annual accounts of the  
European Joint Undertaking for ITER and the Development of Fusion Energy  
for the financial year ended 31 December 2009

together with the replies of the Joint Undertaking

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## **INTRODUCTION**

1. The European Joint Undertaking for ITER<sup>1</sup> and the Development of Fusion Energy was set up in March 2007<sup>2</sup> for a period of 35 years. While the main fusion facilities are to be developed at Cadarache in France, the Joint Undertaking is located in Barcelona.
2. The Members of the Joint Undertaking are the European Atomic Energy Community (Euratom) represented by the European Commission, the Member States of Euratom and other countries which have concluded cooperation agreements with Euratom in the field of controlled nuclear fusion and have expressed their wish to become Members (at 31 December 2009: Switzerland).
3. The tasks of the Joint Undertaking are (see also **Table**):
  - (a) to provide the contribution of Euratom to the ITER International Fusion Energy Organisation<sup>3</sup>;
  - (b) to provide the contribution of Euratom to the 'Broader Approach Activities' (complementary joint fusion research) with Japan for the rapid development of fusion energy;
  - (c) to prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities including the International Fusion Materials Irradiation Facility.

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<sup>1</sup> ITER: International Thermonuclear Experimental Reactor.

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

<sup>3</sup> The ITER International Fusion Energy Organisation was set up in October 2007 for an initial period of 35 years to implement the ITER project, which aims to demonstrate the scientific and technological feasibility of fusion energy. The Members are Euratom, the People's Republic of China, the Republic of India, Japan, the Republic of Korea, the Russian Federation and the United States of America.



4. When the Joint Undertaking was set up, the indicative total resources deemed necessary for the period 2007 to 2041 were 9 653 million euro. The total contribution from Euratom was set at 7 649 million euro, of which a maximum of 15 % for administrative expenditure. Other resources consist of contributions from the ITER host state (France), the annual membership contributions, voluntary contributions from members other than Euratom, and additional resources to be received under terms approved by the Governing Board. The Court draws attention to the need for substantially increased resources for the ITER project (see paragraphs 31 to 33).

#### **STATEMENT OF ASSURANCE**

5. Pursuant to the provisions of Article 287(1) of the Treaty on the Functioning of the European Union, the Court has audited the annual accounts<sup>4</sup> of the European Joint Undertaking for ITER and the Development of Fusion Energy, which comprise the “financial statements”<sup>5</sup> and the “reports on implementation of the budget”<sup>6</sup> for the financial year ended 31 December 2009 and the legality and regularity of the transactions underlying those accounts.

6. This Statement of Assurance is addressed to the European Parliament and the Council in accordance with Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002<sup>7</sup>.

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<sup>4</sup> These accounts are accompanied by a report on the budgetary and financial management during the year which gives *inter alia* an account of the rate of implementation of the appropriations with summary information on the transfers of appropriations among the various budget items.

<sup>5</sup> The financial statements include the balance sheet and the economic outturn account, the cashflow table, the statement of changes in capital and the annex to the financial statements which includes the description of the significant accounting policies and other explanatory information.

<sup>6</sup> The budget implementation reports comprise the budget outturn account and its annex.

<sup>7</sup> OJ L 248, 16.9.2002, p. 1.

### The Director's responsibility

7. As authorising officer, the Director implements the revenue and expenditure of the budget in accordance with the financial rules of the Joint Undertaking<sup>8</sup> under his own responsibility and within the limits of the authorised appropriations<sup>9</sup>. The Director is responsible for putting in place<sup>10</sup> the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts<sup>11</sup> that are free from material misstatement, whether due to fraud or error, and for ensuring that the transactions underlying those accounts are legal and regular.

### The Court's responsibility

8. The Court's responsibility is to provide, on the basis of its audit, a statement of assurance as to the reliability of the annual accounts of the Joint Undertaking and the legality and regularity of the transactions underlying them.

9. The Court conducted its audit in accordance with the IFAC and ISSAI<sup>12</sup> International Auditing Standards and Codes of Ethics. Those standards require that the Court complies with ethical requirements and plans and performs the audit to obtain reasonable assurance about whether the accounts are free from

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<sup>8</sup> Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy adopted by Decision of its Governing Board on 22 October 2007.

<sup>9</sup> Article 33 of Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 (OJ L 357, 31.12.2002, p. 72).

<sup>10</sup> Article 38 of Regulation (EC, Euratom) No 2343/2002.

<sup>11</sup> The rules concerning the presentation of the accounts and accounting by EU bodies are laid down in chapter 1 of Title VII of Regulation (EC, Euratom) No 2343/2002 as last amended by Regulation (EC, Euratom) No 652/2008 of 9 July 2008 (OJ L 181, 10.07.2008, p. 23) and are incorporated in the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy.

<sup>12</sup> International Federation of Accountants (IFAC) and International Standards of Supreme Audit Institutions (ISSAI).

material misstatement and whether the underlying transactions are legal and regular.

10. The Court's audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and about the legality and the regularity of the transactions underlying them. The procedures selected depend on its audit judgement, including the assessment of the risks of material misstatement of the accounts or of illegal or irregular transactions, whether due to fraud or error. In making those risk assessments internal control relevant to the entity's preparation and presentation of accounts is considered in order to design audit procedures that are appropriate in the circumstances. The Court's audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the accounts.

11. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

***Opinion on the reliability of the accounts***

12. In the Court's opinion, the Annual Accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy present fairly, in all material respects, its financial position as of 31 December 2009 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation.

***Opinion on the legality and the regularity of the transactions underlying the accounts***

13. In the Court's opinion, the transactions underlying the annual accounts of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year ended 31 December 2009 are, in all material respects, legal and regular.

14. The comments which follow do not call the Court's opinions into question.

## **COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT**

### ***Implementation of the budget***

15. The final authorised payments budget for the Joint Undertaking for 2009 amounted to 173,6 million euro. The overall utilisation rate for payment appropriations was 65,3 %. Within this, the rate for operational expenditure was 65,5 % and for administrative expenditure it was 64,2 %. At the end of 2009, the Joint Undertaking had bank account deposits of 42 million euro. The underspending mostly relates to delays in the progress of the Euratom fusion programme, as was also noted by the Court in 2008.

### ***Presentation of the accounts: members' contributions***

16. The Court notes that the activities of the EU Joint Undertakings are funded by contributions from their members, and that the Joint Undertakings have no capital as such. The Court recommended that this specific feature of the Joint Undertakings is clearly disclosed in the accounts.

17. Unlike the other EU Joint Undertakings, the Joint Undertaking for ITER and the Development of Fusion Energy is entirely publicly funded. Thus the general provisions of EU Accounting Rule 1 (Group Accounting) on the presentation of members' contributions under Net Assets in the Balance Sheet do not apply to the Joint Undertaking for ITER, where the contributions from members are presented under Operating Revenue in the Economic Outturn Account.

18. While this accounting treatment is acceptable for the Joint Undertaking for ITER and the Development of Fusion Energy, the Court considers that, in general, the Accounts of the Joint Undertakings should be harmonised as far as possible and notes the intention of the Commission to issue detailed guidance in this respect to the Joint Undertakings.

## **OTHER MATTERS**

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

19. While recognising that the Joint Undertaking was in a start-up phase in 2008, the Court observed in its previous Report that the Joint Undertaking had not completely implemented its internal controls and financial information system.

20. Although the Joint Undertaking has taken action during 2009 to develop internal control standards, it remains the case that at the end of 2009, key activities of the organisation are not sufficiently formalised. An appropriate tool for the management of operational contracts was not in place. Budget implementation and reporting is based on the use of spreadsheets. There is no database to centralise operational, administrative and financial information.

21. In April 2009, the departmental structure of the Joint Undertaking was reorganised. In the revised structure, the budget and accounting functions have been placed with the Procurements Department, which raises issues concerning the necessary separation of duties for financial and operational activities (see also paragraph 31).

22. As already observed in 2008, the underlying business processes have not been validated by the Accounting Officer as required by the Financial Regulation of the Joint Undertaking.

23. The Joint Undertaking put an internal auditing service in place in July 2009. However, the assessment of the management systems and of the efficiency of the internal control systems required by the Financial Regulation of the Joint Undertaking has not yet been undertaken. This assessment is especially important in view of the internal reorganisation made by the Joint Undertaking in 2009.

24. The Court tested a sample of 31 transactions. In two cases, the Joint Undertaking made budget commitments only after it had already entered into

legal obligations, contrary to the requirements of the Financial Regulation and in another two cases, there were insufficient supporting documents to attest the validation procedures carried out before making payments.

25. For one audited grant payment of 584 000 euro, the Court found that the officer authorising the payment only had delegated authority to authorise grant payments up to 200 000 euro. For an audited payment of more than 10 million euro in respect of site preparation works, the Court found evidence only of formal checks by the Joint Undertaking, which were not sufficient to provide assurance notably regarding the financial requirements of the grant agreement and the eligibility of costs.

#### ***Late payment of membership contributions***

26. In 2008, the Court observed that a number of members of the Joint Undertaking did not pay their membership contributions within the deadline set by the Governing Board.

27. For 2009, the expiry date for members to pay their annual contributions was 31 May 2009. Despite several reminders sent by the Joint Undertaking, at the year-end two members had not yet paid their 2009 membership contributions.

#### ***Financial Regulation of the Joint Undertaking***

28. The Court noted a number of issues in 2008 for which it considered that amendments were required to the Financial Regulation of the Joint Undertaking in order to reinforce its financial framework<sup>13</sup>. At the end of 2009, no amendments had been introduced to the Financial Regulation.

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<sup>13</sup> Opinion No 4/2008 on the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy), and paragraphs 21 to 23 Court's Report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year ended 31 December 2008 (OJ C 310, 18.12.2009, p. 3).

***The role of the Internal Audit Service of the Commission***

29. The Court pointed out in its Opinion No 4/2008 that the Financial Regulation of the Joint Undertaking does not refer to the powers of the Commission's internal auditor to perform audits of the Joint Undertaking.

30. The Court reiterates that, according to the Framework Financial Regulation, as a general rule, the Commission's internal auditor exercises the same powers with respect to EU bodies, including the Joint Undertakings, as with respect to Commission departments.

***Status of the ITER project***

31. In May 2010, the Commission issued a Communication to the European Parliament and the Council on the status of the ITER project<sup>14</sup>. The Commission concludes that the substantial cost increases for ITER require a review of the governance of the Joint Undertaking, including its procurement policies, and the establishment of a sustainable financial framework. In particular, the Commission estimates that around 1,4 billion euro will be needed to meet the cost increases in the Euratom contribution to ITER in 2012 and 2013.

32. While the Council confirmed its support to the ITER project at its meetings in November 2009 and July 2010, as at September 2010 both the Council and the European Parliament had yet to give their agreement to the additional funding required in 2012 and 2013 for the Euratom contribution to the ITER project .

33. The Court notes that these developments may significantly affect the activities and the budget of the Joint Undertaking.

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<sup>14</sup> Communication from the Commission to the European Parliament and the Council: ITER status and possible way forward (SEC(2010) 571 of 4 May 2010).

This report was adopted by Chamber II, headed by Mr Morten LEVYSOHN, Member of the Court of Auditors, in Luxembourg at its meeting of 20 October 2010.

*For the Court of Auditors*

Vitor Manuel da SILVA CALDEIRA

*President*



**Table - The European Joint Undertaking for ITER and the Development of Fusion Energy (Barcelona)**

Areas of Union competence deriving from the Treaty	Competences of the Joint Undertaking as defined in Council Decision 2007/198/Euratom		Governance	Resources made available to the Joint Undertaking in 2009	Main achievements for 2009
<p><b><u>European Atomic Energy Community</u></b></p> <p>Chapter 5 on 'Joint Undertakings', of the Treaty establishing the European Atomic Energy Community, and in particular</p> <p><i>Article 45 :</i> "Undertakings which are of fundamental importance to the development of the nuclear industry in the Community may be established as Joint Undertakings within the meaning of this Treaty, in accordance with the following Articles"</p> <p><i>Article 49 :</i> Joint Undertakings shall be established by Council decision. Each Joint Undertaking shall have legal personality.</p>	<p><b><u>Objectives</u></b></p> <ul style="list-style-type: none"> <li>- To provide the contribution of the European Atomic Energy Community (Euratom) to the ITER International Fusion Energy Organisation;</li> <li>- To provide the contribution of Euratom to Broader Approach Activities with Japan for the rapid realisation of fusion energy;</li> <li>- To prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities including the International Fusion Materials Irradiation Facility (IFMIF).</li> </ul>	<p><b><u>Tasks</u></b></p> <ul style="list-style-type: none"> <li>- Oversee preparation of the ITER project site;</li> <li>- provide components, equipment, materials and other resources to the ITER Organisation;</li> <li>- manage procurement arrangements vis-à-vis the ITER Organisation and, in particular, associated quality assurance procedures;</li> <li>- prepare and coordinate Euratom's participation in the scientific and technical exploitation of the ITER Project;</li> <li>- coordinate scientific and technological research and development activities in support of Euratom's contribution to the ITER Organisation;</li> <li>- provide Euratom's financial contribution to the ITER Organisation;</li> <li>- arrange to make human resources available for the ITER Organisation;</li> <li>-Interface with the ITER Organisation and carry out any other activities in furtherance of the ITER Agreement.</li> </ul>	<p><b><u>1 - Governing Board</u></b></p> <p>The Governing Board shall be responsible for the supervision of the Joint Undertaking in the pursuit of its objectives and ensure close collaboration between the Joint Undertaking and its Members in the implementation of its activities.</p> <p><b><u>2 - Executive Committee</u></b></p> <p>The Executive Committee shall assist the Governing Board in the preparation of its decisions and shall carry out any other tasks which the Governing Board may delegate to it.</p> <p><b><u>3 - Scientific Programme Board</u></b></p> <p>The Scientific Programme Board shall advise the Governing Board and the Director, as necessary, on the adoption and implementation of the project plan and work programmes.</p> <p><b><u>4 - Director</u></b></p> <p>The Director shall be the chief executive officer responsible for the day-to-day management of the Joint Undertaking and shall be its legal representative.</p> <p><b><u>5 - External Audit</u></b></p> <p>Court of Auditors.</p> <p><b><u>6 - Internal Audit</u></b></p> <p>Established as of 1<sup>st</sup> of July 2009.</p> <p><b><u>7 - Discharge Authority</u></b></p> <p>Parliament on a recommendation of the Council.</p>	<p><b><u>Final budget for 2009</u></b></p> <p>EUR 173,61 million of which 80,6% funded by Union Contribution. (EUR 149.8 million for 2008)</p> <p><b><u>Staff at 31 December 2009</u></b></p> <ul style="list-style-type: none"> <li>- 199 posts in the establishment plan of which 147 occupied at 31.12.2009 (153 including job offers done and accepted, of which 40 permanent and 113 temporary).</li> <li>- 66 other posts (contractual, seconded national experts)</li> <li>- Total staff number: 213 (219 including job offers done and accepted)</li> </ul>	<p><b><u>ITER and Broader Approach International Agreements</u></b></p> <ul style="list-style-type: none"> <li>- Operational Contracts: 47 awarded for a total value of EUR 142.5 million (51 launched)</li> <li>-Procurement Arrangements : 8 signed for the ITER Project (equivalent to EUR 400 million), 3 signed for the Broader Approach Projects (equivalent to EUR 19 million)</li> <li>- ITER Credit Awarded to F4E: 2.92 kUA (equivalent to EUR 4.4 million)</li> <li>- Grants: 30 awarded for a total value of EUR 15.9 million (30 launched)</li> <li>- Administrative Contracts: 5 awarded for a total value of EUR 6 million (7 launched)</li> <li>- Budget Implementation: 98.9% in commitment appropriations, 65.3% in payment appropriations</li> <li>- Building up of the Organisation: 58 F4E Officials or Temporary Agents recruited as well as 34 Contract Agents</li> <li>- Internal Audit and Data Protection functions established</li> <li>- Committees: 4 meetings of the Governing Board, 7 meetings of the Executive Committee and 3 meetings of the Technical Advisory Panel</li> </ul>

Source: Information submitted by the Joint Undertaking.

# **REPLY OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY**

## **Implementation of the budget**

### **Paragraph 15**

F4E agrees with the Court's comments. An improved payment profile is being implemented for 2010 with more rigorous reporting and control mechanisms on budget execution for operational expenditure.

## **Presentation of the accounts: members' contributions**

### **Paragraphs 16 -18**

F4E agrees with the observations of the Court which are statements relating to Joint Undertakings in general and address the intention of the Commission to issue detailed guidance on the presentation of members' contributions in the annual accounts.

## **Internal control systems**

### **Paragraph 19**

F4E agrees with the Court's comments and emphasises that the reinforcement of the control environment of the organisation remains one of its key priorities. However, it needs to be understood that developing, implementing and monitoring internal controls in a young, fast-growing organisation requires substantial time and resources, particularly while the organisation is seeking its most appropriate management arrangements.

Throughout 2009 and 2010, substantial progress has been achieved in the development of the non-financial control framework, especially concerning:

- Job Descriptions
- Ethical and organisational values
- Staff evaluation and development
- Processes and Procedures
- Business Continuity
- Document Management
- Internal Audit

### **Paragraph 20**

F4E agrees with the Court's comments and is currently putting in place a contract management tool. F4E is also developing systematic budget tools covering budget preparation/implementation (with production of an automatic scoreboard) and reporting on budget and resources data.

### **Paragraphs 21 and 23**

After the first months of the Internal Audit function were dedicated to consulting activities and capacity building, the first audit engagement, on Financial Circuits, started in November 2009 and was closed in May 2010. The Annual Audit Plan for 2009/2010 was adopted by the Director and endorsed by the Governing Board on 27 January 2010.

As concerns financial controls, the internal audit on the financial circuits of F4E already addresses a number of cross-cutting issues linked to financial management since the reorganisation carried out in April 2009. The concerns raised by the Court have been subject to an assessment in the light of this internal audit. In line with the recommendations of the Internal Auditor, an action plan has been established which, among others, aims at ensuring the necessary separation of duties for financial and operational activities. The implementation of this action plan has commenced in August 2010 and for the main parts should be completed by year end.

#### **Paragraph 22**

F4E agrees with the Court's comments. The accounting systems have not been formally validated by the Accounting Officer as some of the underlying processes have not yet been formalised.

#### **Paragraph 24**

Due to budgetary constraints, F4E was not in a position to commit the total amount resulting from an agreement reached between the main actors of the ITER project. By the end of 2010, F4E should be able to commit the total amount of International Organisation contribution, as a result of the ITER Council Decision to be taken in November and further amendment of the 2010 F4E budget.

#### **Paragraph 25**

In relation to the grant which was audited, F4E agrees with the Court's comments. The situation is now remedied with a higher, single ceiling defined in the delegation granted to the Authorising Officer by Delegation.

In relation to the audited payment in respect of site preparation works, F4E agrees with the Court's comments. In general, F4E is planning to analyse and reflect on internal procedures which will amongst other things allow to improve internal ex ante control.

### **Late payment of membership contributions**

#### **Paragraphs 26-27**

F4E agrees with the Court's comments. The situation has improved in 2010 due to greater anticipation and preventive measures. For 2011, F4E will further reinforce its early warning by sending the estimates of each member's contribution for 2011. Members already received the information in April 2010 for their 2011 contributions and will receive a formal note with confirmation of the final amount after adoption of the 2011 Budget by the Governing Board in November 2010.

### **Financial Regulation of the Joint Undertaking**

#### **Paragraph 28**

F4E agrees with the Court's comments. F4E considered that a sound and efficient approach was to gather a few years experience on the actual implementation of these rules before proposing a possible revision of the Financial Regulation. This revision should also be consistent with the possible proposal for the revision of the F4E Statutes (after Governing Board approval) and subsequent discussions with the

Council. An internal working group has been set up and a proposal for revision of the F4E Financial Regulation should be submitted for adoption before the end of 2010.

## **The role of the Internal Audit Service of the Commission**

### **Paragraphs 29-30**

It is expected that the revision of the F4E Statutes will clarify the applicability of the Framework Financial Regulation with respect to Internal Audit of the Joint Undertaking. Notwithstanding this clarification, the proposal to amend the F4E Financial Regulation, which is currently under preparation, will already take into account the remark of the Court and existing general provisions empowering the Commission's Internal Auditor to audit EU bodies.

## **Status of the ITER Project**

### **Paragraphs 31-33**

F4E would like to emphasise that, while the information is correct, it represents the status of discussions in September 2010, following the publication by the Commission of a proposal for a decision of the European Parliament and of the Council amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework, to address additional financing needs of the ITER project (COM (2010)/403 of 20 July 2010).



EUROPEAN PARLIAMENT

2009 - 2014

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*Plenary sitting*

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**A7-0131/2011**

5.4.2011

## 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 2009  
(C7-0247/2010 – 2010/2187(DEC))

Committee on Budgetary Control

Rapporteur: Georgios Stavrakakis

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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 2009  
(C7-0247/2010 – 2010/2187(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 2009,
  - 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 ended 31 December 2009, together with the replies of the Joint Undertaking<sup>1</sup>,
  - having regard to the Council's recommendation of 15 February 2011 (5894/2011 – C7-0051/2011),
  - having regard to Article 276 of the EC Treaty and Article 319 of the Treaty on the Functioning of the European Union,
  - 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>2</sup>, and in particular Article 185 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>3</sup>, and in particular Article 5 thereof,
  - having regard to Commission Regulation (EC, Euratom) No 2343/2002<sup>4</sup> of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Regulation (EC, Euratom) No 1605/2002, and in particular Article 94 thereof,
  - having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A7-0131/2011),
1. Grants 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 2009,
  2. Sets out its observations in the resolution below;
  3. Instructs its President to forward this Decision and the resolution that forms an integral

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<sup>1</sup> OJ C 342, 16.12.2010, p. 22.

<sup>2</sup> OJ L 248, 16.9.2002, p. 1.

<sup>3</sup> OJ L 90, 30.3.2007, p. 58.

<sup>4</sup> OJ L 357, 31.12.2002, p. 72.

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).



## 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 2009  
(C7-0247/2010 – 2010/2187(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 2009,
  - 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 ended 31 December 2009, together with the replies of the Joint Undertaking<sup>1</sup>,
  - having regard to the Council's recommendation of 15 February 2011 (5894/2011 – C7-0051/2011),
  - having regard to Article 276 of the EC Treaty and Article 319 of the Treaty on the Functioning of the European Union,
  - 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>2</sup>, and in particular Article 185 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>3</sup>, and in particular Article 5 thereof,
  - having regard to Commission Regulation (EC, Euratom) No 2343/2002<sup>4</sup> of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Regulation (EC, Euratom) No 1605/2002, and in particular Article 94 thereof,
  - having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A7-0131/2011),
1. Approves the closure of the accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2009;

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<sup>1</sup> OJ C 342, 16.12.2010, p. 22.

<sup>2</sup> OJ L 248, 16.9.2002, p. 1.

<sup>3</sup> OJ L 90, 30.3.2007, p. 58.

<sup>4</sup> OJ L 357, 31.12.2002, p. 72.

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).

### 3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with observations forming an integral part of 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 2009 (C7-0247/2010 – 2010/2187(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 2009,
- 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 ended 31 December 2009, together with the replies of the Joint Undertaking<sup>1</sup>,
- having regard to the Council's recommendation of 15 February 2011 (5894/2011 – C7-0051/2011),
- having regard to Article 276 of the EC Treaty and Article 319 of the Treaty on the Functioning of the European Union,
- 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>2</sup>, and in particular Article 185 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>3</sup>, and in particular Article 5 thereof,
- having regard to the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy, adopted by decision of 22 October 2007 of the Joint Undertaking's Governing Board (hereinafter 'ITER Financial Regulation'),
- having regard to Commission Regulation (EC, Euratom) No 2343/2002<sup>4</sup> of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Regulation (EC, Euratom) No 1605/2002, and in particular Article 94 thereof,
- having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control (A7-0131/2011),

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<sup>1</sup> OJ C 342, 16.12.2010, p. 22.

<sup>2</sup> OJ L 248, 16.9.2002, p. 1.

<sup>3</sup> OJ L 90, 30.3.2007, p. 58.

<sup>4</sup> OJ L 357, 31.12.2002, p. 72.

- A. whereas the Court of Auditors stated that it has obtained reasonable assurances that the annual accounts for the financial year 2009 are reliable and that the underlying transactions are legal and regular,
- B. whereas the Joint Undertaking is in a start-up phase and had not fully established its internal control and financial reporting systems by the end of 2009,
- C. whereas the ITER Financial Regulation is based on the framework Financial Regulation, which was recently amended to bring it into line with changes made to the general Financial Regulation,
- D. whereas on 9 October 2008 the Court of Auditors delivered Opinion No 4/2008 on the ITER Financial Regulation;

### ***Implementation of the budget***

- 1. Notes that the Joint Undertaking final 2009 budget was EUR 173 600 000 and its overall utilisation rate for payment appropriations was 65,3 %;
- 2. Recognises that the Joint Undertaking is still in a start-up period and that the underspending mostly relates to delays in the progress of the Euratom fusion programme, as was also reported by the Court of Auditors in 2008;
- 3. Notes that year-end bank deposits totalling EUR 42 000 000 represent a breach of the budgetary principle of equilibrium;
- 4. Considers it to be important, in order to define the application of this derogation from the general budgetary principle of equilibrium, to specify the conditions under which, if it is positive, the balance of the outturn account shall be entered in the budget of the Joint Undertaking of the following financial year;

### ***Presentation of accounts***

- 5. Calls on the Joint Undertaking to harmonise its accounts under the guidance of the Commission;
- 6. Acknowledges that unlike other Union joint undertakings, ITER is entirely publicly funded;

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

- 7. Urges the Joint Undertaking to complete the implementation of its internal controls and financial information system;
- 8. Calls, in addition, on the Joint Undertaking to include in its Financial Rules a specific reference to the powers of the Internal Audit Service of the Commission as its internal auditor, on the basis of the provision set out in the framework Financial Regulation for the Community bodies;

9. Considers, in particular, that the role of the Commission as internal auditor should be to advise the Joint Undertaking on how to deal with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and for promoting sound financial management; considers it to be also essential that the Joint Undertaking submit to the discharge authority a report drawn up by its director summarising the number and the type of internal audits conducted by the internal auditor, the recommendations made and the actions taken regarding these recommendations;
10. Is of the opinion that, in view of the size of its budget and the complexity of its tasks, the Joint Undertaking should establish an audit committee, reporting directly to the Governing Board;

### ***Financial Regulation***

11. Urges the Joint Undertaking to amend its Financial Regulation in order to integrate the Court of Auditors' recommendations made in its Opinion No 4/2008 on that Regulation; considers further improvement to be necessary in relation to:
  - the exceptions to budgetary principles,
  - the role of the Internal Audit Service of the Commission,
  - the establishment of an audit committee,
  - late payment of members' contributions,
  - the rules on the award of grants,
  - the transitional provisions set out in Article 133 of the ITER Financial Regulation.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	21.3.2011
<b>Result of final vote</b>	+: 20 -: 3 0: 0
<b>Members present for the final vote</b>	Marta Andreasen, Jean-Pierre Audy, Inés Ayala Sender, Andrea Češková, Jorgo Chatzimarkakis, Tamás Deutsch, Martin Ehrenhauser, Jens Geier, Ingeborg Gräßle, Iliana Ivanova, Elisabeth Köstinger, Monica Luisa Macovei, Aldo Patriciello, Crescenzo Rivellini, Bart Staes, Georgios Stavrakakis, Søren Bo Søndergaard
<b>Substitute(s) present for the final vote</b>	Thijs Berman, Zuzana Brzobohatá, Derk Jan Eppink, Christofer Fjellner, Ivailo Kalfin, Marian-Jean Marinescu, Véronique Mathieu

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