

**REPORT****on the annual accounts of the ENIAC Joint Undertaking for the financial year 2012, together with the Joint Undertaking's replies**

(2013/C 369/03)

**CONTENTS**

	<i>Paragraph</i>	<i>Page</i>
Introduction . . . . .	1-5	19
Information in support of the statement of assurance . . . . .	6	19
Statement of assurance . . . . .	7-17	19
Opinion on the reliability of the accounts . . . . .	12	20
Basis for a qualified opinion on the legality and regularity of the transactions underlying the accounts . . . . .	13-15	20
Qualified opinion on the legality and regularity of the transactions underlying the accounts . . . . .	16	21
Comments on budgetary and financial management . . . . .	18-20	21
Implementation of the budget . . . . .	18-19	21
Calls for proposals . . . . .	20	21
Other matters . . . . .	21-28	21
Internal audit function and the Commission's Internal Audit Service . . . . .	21	21
Monitoring and reporting of research results . . . . .	22-24	21
ENIAC Member States' contribution . . . . .	25	22
Follow-up of previous observations . . . . .	26-28	22

## INTRODUCTION

1. The European Joint Undertaking for the implementation of the Joint Technology Initiative on Nanoelectronics (ENIAC Joint Undertaking), located in Brussels, was set up in December 2007 <sup>(1)</sup> for a period of 10 years.

2. The main objective of the Joint Undertaking is to define and implement a 'research agenda' for the development of key competences for nanoelectronics across different application areas in order to strengthen European competitiveness and sustainability and allow the emergence of new markets and societal applications <sup>(2)</sup>.

3. The founding members of the Joint Undertaking are the European Union, represented by the Commission, certain EU Member States (Belgium, Germany, Estonia, Ireland, Greece, Spain, France, Italy, the Netherlands, Poland, Portugal, Sweden and the United Kingdom) and the Association for European Nanoelectronics Activities (AENEAS). Other Member States and associated countries, as well as any other country or legal entity capable of making a substantial financial contribution to the achievement of the Joint Undertaking's objectives, may become members of the ENIAC Joint Undertaking.

4. The maximum EU contribution to the ENIAC Joint Undertaking, to cover running costs and research activities, is 450 million euro to be paid from the budget of the Seventh Framework Programme <sup>(3)</sup>. AENEAS is to make a maximum contribution of 30 million euro to the running costs of the Joint Undertaking. ENIAC Member States are to make in-kind contributions to the running costs (by facilitating the implementation of projects), and to provide financial contributions of at least 1,8 times the EU contribution. Research organisations participating in projects are also to provide in-kind contributions, which must be at least equal to the combined contributions of the Commission and the Member States.

5. The Joint Undertaking was granted financial autonomy on 26 July 2010.

## INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

6. The audit approach taken by the Court comprises analytical audit procedures, testing of transactions at the level of the Joint Undertaking and an assessment of key controls of the supervisory and control systems. This is supplemented by evidence provided by the work of other auditors (where relevant) and an analysis of management representations.

<sup>(1)</sup> Council Regulation (EC) No 72/2008 of 20 December 2007 setting up the ENIAC Joint Undertaking (OJ L 30, 4.2.2008, p. 21).

<sup>(2)</sup> The *Annex* summarises the Joint Undertaking's competences, activities and available resources. It is presented for information purposes.

<sup>(3)</sup> The Seventh Framework Programme, adopted by Decision No 1982/2006/EC of the European Parliament and of the Council (OJ L 412, 30.12.2006, p. 1), brings all the research-related EU initiatives together under one roof and plays a crucial role in achieving the goals of growth, competitiveness and employment. It is also a key pillar for the European Research Area.

## STATEMENT OF ASSURANCE

7. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

- (a) the annual accounts of the ENIAC Joint Undertaking, which comprise the financial statements <sup>(4)</sup> and the reports on the implementation of the budget <sup>(5)</sup> for the financial year ended 31 December 2012; and
- (b) the legality and regularity of the transactions underlying those accounts.

### The management's responsibility

8. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 <sup>(6)</sup>, the management is responsible for the preparation and fair presentation of the annual accounts of the Joint Undertaking and the legality and regularity of the underlying transactions.

- (a) The management's responsibilities in respect of the Joint Undertaking's annual accounts include designing, implementing and maintaining an internal control system relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer <sup>(7)</sup>, and making accounting estimates that are reasonable in the circumstances. The Director approves the annual accounts of the Joint Undertaking after its accounting officer has prepared them on the basis of all available information and established a note to accompany the accounts in which he declares, *inter alia*, that he has reasonable assurance that they present a true and fair view of the financial position of the Joint Undertaking in all material respects.

<sup>(4)</sup> These include the balance sheet and the economic outturn account, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

<sup>(5)</sup> These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

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

<sup>(7)</sup> The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

### The auditor's responsibility

9. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council <sup>(8)</sup> with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Joint Undertaking are free from material misstatement and the underlying transactions are legal and regular.

10. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the reasonableness of accounting estimates and the overall presentation of the accounts.

11. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

### Opinion on the reliability of the accounts

12. In the Court's opinion, the Joint Undertaking's annual accounts present fairly, in all material respects, its financial position as at 31 December 2012 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its financial rules and the accounting rules adopted by the Commission's accounting officer.

### Basis for a qualified opinion on the legality and regularity of the underlying transactions

13. The Joint Undertaking's *ex post* audit strategy <sup>(9)</sup> was adopted by a Governing Board decision on 18 November 2010 and is a key tool <sup>(10)</sup> for assessing the legality and regularity of the underlying transactions. The payments made in 2012 against certificates of acceptance of costs issued by the national funding authorities (NFAs) of the Member States amounted to 8,2 million euro, which represents 42 % of the total operational payments.

14. The administrative agreements established between the Joint Undertaking and the NFAs of the Member States provide in principle that the NFAs will perform audits on behalf of the Joint Undertaking. The Joint Undertaking's *ex post* audit strategy relies heavily on the NFAs to audit project cost claims. However, in 2012 the European Commission's Internal Audit Service conducted a consultancy study on assessing the Joint Undertaking's *ex post* audit strategy and the audit strategies of ENIAC Member States and highlighted that the design of the *ex post* audit system should be reviewed and complemented to ensure its adequacy to fulfil its overall objective <sup>(11)</sup>.

<sup>(9)</sup> The *ex post* audit strategy states that the Joint Undertaking 'shall seek sufficient information with respect to the *ex post* audit procedure applied in the ENIAC Member States to perform an assessment of the national procedures with respect to their suitability to provide sufficient assurance with respect to the regularity and the legality of the transactions related to the ENIAC Joint Undertaking projects'.

<sup>(10)</sup> Article 12 of Regulation (EC) No 72/2008 setting up the Joint Undertaking states that it 'shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls' and that it 'shall carry out on-the-spot checks and financial audits among the recipients of the ENIAC Joint Undertaking's public funding. These checks and audits shall be performed either directly by the ENIAC Joint Undertaking or by ENIAC Member States on its behalf'.

<sup>(11)</sup> The key conclusions of the consultancy study are:  
— the Joint Undertaking's *ex post* audit strategy does not include practical details for its implementation,  
— the Joint Undertaking and the NFAs failed to conclude specific agreements under which the latter would perform financial audits.

<sup>(8)</sup> Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

15. In 2012, the Joint Undertaking carried out a limited review of cost claims<sup>(12)</sup> and on this basis concluded in its annual activity report that the error rate in the programme is below 2 %. However, this exercise did not include any audits and did not provide assurance as to the regularity of the cost claims reviewed. By the end of the Court's audit (September 2013), the information available on the implementation of the Joint Undertaking's *ex post* audit strategy was not sufficient for the Court to conclude whether this key control is functioning effectively.

**Qualified opinion on the legality and regularity of the transactions underlying the accounts**

16. In the Court's opinion, except for the possible effects of the matter described in the basis for a qualified opinion in paragraphs 13 to 15, the transactions underlying the annual accounts of the Joint Undertaking for the financial year ended 31 December 2012 are, in all material respects, legal and regular.

17. The comments which follow do not call the Court's opinions into question.

**COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT**

**Implementation of the budget**

18. The 2012 final budget included commitment and payment appropriations of 128 million euro and 42 million euro respectively. The utilisation rates for the available commitment and payment appropriations were 100 % and 52 %<sup>(13)</sup> respectively. Of the 125,5 million euro in commitment appropriations available for operational activities, 17,6 million euro was implemented as a global commitment for the first 2012 call for proposals, and 107,9 million euro as a global commitment for the second 2012 call for proposals. The grant agreements for these two calls for proposals were signed in early 2013, and the average time between the launch of a call and the signing of agreements was 12 months.

19. The control weaknesses that were detected by the 2011 audit regarding the decommitment of unused appropriations persisted in 2012. The unused global commitment of 2,8

<sup>(12)</sup> The limited review exercise consisted of inviting the NFAs to confirm a sample of cost claims.

<sup>(13)</sup> The relatively low implementation rate for operational payments is explained by the late receipt of certificates from national authorities and by delays at Member State level in the signing of national grant agreements.

million euro assigned to operational activities for 2010, which came with a final implementation date of 31 December 2011, had not been decommitted by the end of 2012.

**Calls for proposals**

20. The 2008, 2009, 2010 and 2011 calls for proposals resulted in grant agreements totalling 170,2 million euro, which represents 39 % of the maximum EU contribution to the Joint Undertaking for research activities<sup>(14)</sup>. In 2012, two calls for proposals were launched for a total of 125,4 million euro, and in 2013 two calls have so far been launched for 39,7 million euro. During 2013, an additional call for proposals worth 104,7 million euro (23,8 %) would have to be launched to make full use of the available EU contribution of 440 million euro.

**OTHER MATTERS**

**Internal audit function and the Commission's Internal Audit Service**

21. The mission charter of the Commission's Internal Audit Service was adopted by the Governing Board on 18 November 2010. However, the Joint Undertaking's financial rules have not yet been amended to include the provisions of the framework Regulation<sup>(15)</sup> referring to the powers of the Commission's internal auditor.

**Monitoring and reporting of research results**

22. The Seventh Framework Programme (FP7) establishes a monitoring and reporting system covering the protection, dissemination and transfer of research results.

23. In the grant agreements signed with beneficiaries, the Joint Undertaking has included specific provisions governing intellectual property rights and the dissemination of research results. Implementation of these provisions is monitored by the Joint Undertaking at different stages of the funded projects.

<sup>(14)</sup> According to Article 5 of the Regulation (EC) No 72/2008 and Article 11(5) of its annex, the maximum EU contribution towards the Joint Undertaking's running costs and research activities is 450 million euro, of which the contribution for running costs may not exceed 10 million euro. If part of the contribution for running costs is not used, it can be made available for research activities.

<sup>(15)</sup> 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.

24. Nevertheless, the way the results of this monitoring are reported needs to evolve further to meet the provisions of Article 7 of Decision No 1982/2006<sup>(16)</sup> and Article 27 of Regulation (EC) No 1906/2006<sup>(17)</sup>.

#### **ENIAC Member States' contribution**

25. The Joint Undertaking's statutes stipulate that the financial contributions from ENIAC Member States should amount to at least 1,8 times<sup>(18)</sup> the EU's financial contribution, while the Joint Undertaking's grants may reach a maximum of 16,7 % of the total eligible project costs. For the first seven calls for proposals, the financial contribution from ENIAC Member States was 1,41 times the EU's financial contribution (1,55 times in 2011).

#### **Follow-up of previous observations**

26. The Joint Undertaking's accounting officer validated the financial and accounting systems (ABAC and SAP) in 2012. However, the process providing financial information on the management of cost claims received from the NFAs, has not yet been validated.

27. Since April 2012 the Joint Undertaking has had an internal audit capability as required by Article 6(2) of the Council Regulation setting it up.

28. The disaster recovery plan was finalised and successfully tested in 2012.

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 22 October 2013.

*For the Court of Auditors*

Vitor Manuel da SILVA CALDEIRA

*President*

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<sup>(16)</sup> Article 7 of Decision No 1982/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) requires the Commission to continually and systematically monitor the implementation of the Seventh Framework Programme and its specific programmes and regularly report and disseminate the results of this monitoring.

<sup>(17)</sup> Article 27 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (OJ L 391, 30.12.2006, p. 1) requires the Commission to monitor the implementation of indirect actions on the basis of the periodic progress reports submitted. In particular, the Commission must monitor implementation of the plan for the use and dissemination of foreground. It must also set up and maintain an information system allowing for this monitoring to take place in an efficient and coherent manner across the Seventh Framework Programme.

<sup>(18)</sup> Article 11(6)(b) of the Annex to Regulation (EC) No 72/2008 stipulates that 'financial contributions from ENIAC Member States [...] shall amount in total to at least 1,8 times the Community's financial contribution'.

## ANNEX

**ENIAC Joint Undertaking (Brussels)****Competences and activities**

<p><b>Areas of Union competence deriving from the Treaty</b></p> <p><i>(Articles 187 and 188 of the Treaty on the Functioning of the European Union)</i></p>	<p>Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme provides for a Community contribution to the establishment of long-term public-private partnerships in the form of Joint Technology Initiatives which could be implemented through Joint Undertakings within the meaning of Article 187 of the Treaty.</p> <p>Council Regulation (EC) No 72/2008 of 20 December 2007 setting up the ENIAC Joint Undertaking.</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>(Council Regulation (EC) No 72/2008)</i></p>	<p><b>Objectives</b></p> <p>The ENIAC Joint Undertaking contributes to the implementation of the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) and the theme 'Information and Communication Technologies' of the specific 'Cooperation' programme implementing the Seventh Framework Programme (2007-2013) of the European Community for research, technological development and demonstration activities. It shall, in particular:</p> <ul style="list-style-type: none"> <li>— define and implement a research agenda for the development of key competences for nanoelectronics across different application areas in order to strengthen European competitiveness and sustainability and allow the emergence of new markets and societal applications;</li> <li>— support the activities required for the implementation of the research agenda (R&amp;D activities), notably by awarding funding to participants in selected projects following competitive calls for proposals;</li> <li>— promote a public-private partnership aiming at mobilising and pooling Community, national and private efforts, increasing overall R&amp;D investments in the field of nanoelectronics, and fostering collaboration between the public and private sectors;</li> <li>— ensure the efficiency and durability of the JTI on nanoelectronics;</li> <li>— achieve synergy and coordination of European R&amp;D efforts in the field of nanoelectronics including the progressive integration into the ENIAC Joint Undertaking of the related activities in this field currently implemented through intergovernmental R&amp;D schemes (EUREKA).</li> </ul>
<p><b>Governance</b></p>	<p>The JU's governing body is the Governing Board. The executive team is led by an Executive Director. Industry is represented in the Industry and Research Committee and by the association AENEAS as founding member. The Commission, representing the Union, the Member States and associated countries make up the Public Authorities Board.</p>
<p><b>Resources available to the Joint Undertaking in 2012</b></p>	<p><b>Budget</b></p> <p>127 996 970,00 euro for commitments</p> <p>42 475 500,00 euro for payments</p> <p><b>Staff at 31 December 2012</b></p> <p>15 posts provided for in the establishment plan (7 temporary staff and 8 contract staff), of which 15 posts were occupied; these were allocated to: operational activities (6); administrative tasks (5); mixed tasks (4).</p>
<p><b>Activities and services provided in 2012</b></p>	<p>See the ENIAC Joint Undertaking annual activity report for 2012 at <a href="http://www.eniac.eu">www.eniac.eu</a></p>

Source: Information supplied by the ENIAC Joint Undertaking.



### THE JOINT UNDERTAKING'S REPLIES

13-15. The *ex post* audit strategy of the ENIAC JU relies upon the *ex post* audits performed by the National Funding Authorities because this is the only approach compliant with the principle of subsidiarity and with the three-way funding scheme established by the legislator. In addition, in line with the principle of proportionality, it is the only financially sound method, given that the audits shall assure compliance with any one of the 23 sets of regulations and rules used by the National Funding Authorities to recognise costs.

19. In 2012 the ENIAC JU considerably improved its control, completely eliminating errors on de committing functional appropriations. The ENIAC JU regrets that one operational de commitment has been executed past the final date of implementation; the root cause has been identified and corrective actions have been taken to prevent recurrence.

21. The amendment of the Framework Financial Regulation falls under the competence of the Commission which is currently in the process of preparing the alignment of the existing Framework Financial Regulation with the new EU General Financial Regulation. The ENIAC JU shall adopt the revised version as soon as available.

24. Decision No 1982/2006/EC and Regulation (EC) No 1906/2006 establish specific obligations for the Commission that cannot be transferred automatically to other legal entities such as the ENIAC JU. The ENIAC JU is compliant with all reporting requests received so far from the Commission and is committed to continue undertaking the necessary actions so that the statutory provisions regarding the protection of intellectual property, and the use and dissemination of the research results are fulfilled.

The ENIAC JU took note of the Commission initiative to launch a study on the changing role of the intellectual property in the semiconductor industry (SMART 2013/0005) and will surely implement best practices resulting from this initiative that are compatible with its legislative framework.

25. The ratio between the EU contribution and the ENIAC Member States' contribution is a mechanical result of the application of the State Aid rules (Commission Regulation (EC) No 800/2008) limiting the percentage of the state aid for particular types of actions and participants. The two calls in 2012 made this very obvious: the contributions in Call 2012-1 considerably exceeded the 1,8 ratio, while in the Pilot Line Call 2012-2 they remained below 1,8.

26. The ABAC and SAP systems have been validated by the accounting officer in 2010. In 2012 the accounting officer performed in its entirety the task of validating the accounting systems laid down and, where appropriate, validating systems laid down by the authorising officer, as required by Art. 43.1.e of the ENIAC-60-08 Financial Rules.

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