

# DECISIONS

## COUNCIL DECISION (Euratom) 2021/281

of 22 February 2021

### amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project <sup>(1)</sup> (the 'ITER Agreement') was signed in November 2006 by Euratom, China, India, Japan, South Korea, the Russian Federation and the United States. Euratom, which is the Host Party under the ITER Agreement, has taken the lead in this project.
- (2) By Decision 2007/198/Euratom <sup>(2)</sup>, the Council established the European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy) (the 'Joint Undertaking') to provide for the contribution of Euratom to the ITER International Fusion Energy Organisation and the Broader Approach Activities with Japan and to prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities.
- (3) Article 5 of Decision 2007/198/Euratom provides that the Joint Undertaking is to have a distinct financial regulation based on the principles of Commission Delegated Regulation (EU) No 1271/2013 <sup>(3)</sup> and which may depart from that Delegated Regulation where the specific operating needs of the Joint Undertaking so require, subject to prior consultation with the Commission. Title IV of the financial regulation of the Joint undertaking regulates the implementation of the budget.
- (4) Decision 2007/198/Euratom provided a financial reference amount that was considered necessary for the Joint Undertaking, together with the indicative total contribution of Euratom towards that amount, which is to be made available through the Community research and training programmes adopted pursuant to Article 7 of the Treaty or through any other decision adopted by the Council.
- (5) Decision 2007/198/Euratom was amended by Council Decision 2013/791/Euratom <sup>(4)</sup> to allow the financing of the activities of the Joint Undertaking for the duration of the multiannual financial framework for the years 2014 to 2020 laid down in Council Regulation (EU, Euratom) No 1311/2013 <sup>(5)</sup>.

<sup>(1)</sup> OJ L 358, 16.12.2006, p. 62.

<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> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

<sup>(4)</sup> Council Decision 2013/791/Euratom of 13 December 2013 amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (OJ L 349, 21.12.2013, p. 100).

<sup>(5)</sup> Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

- (6) A new ITER project baseline, which was prepared as part of the improvements in the management of the project, gained the support of the ITER Council in 2016 and 2017. It was subsequently used for estimating the funding needs of the Joint Undertaking. The updated schedule of the new baseline envisages that First Plasma will be achieved in December 2025 and full performance operation, using deuterium-tritium fuel, in 2035. That schedule does not include contingencies and therefore assumes that all major risks have to be mitigated.
- (7) On 12 April 2018, the Council reaffirmed the continued commitment of Euratom to the successful completion of the ITER project and mandated the Commission to approve the new ITER project baseline on behalf of Euratom at an ITER Council meeting at Ministerial level. At the same time, the Council requested that the Joint Undertaking continue its reporting and review duties in line with the Council conclusions of 12 July 2010 and carry out regular independent assessments of the progress of ITER with a focus on the performance and project management, including cost containment, schedule project control as well as risk management.
- (8) This Decision will allow synergies and complementarities with fusion research activities funded through the Euratom Research and Training Programme. The successful construction and operation of ITER are on the critical path of the European fusion roadmap endorsed by all fusion research stakeholders in Europe.
- (9) The European Parliament and the Council set the maximum level of the Euratom commitments for ITER in the multiannual financial framework for the years 2021 to 2027 laid down in Council Regulation (EU, Euratom) 2020/2093 <sup>(6)</sup> (the '2021-2027 MFF') at EUR 5 614 000 000 in current prices.
- (10) In full respect of the Member States' right to decide on their energy mix, actions under this Decision can contribute to the realisation of the objectives of the European fusion roadmap.
- (11) Pursuant to paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making <sup>(7)</sup>, there is a need to evaluate ITER on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens. Those requirements, where appropriate, could include measurable indicators, as a basis for evaluating the effects of ITER. The conclusions of the evaluations carried out by the Commission should be communicated to the European Parliament, to the Council, to the European Economic and Social Committee and to the Committee of the Regions. If the timings of the *ex post* and interim evaluations are close to each other, it should be possible for both evaluations to be combined into one single evaluation covering the combined period.
- (12) In accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(8)</sup> (the 'Financial Regulation'), Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council <sup>(9)</sup>, and Council Regulations (EC, Euratom) No 2988/95 <sup>(10)</sup>, (Euratom, EC) No 2185/96 <sup>(11)</sup> and (EU) 2017/1939 <sup>(12)</sup>, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties.

<sup>(6)</sup> Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433I, 22.12.2020, p. 11).

<sup>(7)</sup> OJ L 123, 12.5.2016, p. 1.

<sup>(8)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

<sup>(9)</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>(10)</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

<sup>(11)</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 (OJ L 292, 15.11.1996, p. 2).

<sup>(12)</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>(13)</sup>. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (13) This Decision should ensure the visibility of the Community funding through the provision of coherent, effective and proportionate targeted information to multiple audiences, including to the media and the public.
- (14) It is necessary to amend Decision 2007/198/Euratom to allow the financing of the activities of the Joint Undertaking and the related activities of the Commission for the period 2021-2027 from the general budget of the European Union.
- (15) In order to ensure the successful completion of the ITER project and continuity in providing support in the relevant policy area from the beginning of the 2021-2027 MFF, this Decision should apply, with retroactive effect, from 1 January 2021 and should enter into force as a matter of urgency.
- (16) Decision 2007/198/Euratom should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

#### *Article 1*

Decision 2007/198/Euratom is amended as follows:

(1) Article 4 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The indicative Euratom contribution to the Joint Undertaking for the period 2021-2027, including the related supporting expenditure as referred to in paragraph 4 for the same period, shall be EUR 5 614 000 000 in current prices.;

(b) the following paragraph is added:

'4. The amount referred to in paragraph 3 may also cover expenses relating to preparation, monitoring, control, audit, evaluation and other activities and expenditure necessary for managing and implementing this Decision, including administrative expenditure, as well as evaluating the achievement of its objectives. It may also cover expenses relating to studies and meetings of experts, and expenses relating to information technology networks focusing on information processing and exchange, including corporate information technology tools and other technical and administrative assistance needed in connection with the management of this Decision.;

(2) Article 5b is deleted;

(3) the following Article is inserted:

'Article 5c

#### **Evaluation**

1. Evaluations of the implementation of this Decision shall be carried out regularly and in a timely manner to feed into the decision-making process.

<sup>(13)</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

2. Once sufficient information about the implementation of this Decision during the period 2021-2027 is available, the Commission shall carry out an interim evaluation of the implementation of this Decision at the latest by 2024.

3. At the end of the implementation of this Decision, at the latest by four years after the end of the period specified in Article 4(3), the Commission shall carry out a final evaluation of the implementation of this Decision.

4. The Commission shall communicate the conclusions of the evaluations carried out under this Article, accompanied by its observations, to the European Parliament, to the Council, to the European Economic and Social Committee and to the Committee of the Regions.;

(4) the following Article is inserted:

*'Article 5d*

**Communication, visibility and publicity**

1. The recipients of Community funding shall acknowledge the origin of those funds and ensure the visibility of the Community funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including to the media and the public.

2. The Commission shall implement information and communication actions relating to this Decision, to actions taken pursuant to this Decision and to the results obtained. Financial resources allocated to this Decision shall also contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 1.'

*Article 2*

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

It shall apply from 1 January 2021.

This Decision is addressed to the Member States.

Done at Brussels, 22 February 2021.

*For the Council*

*The President*

J. BORRELL FONTELLES

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