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## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

## COURT OF AUDITORS

**Summary of results from the Court's 2014 annual audit of the European Research Joint Undertakings**

(2015/C 422/01)

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## INTRODUCTION

1. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union, the Court has audited the annual accounts for the financial year ended 31 December 2014 and the legality and regularity of the transactions underlying them for eight European Research Joint Undertakings (JUs) <sup>(1)</sup>:

- Fusion for Energy — F4E (ITER) — Development of Fusion Energy;
- Clean Sky — Clean Air Transport Technologies;
- ARTEMIS — Embedded Computing Systems <sup>(2)</sup>;
- IMI — Innovative Medicines Initiative;
- ENIAC — Nanoelectronics <sup>(3)</sup>;
- FCH — Fuel Cells and Hydrogen;
- SESAR — Single European Sky Air Traffic Management Research; and
- ECSEL — Electronic components and Systems <sup>(4)</sup>.

2. Apart from the European Union (represented by the Commission), members of the Joint Undertakings may include various public and private partners who make contributions to the funding of the activities performed by the Joint Undertakings. The Joint Undertakings either follow a bipartite model with the participation of the European Commission and the Industry, or a tripartite model with the participation also of the Member States <sup>(5)</sup>. Joint Undertakings play an important role in implementing research policy in specific areas.

3. As in prior years, the Court has audited the legality and regularity of the transactions. However, 2014 is the first year whereby the annual accounts of two Joint Undertakings (Fusion for Energy — F4E (ITER) and SESAR) were verified by an independent external auditor (audit firm) according to Article 208(4) of the EU Financial Regulation and Article 107(1) of the new framework financial Regulation for agencies and other bodies. The Court's opinion on these accounts considered the audit work performed by the independent external auditor and the action taken in response to the auditor's findings. For other Joint Undertakings, the Court carried out its own audit work on the annual accounts.

4. This summary provides an overview on the results of the Court's annual audits of the Joint Undertakings for the financial year 2014. It aims at facilitating the analysis and comparison of the Court's specific reports on the 2014 annual accounts of the Joint Undertakings. The Court's opinions and comments as well as the Joint Undertakings' replies can be found in the published specific annual reports. This summary is not an audit report or opinion.

5. The Joint Undertakings' total 2014 forecasted budgeted income <sup>(6)</sup> amounted to 1,9 billion euro (2013: 2,2 billion euro) or 1,6 % of the 2014 EU general budget (2013: 1,7 %). Of the amounts received, 1 224 million euro (2013: 686 million euro) came from the EU general budget and 204 million euro (2013: 134 million euro) came from the industrial partners and members of the Joint Undertakings. The increase of the Commission and of the ITER Host State contributions to F4E in 2014 explain most of the increase noted in the amounts received.

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<sup>(1)</sup> Two Joint Undertakings were created in 2014: BBI JU (Bio-Based Industries) and Shift2Rail JU. As these JUs have not obtained their financial autonomy from the Commission in 2014, the Court has not audited their annual accounts.

<sup>(2)</sup> On 27 June 2014, ARTEMIS was merged with ENIAC Joint Undertaking to create the ECSEL JU. As a consequence of the merger, the Court's audit covers the financial period of the ARTEMIS Joint Undertaking from 1 January to 26 June 2014.

<sup>(3)</sup> On 27 June 2014, ENIAC was merged with ARTEMIS Joint Undertaking to create the ECSEL JU. As a consequence of the merger, the Court's audit covers the financial period of the ENIAC Joint Undertaking from 1 January to 26 June 2014.

<sup>(4)</sup> The ECSEL Joint Undertaking replaces and succeeds the ENIAC and ARTEMIS Joint Undertakings, the official closure of which took effect on 26 June 2014. The Court's audit thus covers the financial period of the ECSEL Joint Undertaking from 27 June to 31 December 2014.

<sup>(5)</sup> Bipartite Joint Undertakings are Clean Sky, IMI, FCH and SESAR. Tripartite Joint Undertakings are ARTEMIS, ENIAC and ECSEL. As regards Fusion for Energy-F4E (ITER), the members are 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 (as at 31 December 2014: Switzerland).

<sup>(6)</sup> Forecasted income budget represent commitments appropriations (final budget).

6. The Joint Undertakings employ 432 (2013: 414) permanent and temporary officials, less than 1 % of total EU officials authorised under the EU general budget (see *Annex I* for details).

7. Whereas the financial risk related to the Joint Undertakings is limited compared to the total EU budget, the reputational risk for the Union is high: they are a key tool for the implementation of the EU Research strategy and their public-private partnership nature makes them highly visible among the industries they are cooperating with.

#### **INFORMATION IN SUPPORT OF THE COURT'S OPINIONS**

8. Regarding the two Joint Undertakings audited by an independent external auditor, the Court has reviewed the work of the audit firms in accordance with international audit standards. In forming its opinion on the reliability of the accounts expressed in the Specific Annual Reports (SARs), the Court took into account the audit firms' work.

9. There is adequate assurance for the Court to base its own audit opinions on the reliability of the accounts using the private audit firms' work.

10. Regarding the legality and regularity of transactions, for which the Court remains exclusively responsible, 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 and an analysis of management representations and of Annual Activity Reports. In 2014, the audit continued to place special emphasis on ex-post audits.

11. For the remaining six Joint Undertakings, the Court continued to perform the audit of both the legality and regularity of the underlying transactions and the reliability of the accounts.

#### **AUDIT RESULTS**

##### ***Opinions on the reliability of the accounts***

12. The final accounts of all Joint Undertakings present fairly, in all material respects, their financial position as at 31 December 2014 and the results of their operations and their cash flows for the year then ended, in accordance with the provisions of the applicable Financial Regulations and the accounting rules adopted by the Commission's Accounting Officer.

##### ***Opinions on the legality and regularity of the transactions underlying the accounts***

13. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2014 were legal and regular in all material respects for five (F4E, Clean Sky, FCH, IMI and SESAR) of the eight Joint Undertakings.

14. As regards the ARTEMIS and ENIAC Joint Undertakings, the audit of project cost claims has been delegated to the national funding authorities (NFAs), under the administrative agreements in force. ARTEMIS and ENIAC received audit reports from the NFAs but did not systematically assess the quality of these audits. The Court performed an assessment of the audit strategies, including audit reports, of three NFAs. The methodologies used did not allow the Joint Undertakings to

calculate a reliable weighted error rate nor a residual error rate. As a consequence, the Court concluded that the information available on the implementation of the ARTEMIS and ENIAC Joint Undertakings' ex post audit strategies is not sufficient to conclude whether this key control tool is functioning effectively<sup>(7)</sup> and the Court issued a qualified opinion<sup>(8)</sup>.

15. The ECSEL Joint Undertaking has taken over the projects of the ARTEMIS and ENIAC Joint Undertakings. The administrative agreements concluded by the ARTEMIS and ENIAC Joint Undertakings with the NFAs of the Member State continue to apply after the merger into ECSEL Joint Undertaking<sup>(9)</sup>. As a result of the situation mentioned in paragraph 14 above, the Court also issued a qualified opinion for ECSEL on projects launched by ARTEMIS and ENIAC.

#### **Emphasis of matter on the EU contribution to the ITER project costs<sup>(10)</sup>**

16. As regards F4E, the EU contribution to ITER construction phase was valued by the Council in 2010<sup>(11)</sup> at 6,6 billion euro. This amount is subject to significant risks of increase, mainly resulting from changes in the scope of the project deliverables and due to the current schedule which is considered unrealistic. The latest estimate of the shortfall until the finalisation of the construction phase of the project is 428 million euro. The slippage for the construction phase of the project was estimated by the Joint Undertaking at the time of the audit (March 2015) to be at least 43 months. In relation to these risks, the Joint Undertaking is developing a system at contract level to regularly monitor the cost deviations but has not yet updated the valuation of the Joint Undertaking contribution to the ITER project beyond the finalisation of the construction phase. The Joint Undertaking is however currently working on the implementation of an action plan to address the main constraints that are currently affecting the development of the project.

#### **Comments not calling the Court's opinions into question**

17. The Court made 55 comments (2013: 55) affecting all Joint Undertakings highlighting matters of importance. An overview of the comments made is provided in *Annex II*. The most frequent comments are summarised below.

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

18. Comments under this heading focus on three areas:

- budgetary implementation rate: the budgetary implementation rate for commitment appropriations ranged between 90 % and 100 % (except for ARTEMIS and ENIAC with a range between 38 % and 43 %, which reflects the implementation over 6 months of appropriations adopted for a full year) and the budgetary implementation rate for payment appropriations ranged between 74 % and 100 %. The latter amounts to 74 % for FCH and IMI and 80 % for SESAR and is mostly explained by delays in the funding of projects.
- calls for proposals and the implementation of projects: Except for ARTEMIS, where the final rate of appropriations committed for the calls for proposals represented only 48 % (49 % as at 31 December 2013) of the total budget available to cover operational expenditure during the total duration of the Joint Undertaking, the other Joint Undertakings achieved a figure between 90 % and 100 %.

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<sup>(7)</sup> ARTEMIS and ENIAC initiated in 2014 a common action plan to mitigate this qualified opinion, which includes visiting National Funding Authorities and examining their systems.

<sup>(8)</sup> The Court expresses a qualified opinion when the auditor has obtained sufficient appropriate audit evidence and concludes that misstatements or instances of noncompliance are material, but not pervasive, to the annual accounts or underlying transactions. The Court also expresses a qualified opinion when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the possible effects on the annual accounts or underlying transactions of that inability are material but not pervasive (as outlined in paragraphs 14 and 15). Pervasive effects are those that, in the auditor's judgment, are not confined to specific elements, accounts or items or, if they are so confined, they represent or could represent a substantial proportion of the financial statements.

<sup>(9)</sup> ECSEL continues to implement the common action plan initiated by ARTEMIS and ENIAC in 2014 to mitigate this qualified opinion.

<sup>(10)</sup> An Emphasis of Matter paragraph is used to draw readers' attention to a matter which is not materially misstated in the accounts, but is of such importance that it is fundamental to users' understanding of the accounts.

<sup>(11)</sup> Council conclusion on ITER status of 7 July 2010 (Ref. 11902/10).

- The Institutions and Bodies are required to produce each year a Report on Budgetary and Financial Management <sup>(12)</sup>. The information provided by the Joint Undertakings in this report lacked harmonisation and was often incomplete. Guidance is required from the Commission as to the nature and content of the report.

### Internal controls

19. Ex-post audits are a key tool for Joint Undertakings to ensure the eligibility and accuracy of costs claimed by beneficiaries and/or partners. All except ECSEL <sup>(13)</sup> have adopted an ex-post audit strategy, five of which have contracted out the performance of ex-post audits to independent external audit firms. In three cases (see paragraphs 14 and 15), the Court issued a qualified opinion on the basis of the inadequacy of the implementation of the ex-post audit strategy.

20. As regards F4E, the Court notes that significant progress has been achieved, although the JU was still addressing a number of key actions at the time of the audit (March 2015). The competitiveness of procurement procedures, which are central to the implementation of the ITER project by F4E, still needs to be increased. As regards grants, the average number of proposals received was one per call, as in 2013 and 2012.

### Monitoring and reporting of project research results

21. The monitoring and reporting of research results is laid down in the Seventh Framework Programme (FP7), which establishes a monitoring and reporting system covering the protection, dissemination and transfer of research results. In the grant agreements signed with members and other beneficiaries, the Joint Undertakings have included specific provisions governing intellectual property rights and the dissemination of research activities and results. The implementation of these provisions is monitored by the Joint Undertakings at different stages of the funded projects and significant progress has been achieved in 2014. However, in order to meet the requirements of Horizon 2020 and to better contribute to the dissemination of FP7 research results, cooperation between the Joint Undertakings and the Commission must be developed as much as possible with special regard to the further integration of some of the Joint Undertakings' data into the Commission's systems.

### The Commission's Second Interim Evaluation

22. The Commission's Second Interim Evaluation was performed over 2013 and early 2014. It assessed all Joint Undertakings (except F4E) in terms of relevance, efficiency, effectiveness and research quality. The action plans adopted as a result from the reports were being implemented in all Joint Undertakings

### CONCLUSIONS

23. All Joint Undertakings have produced reliable accounts but three have a qualified opinion on their 2014 accounts in respect of the legality and regularity of the transactions underlying them.
24. There is room to improve procedures, in particular the implementation of the ex-post audit strategy, the cooperation with the Commission as regards the integration of the research results and, in the case of F4E, cost control mechanisms.

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<sup>(12)</sup> Article 142 of Regulation (EU, Euratom) No 966/2012 (OJ L 298, 26.10.2012, p. 1), Article 93 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42), and Article 39 of Commission Delegated Regulation (EU) No 110/2014 (OJ L 38, 7.2.2014, p. 2).

<sup>(13)</sup> ECSEL has not yet adopted an ex-post audit strategy for its own projects.

## ANNEX I

## Joint Undertakings' Income (Forecasted income budgets, entitlements established and amounts received) and Staff establishment plans

Joint Undertaking	Parent DG	Policy Area	2014						2013					
			Forecasted Income budget (€)	Entitlements established (€)	Amounts received (€)	Staff establishment plan (4)	Forecasted Income budget (€)	Entitlements established (€)	Amounts received (€)	Staff establishment plan (4)				
1 ARTEMIS (until 26 June 2014)	DG CONNECT	Research	2 224 000	863 193	20 100 000	(15)	32 643 708	32 647 545	20 123 350	15				
2 CLEAN SKY	DG Research and Innovation	Research	229 241 764	189 316 793	98 585 400	37	306 043 097	227 000 428	124 613 566	24				
3 ENIAC (until 26 June 2014)	DG CONNECT	Research	2 720 633	1 022 580	54 144 250	(15)	172 696 508	172 608 748	36 529 216	15				
4 FUSION FOR ENERGY	DG Research and Innovation	Research	1 168 825 456	1 168 825 456	720 917 805	262	1 297 013 166	1 296 952 709	245 002 495	262				
5 FUEL CELLS AND HYDROGEN — FCH	DG Research and Innovation	Research	112 919 000	108 384 000	69 379 993	26	74 482 039	73 672 484	56 393 265	20				
6 INNOVATIVE MEDICINES INITIATIVE — IMI	DG Research and Innovation	Research	223 294 603	207 433 859	165 627 993	37	255 715 919	254 435 104	125 829 159	36				
7 SESAR	DG MOVE	Research	13 119 600	13 046 425	94 753 384	42	84 222 608	64 066 631	77 535 515	42				



Joint Undertaking	Parent DG	Policy Area	2014					2013				
			Forecasted Income budget <sup>(1)</sup>	Entitlements established <sup>(2)</sup>	Amounts received <sup>(3)</sup>	Staff establishment plan <sup>(4)</sup> <sup>(5)</sup>	Forecasted Income budget <sup>(1)</sup>	Entitlements established <sup>(2)</sup>	Amounts received <sup>(3)</sup>	Staff establishment plan <sup>(4)</sup>		
8 ECSEL (as from 27 June 2014)	DG CONNECT	Research	1 58 245 086	1 58 318 481	460 000	28	N/A	N/A	N/A	N/A	N/A	
<b>Total</b>			<b>1 910 590 142</b>	<b>1 847 210 787</b>	<b>1 223 967 872</b>	<b>432</b>	<b>2 222 817 045</b>	<b>2 121 382 649</b>	<b>686 026 566</b>	<b>414</b>		

<sup>(1)</sup> Forecasted income budget represent commitments appropriations (final budget).

<sup>(2)</sup> Entitlements established represent commitments authorised.

<sup>(3)</sup> Amounts received represent cash contribution during the year from the European Commission.

<sup>(4)</sup> Final budget.

<sup>(5)</sup> ARTEMIS and ENIAC were merged into ECSEL on 27 June 2014. Their total of 30 posts was converted into 28 posts at ECSEL. The total number of posts at 31 December 2014 is thus 432.

## ANNEX II

## Comments made by the Court in 2014

Joint Undertaking	Budgetary and financial management				Key controls of the JU's supervisory and control systems			Other matters and follow-up of previous observations							
	Implementation of the budget and multi annual funding	Presentation of the accounts	Calls for proposals	Multilateral Framework Agreement	Internal Control Systems and Accounting systems	Operational procurement and grants	Implementation of ex-post audit strategy	Internal audit function and the Commission's Internal Audit Service	Legal framework	Monitoring and reporting of research results	Intellectual property rights and industrial policy	Conflict of interest	The Commission second interim evaluation	EU contribution to ITER construction phase	Other
1 ARTEMIS	x		x				x <sup>(1)</sup>	x	x		x				
2 CLEAN SKY	x				x			x	x		x	x			
3 ENIAC	x		x				x <sup>(1)</sup>	x							
4 FUSION FOR ENERGY	x	x			x	x		x		x	x		x <sup>(1)</sup>	x	
5 FUEL CELLS AND HY-DROGEN — FCH	x		x		x			x	x		x	x			
6 INNOVATIVE MEDICINES INITIATIVE — IMI	x				x			x	x		x	x			
7 SESAR	x			x				x	x		x	x			
8 ECSEL	x				x		x <sup>(1)</sup>	x	x		x				
<b>Subtotals</b>	<b>8</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>6</b>	<b>8</b>	<b>5</b>	<b>1</b>	<b>7</b>	<b>4</b>	<b>1</b>	<b>1</b>
<b>Total</b>	<b>13</b>				<b>9</b>			<b>33</b>							

<sup>(1)</sup> These comments are set out in the opinion section of the report.

**REPORT****on the annual accounts of the Artemis Joint Undertaking for the period 1 January to 26 June 2014,  
together with the Joint Undertaking's reply**

(2015/C 422/02)

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## INTRODUCTION

1. The ARTEMIS Joint Undertaking, located in Brussels, was set up in December 2007<sup>(1)</sup> for a period of 10 years and has worked autonomously since 2009. On 27 June 2014 ARTEMIS was merged with ENIAC Joint Undertaking<sup>(2)</sup> to create the Electronic Components and Systems for European Leadership Joint Undertaking (ECSEL JU)<sup>(3)</sup>. ECSEL JU started its activities on 27 June 2014 and will run for 10 years. As a consequence of the merger, this report covers the financial period of the ARTEMIS Joint Undertaking from 1 January to 26 June 2014.
2. The main objective of the Joint Undertaking was to define and implement a 'research agenda' for the development of key technologies for embedded computing systems across different application areas, in order to strengthen European competitiveness and sustainability and allow the emergence of new markets and societal applications<sup>(4)</sup>.
3. The founding members of the ARTEMIS Joint Undertaking were the European Union, represented by the Commission, certain EU Member States (Belgium, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Hungary, the Netherlands, Austria, Portugal, Romania, Slovenia, Finland, Sweden and the United Kingdom) and ARTEMIS-IA, an association representing companies and other research organisations active in the field of embedded computing systems in Europe. In 2009, the Czech Republic, Cyprus, Latvia and Norway also became members of the Joint Undertaking, and Poland followed suit in 2012.
4. The maximum EU contribution to the Joint Undertaking, to cover running costs and research activities, was 420 million euro to be paid from the budget of the Seventh Framework Programme<sup>(5)</sup>. In addition, ARTEMIS-IA was to make a maximum contribution of 30 million euro to the running costs, while the ARTEMIS Member States were to make in-kind contributions to the running costs (by facilitating the implementation of projects) and provide financial contributions of at least 1,8 times the EU contribution. In-kind contributions were also to be provided by the research organisations participating in projects.

## INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

5. 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.

### STATEMENT OF ASSURANCE

6. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:
  - (a) the accounts of the ARTEMIS Joint Undertaking, which comprise the financial statements<sup>(6)</sup> and the reports on the implementation of the budget<sup>(7)</sup> for the period 1 January to 26 June 2014; and
  - (b) the legality and regularity of the transactions underlying those accounts.

<sup>(1)</sup> Council Regulation (EC) No 74/2008 of 20 December 2007 on the establishment of the 'ARTEMIS Joint Undertaking' to implement a Joint Technology Initiative in Embedded Computing Systems (OJ L 30, 4.2.2008, p. 52).

<sup>(2)</sup> The ENIAC Joint Undertaking was set up by Council Regulation (EC) No 72/2008 of 20 December 2007 (OJ L 30, 4.2.2008, p. 21) to define and implement a 'research agenda' for the development of key competences for nanoelectronics.

<sup>(3)</sup> The ECSEL Joint Undertaking was set up by Council Regulation (EU) No 561/2014 of 6 May 2014 (OJ L 169, 7.6.2014, p. 152).

<sup>(4)</sup> The *Annex* summarises the Joint Undertaking's competences and activities. It is presented for information purposes.

<sup>(5)</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.

<sup>(6)</sup> These include the balance sheet and the statement of financial performance, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

<sup>(7)</sup> These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

**The management's responsibility**

7. In accordance with Articles 16 and 22 of Commission Delegated Regulation (EU) No 110/2014<sup>(8)</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>(9)</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.
- (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**

8. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council<sup>(10)</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.

9. 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.

10. 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**

11. In the Court's opinion, the Joint Undertaking's accounts for the period 1 January to 26 June 2014 present fairly, in all material respects, its financial position as at 26 June 2014 and the results of its operations and its cash flows for the period then ended, in accordance with the provisions of its financial rules and the accounting rules adopted by the Commission's accounting officer.

<sup>(8)</sup> OJ L 38, 7.2.2014, p. 2.

<sup>(9)</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.

<sup>(10)</sup> Article 47 of Delegated Regulation (EU) No 110/2014.

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

12. The Joint Undertaking's *ex-post* audit strategy <sup>(11)</sup>, adopted by a Governing Board decision on 25 November 2010 and modified on 20 February 2013, is a key tool <sup>(12)</sup> for assessing the legality and regularity of the underlying transactions. The payments made in 2014 relating to certificates of acceptance of costs issued by the national funding authorities of the Member States (NFAs) amounted to 5,9 million euro, or 37 % of the total payments.

13. Although the audit of project cost claims has been delegated to the NFAs, the administrative agreements signed with the NFAs do not include practical arrangements for *ex-post* audits.

14. The Joint Undertaking received audit reports from the NFAs covering approximately 46 % (as of April 2015) of the costs related to completed projects. However, the Joint Undertaking did not assess the quality of these audits <sup>(13)</sup>. The Court performed an assessment of the audit strategies, including audit reports, of three NFAs which indicated that the methodologies used by the NFAs did not allow the Joint Undertaking to calculate a reliable weighted error rate nor a residual error rate. Therefore it is not possible to conclude whether *ex-post* audits are functioning effectively and whether this key control provides sufficient assurance as to the legality and regularity of the underlying transactions.

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

15. In the Court's opinion, except for the possible effects of the matter described in the basis for a qualified opinion in paragraphs 12 to 14, the transactions underlying the annual accounts for the financial year ended 26 June 2014 are, in all material respects, legal and regular.

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

**COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT****Implementation of the budget**

17. The initial 2014 budget included commitment appropriations for running costs amounting to 2,2 million euro. The budget did not include commitment appropriations for operational activities as a consequence of the plans to merge ARTEMIS and ENIAC during 2014 to create ECSEL which will be in charge of the 2014 call. The utilisation rate for administrative commitment appropriations was 38 % because the merger took place in June whereas the budget was adopted for the whole year.

**Calls for proposals**

18. The Council Regulation setting up the Joint Undertaking envisaged a maximum total budget of 410 million euro to cover operational expenditure. At the time of the merger, the amount of appropriations committed for the calls for proposals was 198 million euro (48 % of the total budget). According to the Council Regulation setting up the Joint Undertaking, ARTEMIS is to respect a 1 to 1,8 ratio between the EU contribution and the Member States' contribution. Budget restrictions in the Member States meant that it was not possible to commit the remaining part of the budget (52 %).

<sup>(11)</sup> The general financing agreement between the European Commission and the Joint Undertaking states that 'the Joint Undertaking, in its competent board, adopts its *ex-post* audit strategy with the aim of providing reasonable assurance on the legality and regularity of the underlying transactions' and 'the *ex-post* audit strategy shall be based on examination of procedures and of a sample of transactions for all or a sample of beneficiaries and shall, in particular, adequately reflect the risks involved'.

<sup>(12)</sup> Article 12 of Regulation (EC) No 74/2008 states that 'The ARTEMIS Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls' and 'The ARTEMIS Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the ARTEMIS Joint Undertaking's public funding. These checks and audits shall be performed either directly by the ARTEMIS Joint Undertaking or by ARTEMIS Member States on its behalf. ARTEMIS Member States may carry out any other checks and audits among the recipients of their national funding as they deem necessary and shall communicate the results to the ARTEMIS Joint Undertaking.'

<sup>(13)</sup> According to the *ex-post* audit strategy adopted by the ARTEMIS Governing Board, the Joint Undertaking must assess at least once a year whether the information received from the ARTEMIS Member States provides sufficient assurance as to the regularity and legality of the executed transactions.

**OTHER MATTERS*****Follow-up of previous observations***

19. The new Financial Regulation applicable to the general budget of the Union <sup>(14)</sup> was adopted on 25 October 2012 and took effect on 1 January 2013 <sup>(15)</sup>. However the model financial regulation for public-private partnership bodies referred to in Article 209 of the new Financial Regulation did not enter into force until 8 February 2014 <sup>(16)</sup>. Because of the merger into ECSEL Joint Undertaking, the financial rules of the Joint Undertaking were not amended.

20. Article 6(2) of the Council Regulation setting up the ARTEMIS Joint Undertaking stipulates that the Joint Undertaking shall have an internal audit capability. This function had not been set up at the time of the merger.

21. The mission charter of the Commission's Internal Audit Service (IAS) was adopted by the Governing Board on 25 November 2010. Because of the merger into ECSEL Joint Undertaking, the financial rules of the Joint Undertaking were not amended to include the provision of the Framework Regulation referring to the powers of the Commission's Internal Auditor.

22. At the time of the audit, the Joint Undertaking did not have in place a comprehensive written procedure to deal with conflicts of interest.

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 20 October 2015.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

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<sup>(14)</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

<sup>(15)</sup> Article 214 of Regulation (EU, Euratom) No 966/2012 with the exemptions referred to.

<sup>(16)</sup> Delegated Regulation (EU) No 110/2014.

## ANNEX

**ARTEMIS 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 74/2008 of 20 December 2007 on the establishment of the 'ARTEMIS Joint Undertaking' to implement a Joint Technology Initiative.</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>(Council Regulation (EC) No 74/2008)</i></p>	<p><b>Objectives</b></p> <ul style="list-style-type: none"> <li>— The Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme by defining and implementing significant parts of the ARTEMIS Strategic Research Agenda for the development of key technologies in the field of embedded computing systems, by creating a sustainable public-private partnership and leveraging and increasing private and public investment in the sector of embedded systems in Europe.</li> <li>— The JU aims to achieve effective coordination and synergy of resources and funding from the industry, the Framework Programme, national R &amp; D programmes and intergovernmental R &amp; D schemes, thus contributing to strengthening Europe's future growth, competitiveness and sustainable development.</li> <li>— ARTEMIS seeks to foster collaboration between all stakeholders such as industry, including small and medium-sized enterprises (SMEs), national or regional authorities, academic and research centres, pulling together and focusing the research effort.</li> <li>— The JU adopts a commonly agreed research agenda closely following the recommendations of the Strategic Research Agenda developed by the ARTEMIS Technology Platform. This Research Agenda identifies and regularly reviews research priorities for the development and adoption of key technologies for embedded computing systems across different application areas in order to strengthen European competitiveness and allow the emergence of new markets and applications important to society.</li> <li>— The JU will support R &amp; D activities through open and competitive calls for proposals published on a yearly basis, to attract the best European research ideas and capacities in the field of embedded computing systems. Proposals submitted to ARTEMIS JU calls undergo a technical evaluation and selection process carried out with the assistance of independent experts. This process ensures that allocation of the Joint Undertaking's public funding follows the principles of equal treatment, excellence and competition.</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, while industry (which includes large and small enterprises, as well as academia and research institutes) is represented by the ARTEMIS Industry Association (ARTEMIS-IA). ARTEMIS-IA provides the chairperson of the Governing Board and the members of the Industry and Research Committee (IRC), which is responsible for the technical work programme. The public sector (participating Member States and the European Commission) are individually represented on the Governing Board and the Public Authorities Board (PAB), which is responsible for financial matters.</p>



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<b>Resources available to the Joint Undertaking in 2014</b>	<b>Budget</b> 2 554 510 euro for commitments. 30 330 178 euro for payments (operational). <b>Staff at 26 June 2014</b> 15 posts provided for in the establishment plan (8 temporary staff and 7 contract staff); 13 posts were occupied and assigned as follows: operational activities (8); administrative tasks (5); mixed tasks (0).
<b>Activities and services provided in 2014</b>	See the Joint Undertaking's latest available annual activity report for 2013 at <a href="http://www.artemis-ju.eu/reference_documents">http://www.artemis-ju.eu/reference_documents</a>

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Source: Information supplied by the ARTEMIS Joint Undertaking.

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### THE JOINT UNDERTAKING'S REPLY

13. The ARTEMIS JU made arrangements with the national funding authorities (NFAs) within the boundaries established by the Council Regulation (EC) No 74/2008 <sup>(1)</sup> that entrusts the task to define the total costs to the NFAs, based on their grant agreements 'in accordance with their national rules, in particular as regards eligibility criteria and other necessary financial and legal requirements.' This Regulation does not establish a competence for the JU to define rules for the NFAs, and does not empower it to perform on the spot checks and audits among the NFAs. These shortcomings have been recognised and alleviated in the Council Regulation (EU) No 561/2014 establishing ECSEL Joint Undertaking that empowers the Joint Undertaking to award the EU grants in strict compliance with the Horizon 2020 procedures.

14. The ECSEL JU confirms that its extensive assessments of the national assurance systems concluded that they can provide a reasonable protection of the financial interests of the JU members; however, as indicated by the ECA, the national methodologies do not allow the calculation of a weighted error rate nor a residual error rate for the projects launched under ARTEMIS and ENIAC Joint Undertakings. This technical difficulty does not result, however, in a negative opinion of the ECA, but understandably prevents it from confirming the legality and regularity of the transactions without formulating a reservation.

20. Immediately after the merger of ARTEMIS and ENIAC into ECSEL, the function of internal audit capability has been established — on 4 July 2014 — by the Governing Board of ECSEL, with responsibilities for both legacy ARTEMIS and ENIAC programmes as well as for ECSEL itself.

22. The Governing Board of ECSEL has adopted a comprehensive policy to prevent conflicts of interest.

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<sup>(1)</sup> Council Regulation (EC) No 74/2008 from 20 December 2007 establishing the ARTEMIS Joint Undertaking.

**REPORT****on the annual accounts of the Clean Sky Joint Undertaking for the financial year 2014 together with the Joint Undertaking's replies**

(2015/C 422/03)

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## INTRODUCTION

1. The Joint Undertaking for the implementation of the Joint Technology Initiative in aeronautics (Clean Sky Joint Undertaking), located in Brussels, was set up in December 2007<sup>(1)</sup> for a period of ten years and started working autonomously on 16 November 2009. On 6 May 2014<sup>(2)</sup>, the Council adopted a new founding Regulation which repealed the original Regulation and entrusted the Joint Undertaking, referred to as 'Clean Sky 2 Joint Undertaking'<sup>(3)</sup>, with new tasks under the Horizon 2020 framework programme for research and innovation<sup>(4)</sup> and extended the lifetime of the Joint Undertaking for the period up to 31 December 2024.

2. The objective of the Clean Sky 2 Joint Undertaking is to contribute to the finalisation of research activities of the seventh framework programme<sup>(5)</sup> and to improving the environmental impact of aeronautical technologies, as well as to developing a strong and globally competitive aeronautical industry and supply chain in Europe. The objectives of the Clean Sky 2 Joint Undertaking fall under the societal challenge pillar in Horizon 2020, namely smart, green and integrated transport<sup>(6)</sup>.

3. The research activities coordinated by the Joint Undertaking comprise (a) six continued technological and demonstration-focused areas or 'Integrated technology demonstrators' (ITDs) implementing seventh framework programme projects; and (b) nine new technological and demonstration-focused areas implementing Horizon 2020 projects:

- three integrated technology demonstrators (ITDs),
- three innovative aircraft demonstrator platforms (IADPs),
- three transverse areas, including the technology evaluator (TAs)

4. The Members of the Joint Undertaking under the new Regulation are the European Union, represented by the Commission, the industrial Leaders of the ITDs/IADPs/TAs and the other Members of the newly established Joint Undertaking which will be selected via open and competitive calls and will assume the status of Core Partners. The Associates of the Clean Sky Joint Undertaking under the seventh framework programme will keep such a Membership status until completion of their research activities and actions initiated under Regulation (EC) No 71/2008.

5. The maximum EU contribution to the Clean Sky Joint Undertaking under the seventh framework programme, to cover running costs and research activities, was 800 million euro. The EU financial contribution to the Clean Sky 2 Joint Undertaking under Horizon 2020 will be up to 1 755 million euro. The Leaders and Core Partners of the Joint Undertaking are to bring a minimum level of private contribution to the programme of 2 193,7 million euro over the period of duration of the Joint Undertaking<sup>(7)</sup> including contributions for additional activities<sup>(8)</sup> of at least 965,2 million euro over the same period<sup>(9)</sup>. Administrative costs should not exceed 78 million euro and should be split equally between the EU and the private members of the Joint Undertaking.

<sup>(1)</sup> Council Regulation (EC) No 71/2008 of 20 December 2007 setting up the Clean Sky Joint Undertaking (OJ L 30, 4.2.2008, p. 1).

<sup>(2)</sup> Council Regulation (EU) No 558/2014 of 6 May 2014 establishing the Clean Sky 2 Joint Undertaking (OJ L 169, 7.6.2014, p. 77).

<sup>(3)</sup> This report refers to the 'Clean Sky Joint Undertaking' unless it is necessary to distinguish between the two programmes.

<sup>(4)</sup> The Horizon 2020 Framework programme for Research and Innovation, adopted by Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104), is the research and innovation programme for 2014-2020 and brings together all existing EU research and innovation funding.

<sup>(5)</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.

<sup>(6)</sup> The *Annex* summarises the Joint Undertaking's competences, activities and available resources. It is presented for information purposes.

<sup>(7)</sup> Article 4.1 of Regulation (EU) No 558/2014.

<sup>(8)</sup> Costs incurred by Leaders and Core Partners outside of the work plan of Clean Sky 2 Joint Undertaking and contributing to the objectives of the Clean Sky Joint Initiative.

<sup>(9)</sup> Article 15(3) of Annex I to Regulation (EU) No 558/2014 stipulates that the 'operational costs of the Clean Sky 2 Joint Undertaking shall be covered through (a) a financial contribution by the Union; (b) in-kind contributions by Leaders and Core Partners and their affiliated entities consisting of the costs incurred by them in implementing indirect actions less the contribution of the Clean Sky 2 Joint Undertaking and any other Union contribution to those costs'.

**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.

**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 Clean Sky Joint Undertaking, which comprise the financial statements<sup>(10)</sup> and the reports on the implementation of the budget<sup>(11)</sup> for the financial year ended 31 December 2014; and
- (b) the legality and regularity of the transactions underlying those accounts.

**The management's responsibility**

8. In accordance with Articles 16 and 22 of Commission Delegated Regulation (EU) No 110/2014<sup>(12)</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>(13)</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.
- (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>(14)</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

<sup>(10)</sup> These include the balance sheet and the statement of financial performance, the cash flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

<sup>(11)</sup> These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

<sup>(12)</sup> OJ L 38, 7.2.2014, p. 2.

<sup>(13)</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.

<sup>(14)</sup> Article 47 of Delegated Regulation (EU) No 110/2014.

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 2014, 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 rules adopted by the Commission's accounting officer.

#### ***Opinion on the legality and regularity of the transactions underlying the accounts***

13. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2014 are, in all material respects, legal and regular.

14. The comments which follow do not call the Court's opinion into question.

### **COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT**

#### ***Implementation of the budget***

15. The 2014 final budget included commitment appropriations of 201,6 million euro and payment appropriations of 153,6 million euro. The utilisation rate for commitment appropriations was 93,9 % (90,6 % for 2013), while the rate for payment appropriations was 90,2 % (87,7 % for 2013). These improved implementation rates are explained by the quicker granting process.

#### ***Multiannual funding***

16. Since 2007 and up to the time of the audit (April 2015), out of the operational envelope of 790 million euro under the Clean Sky initial programme, the European Union committed contribution amounted to 703 million euro (i.e. 88,9 %), out of which 631 million euro had been paid (i.e. 79,9 %). The other members' contribution for the operational activities at 31 December 2014 amounted to 486 million euro<sup>(15)</sup>, i.e. 82,4 % of the other members' total operational budget of 590 million euro.

### **OTHER MATTERS**

#### ***Key controls and supervisory systems***

17. Payment time limits are not always respected, which leads to penalties (41 000 euro in 2014).

<sup>(15)</sup> The total other members' contribution amounts to 498 million euro and includes members' contribution already validated (448 million euro), received but not yet validated (38 million euro), and the contribution in cash to cover running costs (12 million euro).

### **Legal framework**

18. The financial rules of the Clean Sky 2 Joint Undertaking were adopted on 3 July 2014 on the basis of the model financial regulation for public-private partnership bodies<sup>(16)</sup> and taking into account the requirements of Council Regulation (EU) No 558/2014 establishing the Clean Sky 2 Joint Undertaking.

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

19. In 2014 the Commission's Internal Audit Service (IAS) finalised an audit on the financial aspects of grant management. The IAS made two very important recommendations on the *ex ante* validation guidelines and checklists for the approval of financial statements of Members and Partners and on the approval process of project deliverables for Partners. The agreed actions have been implemented for both recommendations.

### **FOLLOW-UP OF PREVIOUS OBSERVATIONS**

#### **Monitoring and reporting of project research results**

20. As regards the monitoring and reporting of project research results<sup>(17)</sup>, Clean Sky uses the European Commission's tools and its own tools to integrate its research results into the overall reporting system of the Commission. For the first time, the latest Monitoring report from the Commission on FP7 published in March 2015<sup>(18)</sup> includes quantitative data on Clean Sky Joint Undertaking activities<sup>(19)</sup>. As regards qualitative data, the results of Clean Sky research activities are on its website, in its activity report, in the Grant Agreements with Members (GAM) annual report summaries and in other publications.

21. The Horizon 2020 legal framework requires specific monitoring on research results, based on quantitative and, where appropriate, qualitative evidence, including progress against performance indicators<sup>(20)</sup>. In order to meet the requirements of Horizon 2020 and to better contribute to the dissemination of FP7 research results (especially as funded projects are reaching the end phase), cooperation between the Joint Undertaking and the Commission shall be enhanced to improve the reporting and dissemination of research results<sup>(21)</sup>.

#### **Conflicts of interest**

22. The Commission is developing a common template for the Joint Undertakings. Meanwhile, Clean Sky's procedure remains in force.

#### **The Commission's Second Interim Evaluation**

23. As a result of the Commission's Second Interim Evaluation<sup>(22)</sup>, an action plan on the recommendations was discussed by the Governing Board on 20 March 2014. Most recommendations relate to the Clean Sky 2 programme and are being implemented.

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 6 October 2015.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

<sup>(16)</sup> Delegated Regulation (EU) No 110/2014.

<sup>(17)</sup> Paragraph 27 of the Court's 2013 report (OJ C 452, 16.12.2014, p. 17).

<sup>(18)</sup> [http://ec.europa.eu/research/evaluations/pdf/archive/fp7\\_monitoring\\_reports/7th\\_fp7\\_monitoring\\_report.pdf#view=fit&pagemode=none](http://ec.europa.eu/research/evaluations/pdf/archive/fp7_monitoring_reports/7th_fp7_monitoring_report.pdf#view=fit&pagemode=none)

<sup>(19)</sup> In the EC Monitoring Report this information is presented in aggregated values together with the information from the other Joint Technology Initiatives.

<sup>(20)</sup> Article 31 of Regulation (EU) No 1291/2013, establishing Horizon 2020 and Annex II (Performance indicators) of Council Decision 2013/743/EU (OJ L 347, 20.12.2013, p. 965) of 3 December 2013 establishing the specific programme implementing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020).

<sup>(21)</sup> See the Annual Progress Report from the European Commission to the European Parliament and Council on the activities of the JTI JUs (COM(2013) 935).

<sup>(22)</sup> Paragraph 30 of the Court's 2013 report (OJ C 452, 16.12.2014, p. 17).

## ANNEX

**Clean Sky 2 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>Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104). Horizon 2020 aims to achieve a greater impact with respect to research and innovation by combining Horizon 2020 and private sector funds in public-private partnerships in key areas where research and innovation can contribute to the Union's wider competitiveness goals, leverage private investment and help tackle societal challenges.</p> <p>Council Regulation (EU) No 558/2014 of 6 May 2014 setting up the Clean Sky 2 Joint Undertaking (OJ L 169, 7.6.2014, p. 77).</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>(Council Regulation (EU) No 558/2014)</i></p>	<p><b>Objectives</b></p> <p>The Clean Sky 2 Joint Undertaking has the following objectives:</p> <p>(a) to contribute to the finalisation of research activities initiated under Regulation (EC) No 71/2008 and to the implementation of Regulation (EU) No 1291/2013, and in particular the smart, green and integrated transport challenge under Part III — Societal Challenges of Decision 2013/743/EU;</p> <p>(b) to contribute to improving the environmental impact of aeronautical technologies, including those relating to small aviation, as well as to developing a strong and globally competitive aeronautical industry and supply chain in Europe. This can be realised through speeding up the development of cleaner air transport technologies for earliest possible deployment, and in particular the integration, demonstration and validation of technologies capable of:</p> <p>(i) increasing aircraft fuel efficiency, thus reducing CO emissions by 20 to 30 % compared to 'state-of-the-art' aircraft entering into service as from 2014;</p> <p>(ii) reducing aircraft NO<sub>x</sub> and noise emissions by 20 to 30 % compared to 'state-of-the-art' aircraft entering into service as from 2014.</p>
<p><b>Governance</b></p>	<p>The JU's governing body is the Governing Board composed of:</p> <p>(a) one representative of the Commission on behalf of the Union;</p> <p>(b) one representative of each Leader;</p> <p>(c) one representative of Core Partners per ITD;</p> <p>(d) one representative of Associates per ITD;</p> <p>(e) one representative of Core Partners per IADP.</p> <p>The competences/tasks of the Board are set out in Article 8 of the Statutes (Annex I to the JU Regulation)</p> <p>The Union holds 50 % of the voting rights. The voting rights of the Union are indivisible. Each other representative holds an equal number of votes.</p> <p>The Executive Team is led by an Executive Director who is also an official body of the JU and whose competences/tasks are set out in Article 10 of the Statutes.</p>



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	<p>The industry is directly represented on the Board and through the other bodies of the JU which are the ITD and IADP Steering Committees and whose competences/tasks are set out in Article 11 of the Statutes. The States Representatives Group and the Scientific Committee are also bodies of the JU but only with an advisory role.</p>
<b>Resources available to the Joint Undertaking in 2014</b>	<p><b>Budget</b></p> <p>229 241 764 euro</p> <p><b>Staff at 31 December 2014</b></p> <p>37 posts provided for in the establishment plan (31 temporary staff and 6 contract staff), of which 31 posts were occupied; these were assigned to operational activities (24) and mixed tasks (6).</p>
<b>Activities and services provided in 2014</b>	<p>See the Clean Sky 2 Joint Undertaking's annual activity report 2014 at <a href="http://www.cleansky.eu">www.cleansky.eu</a></p>

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Source: Information supplied by the Clean Sky 2 Joint Undertaking

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**THE JOINT UNDERTAKING'S REPLY**

17. The Joint Undertaking has taken measures in order to avoid payments to be processed late, especially in the area of Grant Agreements for Partners, which have been identified as being the principal cause of this issue:

- more effective workflow introduced for the validation of Partners' financial statements and enhanced collaboration between Operational and Finance Units,
- European Commission 'single submission procedure' (for technical and financial reports) implemented,
- regular, monthly monitoring of the time to pay for grant agreements in place.

21. In order to further improve the dissemination of FP7 research results and prepare the appropriate reporting through performance indicators also for the H2020 programme, the JU has established an action plan consisting in:

- (A) creating a repository of research results on Clean Sky website;
  - (B) harmonising the reporting in the Annual Activity Report 2015 regarding dissemination of results with European Commission and use of common H2020 key performance indicators;
  - (C) developing a reporting/dissemination module in our local system grant management tool.
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**REPORT****on the annual accounts of the ENIAC Joint Undertaking for the period 1 January to 26 June 2014,  
together with the Joint Undertaking's reply**

(2015/C 422/04)

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## 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 and has worked autonomously since 2010. On 27 June 2014 ENIAC was merged with ARTEMIS Joint Undertaking<sup>(2)</sup> to create the Electronic Components and Systems for European Leadership Joint Undertaking (ECSEL JU)<sup>(3)</sup>. ECSEL JU started its activities on 27 June 2014 and will run for 10 years. As a consequence of the merger, this report covers the financial period of the ENIAC Joint Undertaking from 1 January to 26 June 2014.

2. The main objective of the Joint Undertaking was 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>(4)</sup>.

3. The founding members of the Joint Undertaking were 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, could become member of the ENIAC Joint Undertaking.

4. The maximum EU contribution to the ENIAC Joint Undertaking, to cover running costs and research activities, was 450 million euro to be paid from the budget of the Seventh Framework Programme<sup>(5)</sup>. AENEAS was to make a maximum contribution of 30 million euro to the running costs of the Joint Undertaking. ENIAC Member States were 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 were also to provide in-kind contributions, which had to be at least equal to the combined contributions of the Commission and the Member States.

## INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

5. 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.

### STATEMENT OF ASSURANCE

6. 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>(6)</sup> and the reports on the implementation of the budget<sup>(7)</sup> for the period 1 January to 26 June 2014, and

<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> ARTEMIS Joint Undertaking was set up by Council Regulation (EC) No 74/2008 of 20 December 2007 (OJ L 30, 4.2.2008, p. 52) to define and implement a 'research agenda' for the development of key technologies for embedded computing systems.

<sup>(3)</sup> The ECSEL Joint Undertaking was set up by Council Regulation (EU) No 561/2014 of 6 May 2014 (OJ L 169, 7.6.2014, p. 152).

<sup>(4)</sup> The *Annex* summarises the Joint Undertaking's competences, activities and available resources. It is presented for information purposes.

<sup>(5)</sup> The Seventh Framework Programme, adopted by Decision No 1825/2006/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.

<sup>(6)</sup> These include the balance sheet and the statement of financial performance, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

<sup>(7)</sup> These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

- (b) the legality and regularity of the transactions underlying those accounts.

#### **The management's responsibility**

7. In accordance with Articles 16 and 22 of Commission Delegated Regulation (EU) No 110/2014<sup>(8)</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>(9)</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.
- (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**

8. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council<sup>(10)</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.

9. 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.

10. 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**

11. In the Court's opinion, the Joint Undertaking's accounts for the period 1 January to 26 June 2014 present fairly, in all material respects, its financial position as at 26 June 2014 and the results of its operations and its cash flows

<sup>(8)</sup> OJ L 38, 7.2.2014, p. 2.

<sup>(9)</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.

<sup>(10)</sup> Article 47 of Delegated Regulation (EU) No 110/2014.

for the period 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**

12. The Joint Undertaking's *ex-post* audit strategy <sup>(11)</sup>, adopted by a Governing Board decision on 18 November 2010, is a key tool <sup>(12)</sup> for assessing the legality and regularity of the underlying transactions. The payments made in 2014 relating to certificates of acceptance of costs issued by the national funding authorities of the Member States (NFAs) amounted to 14,2 million euro, or 79 % of the total payments.

13. Although the audit of project cost claims has been delegated to the NFAs, the administrative agreements signed with the NFAs do not include practical arrangements for *ex-post* audits.

14. The Joint Undertaking received audit reports from the NFAs covering approximately 76 % (as of April 2015) of the costs related to completed projects. However, the Joint Undertaking did not assess the quality of these audits <sup>(13)</sup>. The Court performed an assessment of the audit strategies, including audit reports, of three NFAs which indicated that the methodologies used by the NFAs did not allow the Joint Undertaking to calculate a reliable weighted error rate nor a residual error rate. Therefore it is not possible to conclude whether *ex-post* audits are functioning effectively and whether this key control provides sufficient assurance as to the legality and regularity of the underlying transactions.

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

15. In the Court's opinion, except for the possible effects of the matter described in the basis for a qualified opinion in paragraphs 12 to 14, the transactions underlying the annual accounts for the financial year ended 26 June 2014 are, in all material respects, legal and regular.

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

### **COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT**

#### **Implementation of the budget**

17. The initial 2014 budget only included commitment appropriations for running costs amounting to 2,3 million euro. The budget does not include commitment appropriations for operational activities as a consequence of the plans to merge ENIAC and ARTEMIS during 2014 to create ECSEL which will be in charge of the 2014 call. The utilisation rate for administrative commitment appropriations was 43 %. The reason for the low budget implementation is mainly that the merger took place in June while the budget was adopted for the whole year.

#### **Calls for proposals**

18. At the time of the merger, the total amount foreseen for the calls for proposals had been committed.

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<sup>(11)</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>(12)</sup> Article 12 of Regulation (EC) No 72/2008 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>(13)</sup> According to the *ex-post* audit strategy adopted by the ENIAC Governing Board, the Joint Undertaking must assess at least once a year whether the information received from the ENIAC Member States provides sufficient assurance as to the regularity and legality of the executed transactions.

**OTHER MATTERS*****Legal framework***

19. The new Financial Regulation applicable to the general budget of the Union <sup>(14)</sup> was adopted on 25 October 2012 and took effect from 1 January 2013 <sup>(15)</sup>. However, the model financial regulation for public-private partnership bodies referred to in Article 209 of the new Financial Regulation <sup>(16)</sup> did not enter into force until 8 February 2014. Because of the merger into ECSEL Joint Undertaking, the financial rules of the Joint Undertaking have not been amended.

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 20 October 2015.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

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<sup>(14)</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

<sup>(15)</sup> Article 214 of Regulation (EU, Euratom) No 966/2012 with the exemptions referred to.

<sup>(16)</sup> Commission Delegated Regulation (EU) No 110/2014.

## 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 (2007-13) and the theme 'Information and Communication Technologies' of the specific 'Cooperation' programme implementing the Seventh Framework Programme (2007-13) 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 2014</b></p>	<p><b>Budget</b></p> <p>2 356 000,00 euro for commitments</p> <p>76 500 250,00 euro for payments</p>



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	<b>Staff at 26 June 2014</b> 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).
<b>Activities and services provided in 2014</b>	See the ENIAC Joint Undertaking annual activity report for 2014 at <a href="http://www.ecsel.eu">www.ecsel.eu</a>

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*Source:* Information supplied by the ENIAC Joint Undertaking.

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### THE JOINT UNDERTAKING'S REPLY

13. The ENIAC JU made arrangements with the national funding authorities (NFAs) within the boundaries established by Council Regulation (EC) 72/2008<sup>(1)</sup> that entrusts the task to define the total costs to the NFAs, based on their grant agreements 'in accordance with their national rules, in particular as regards eligibility criteria and other necessary financial and legal requirements.' This Regulation does not establish a competence for the JU to define rules for the NFAs, and does not empower it to perform on-the-spot checks and audits among the NFAs. These shortcomings have been recognised and alleviated in Council Regulation (EU) No 561/2014 establishing ECSEL Joint Undertaking that empowers the Joint Undertaking to award the EU grants in strict compliance with the Horizon 2020 procedures.

14. The ECSEL JU confirms that its extensive assessments of the national assurance systems concluded that they can provide a reasonable protection of the financial interests of the JU members; however, as indicated by the ECA, the national methodologies do not allow the calculation of a weighted error rate nor a residual error rate for the projects launched under ARTEMIS and ENIAC Joint Undertakings. This technical difficulty does not result, however, in a negative opinion of the ECA, but understandably prevents it from confirming the legality and regularity of the transactions without formulating a reservation.

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<sup>(1)</sup> Council regulation (EC) No 72/2008 from 20th December 2007 establishing the ENIAC Joint Undertaking

## REPORT

**on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2014 together with the Joint Undertaking's reply**

(2015/C 422/05)

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**INTRODUCTION**

1. The European Joint Undertaking for ITER <sup>(1)</sup> and the Development of Fusion Energy (F4E) 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 tasks of the Joint Undertaking are <sup>(3)</sup>:
  - (a) to provide the contribution of Euratom to the ITER International Fusion Energy Organisation <sup>(4)</sup>;
  - (b) to provide the contribution of Euratom to 'Broader Approach' (complementary joint fusion research) activities 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.
3. The members of the Joint Undertaking are 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 (as of 31 December 2014: Switzerland).

**INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE**

4. 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.

**STATEMENT OF ASSURANCE**

5. 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 Joint Undertaking for ITER and the Development of Fusion Energy <sup>(5)</sup>, which comprise the financial statements and the reports on the implementation of the budget <sup>(6)</sup> for the financial year ended 31 December 2014; and
  - (b) the legality and regularity of the transactions underlying those accounts.

**The management's responsibility**

6. In accordance with Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 <sup>(7)</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.

<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), amended by Council Decision 2013/791/Euratom of 13 December 2013 (OJ L 349, 21.12.2013, p. 100) and Council Decision (Euratom) 2015/224 of 10 February 2015 (OJ L 37, 13.2.2015, p. 8).

<sup>(3)</sup> The *Annex* summarises the Joint Undertaking's competences, activities and available resources. It is presented for information purposes.

<sup>(4)</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. Its 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.

<sup>(5)</sup> These include the balance sheet and the statement of financial performance, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

<sup>(6)</sup> These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

<sup>(7)</sup> OJ L 328, 7.12.2013, p. 42.

- (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>(8)</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.
- (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**

7. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council<sup>(9)</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.

8. 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.

9. 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***

10. In the Court's opinion, the Joint Undertaking's annual accounts present fairly, in all material respects, its financial position as at 31 December 2014 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.

### ***Opinion on the legality and regularity of the transactions underlying the accounts***

11. In the Court's opinion, the transactions underlying the annual accounts of the Joint Undertaking for the year ended 31 December 2014 are, in all material respects, legal and regular.

<sup>(8)</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.

<sup>(9)</sup> Article 107 of Regulation (EU) No 1271/2013.

**Emphasis of Matter**

12. Without calling into question the opinions expressed in paragraphs 10 and 11, the Court draws attention to the following. The Council conclusions adopted on 7 July 2010<sup>(10)</sup> approved 6,6 billion euro (in 2008 values) for the Joint Undertaking contribution to the ITER construction phase of the project. This figure, which doubled the initial budgeted costs for this phase of the project, did not include 663 million euro proposed by the European Commission in 2010 to cover potential contingencies<sup>(11)</sup>.

13. The complexity of F4E activities<sup>(12)</sup> implies that the amount of the Joint Undertaking contribution to the construction phase of the project is exposed to significant risks of increase<sup>(13)</sup>. These risks mainly result from changes in the scope<sup>(14)</sup> of the project deliverables and delays in the current schedule which is considered unrealistic<sup>(15)</sup>. The release of a new ITER project baseline (scope, schedule and costs) by ITER IO Council<sup>(16)</sup>, planned for June 2015, has been postponed until November 2015. The slippage for the construction phase of the project was estimated by the Joint Undertaking at the time of the audit (March 2015) to be at least 43 months.

14. The latest estimate of the shortfall ('negative contingency') until the finalisation of the construction phase, calculated by the Joint Undertaking in November 2014, was 428 million euro (2008 values)<sup>(17)</sup>. F4E is currently working on a more accurate and updated estimate.

15. The Joint Undertaking is still developing a central and uniform system to integrate all the operational data and to allow regular monitoring and controlling of estimates, costs and deviations<sup>(18)</sup>. Moreover, it has not updated the valuation of the Joint Undertaking contribution to the ITER project beyond the finalisation of the construction phase.

16. As a result of the challenges currently faced by the ITER project, the new Director General of ITER IO presented to the ITER Council an action plan with specific measures to address the main constraints that are currently affecting the development of the project<sup>(19)</sup>. As regards F4E Joint Undertaking, the new Acting Director<sup>(20)</sup> presented to the Governing Board a F4E action plan which largely supports the ITER IO action plan<sup>(21)</sup>. At the time of the audit, the practical measures for the implementation of both action plans were still being defined.

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

<sup>(11)</sup> Communication from the Commission to the European Parliament and the Council of 4 May 2010 on ITER status and possible way forward (COM(2010) 226 final).

<sup>(12)</sup> This results in particular from the innovative engineering solutions and technical challenges of many of the in-kind contributions to be provided to ITER International Organisation (ITER IO) and from the changes in technical specifications and in scope, which are the remit of ITER IO and over which F4E has little or no control.

<sup>(13)</sup> As also reported in the Fusion for Energy Progress Report to the Council of the European Union of November 2014 and in the 3rd Annual assessment of Fusion for Energy-Report to the Council of the European Union of November 2014.

<sup>(14)</sup> As regards the changes in the scope of the in-kind contributions to be provided to ITER IO, the current mechanism for compensating the cost increases resulting from these changes continues to be a matter of contention between ITER IO and F4E, with the latter considering that the current system is not applied in the intended manner and that F4E is left with uncompensated cost increases (2014 Fusion for Energy Progress Report to the Council of the European Union November 2014).

<sup>(15)</sup> Paragraph 12, footnote 12, of the Court's 2013 report (OJ C 452, 16.12.2014, p. 44).

<sup>(16)</sup> The Council of the ITER International Organisation (IO).

<sup>(17)</sup> This represents a deviation of 7,2% over the figure approved by the Council in 2010 (Fusion for Energy Progress Report to the European Competitiveness Council of November 2014). The increase in relation to the deviation reported in November 2013 (290 million euro) is of 138 million euro, mostly due to additional resources to ITER IO, and an additional contribution to Japan related to the EU procurements transferred to Japan, unforeseen in the initial cost baseline (see paragraph 2.7 of the 2014 F4E Accounts).

<sup>(18)</sup> See paragraph 20.

<sup>(19)</sup> On 5 March 2015 the ITER IO Council appointed the new Director General and endorsed the 2015 ITER IO action plan.

<sup>(20)</sup> The new Acting Director was appointed by the Governing Board of F4E on 3 December 2014 for a period of 1 year starting 1 March 2015, pending the selection process of a new Director.

<sup>(21)</sup> The Governing Board of F4E has endorsed the main principles set out in the F4E Action Plan and, in particular, the measures to support the creation of a new integrated organisation as envisioned by the new ITER IO DG, and requested the examination of any legal issue regarding the implementation of the action plan.

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

#### COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

##### *Financial statements*

18. In the notes to the financial statements, the table and the information included under heading 4.3.1.1 'ITER Procurement Arrangement (ITER IO)', reflects the Procurement Arrangements signed (Column 3) and the Procurement Arrangements credited so far (Column 4). However, the table does not show the degree of advancement of the works in-progress and the text contains limited information. This is essential to reflect the status and value of the activities carried out so far by the Joint Undertaking.

##### *Implementation of the budget*

19. The final 2014 budget available for implementation included commitment appropriations of 1 168,8 million euro and payment appropriations of 567,6 million euro. The utilisation rates for commitment and payment appropriations were 100 % and 88,5 % respectively. However, the implementation rate for payment appropriations with respect to the 2014 initial budget was 73 %<sup>(22)</sup>. Regarding commitment appropriations of 1 125,2 million euro available for operational activities, 23 % were implemented through direct individual commitments while the remaining 77 % were implemented through global commitments. The low rate of implementation by individual commitment is explained by the overall slippage of the ITER project and the multiple change requests coming from ITER IO.

#### COMMENTS ON KEY CONTROLS OF THE JOINT UNDERTAKING'S SUPERVISORY AND CONTROL SYSTEMS

20. The Court of Auditors notes that significant progress has been achieved in many areas. At the time of the audit (March 2015), F4E was still addressing a number of key actions for the management of the Joint Undertaking:

- F4E is still developing a central and uniform system to integrate all the operational data and to allow for estimates and cost deviations to be regularly monitored and controlled, including the system to estimate the value of each work item at contract level. At the time of the audit, F4E had completed an update of its cost baseline<sup>(23)</sup> at level 4 of the Working Base Structure (WBS) but not at contract level (level 6). In addition, the system to provide information on the degree of implementation of the activities (Earn Value Management) still has to be developed.
- The action plans adopted by the Joint Undertaking, in response to the internal audits on the financial circuits, grant management and expert contracts, were fully or mostly implemented at the time of the audit (March 2015). As regards the overall status of all the actions plans adopted by F4E in response to the internal audits carried out so far<sup>(24)</sup>, at the date of the audit, out of 46 recommendations still in progress, the deadline for implementation of 29 recommendations was overdue.

<sup>(22)</sup> The initial budget available for payment appropriations adopted on 11 December 2013 was 698 million euro. It was then reduced to 567,6 million euro in the amending budgets of 11 June and 3 December 2014, mainly because of delays in the implementation of the activities related to the ITER construction budget chapter.

<sup>(23)</sup> Cost Baseline (CB) as defined in footnote 3 of the 2014 Progress Report to the Council of the European Union: 'The amount of money a project, a work breakdown structure component, a work package, or a schedule activity was estimated to cost when the Project Baseline was established. It reflects the cost estimates that were originally at the base of the 6,6 billion euro F4E budget, appropriately updated to add only the estimated costs associated with any scope changes that have occurred up to now. It is the reference against which F4E cost performance will be measured. The CB for a given amount of scope is given with a cost Probability Density Function (PDF).'

<sup>(24)</sup> Internal audits on financial circuits, grant management, expert contracts, operational pre-procurement activities, procurement in the area of ITER buildings, selection and recruitment, monitoring of contract implementation in the area of ITER buildings, preparation of procurement arrangements in the EU JU for ITER and the development of fusion energy, review of the competitive dialogue procedure for the procurement of Tender Batch 03 (Tokamak Buildings) and limited review on contracts management.

- In 2014 the Joint Undertaking Internal Audit Capability (IAC) performed a review of the monitoring of contract implementation in the area of the ITER buildings<sup>(25)</sup> and outlined the existence of important risk factors such as the immature design of some of the ITER activities, the large number of project change requests, the unrealistic project schedule and the current delay in the implementation of the activities. It is difficult for F4E to mitigate some of these risks effectively, as their ownership belongs to ITER IO. The review also identified that stronger controls and changes to processes are needed, in particular in management and change control, financial management of contracts and the management of non-conformities.
- The European Commission's Internal Audit Service (IAS) carried out a limited review on the contract management<sup>(26)</sup> and outlined that F4E is moving from an organisation which is mainly procurement-oriented to an organisation which mainly manages contracts. While the review concluded that F4E is progressing in establishing entity-wide controls to address the risks related to the implementation of the contracts, it also identified a certain number of areas where the controls in place are not yet mature enough, in particular as regards the management of contract amendments and contingencies.
- The F4E internal corporate risk management system identified 10 new risks in 2014. Of the 32 actions identified as at October 2014 to address the 6 very high risks, 13 actions were implemented, 9 actions were in progress, 1 action was cancelled as obsolete and 9 actions had not started.

### **Operational procurement and grants**

21. Negotiated procedures constituted 58 % of the 67 operational tendering procedures launched in 2014 (44 % in 2013). Although the Joint Undertaking operates in a very specialised technical field, it still needs to increase the competitiveness of procurement procedures. Regarding grants, the average number of proposals received was only 1 per call.

22. Five operational procurement procedures were audited. The following weaknesses were identified:

- With one exception, F4E failed to provide the amount allocated to the different contracts from the 6,6 billion euro capped budget at the time of launching the procedure. In addition, nor did it provide the value for the estimate at completion (EAC)<sup>(27)</sup> of these activities. This information is essential to calculate the cost deviations from the capped budget.
- In one case, the deviation of the awarded value of the contract over the cost baseline was 29 % (12,4 million euro in 2008 values). This deviation was not reported in the evaluation committee report.
- Deficiencies were found in the assessment of the financial offers by the evaluation committee. In one case, neither the contract options (amounting to 32 million euro) nor the additional costs to be incurred were taken into consideration in the assessment. In another case, the offers were not compared against the allocated value from the capped budget or against the cost baseline. In none of the procedures reviewed did the evaluation committee reports state the EAC for these contracts.
- The performance of 1 procurement procedure was affected by a 21 month delay beyond the target date for completion. In 2 other procurement procedures, the contracts were awarded 10 and 5 months after the target date.

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<sup>(25)</sup> F4E Internal Audit Capability review on monitoring of contracts implementation in the area of ITER buildings of October 2014.

<sup>(26)</sup> IAS Limited Review of Contracts Management — Entity-wide Controls in the European Joint Undertaking for ITER and the Development of Fusion Energy of October 2014.

<sup>(27)</sup> EAC as defined in footnote 4 of the 2014 Progress Report to the Council of the European Union: 'The expected total cost of a scheduled activity, a work breakdown structure component, or the project when the defined scope of work is completed. In practice it covers all the most up-to-date cost estimates of F4E's activities, including real costs of finished contracts, updated total cost estimates of current contracts, as well as forecast costs of future contracts. Thus the EAC also includes the cost of expected changes and of risks that may materialise during the execution of the current and future contracts. The EAC is given with a cost Probability Density Function (PDF).'



- In 1 procurement procedure, the Joint Undertaking had to include an unforeseen and unbudgeted activity in the 2014 work programme <sup>(28)</sup>. The value of the additional contract was 2,88 million euro.
- In 1 procurement procedure, the assessment of the technical award criteria provided by the evaluation committee in the evaluation report was too generic and the comments recorded were not sufficiently detailed to support the scores awarded.
- In 3 procurement procedures, although the Joint Undertaking published the corresponding contract notices and carried out a number of pre-procurement activities, it did not advertise the contracts by means of a pre information notice in order to increase visibility and competition, as advised by the Commission Vademecum on public procurement.

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

23. The Joint Undertaking has a system for performing audits <sup>(29)</sup> at the level of contractors with the aim of checking compliance with quality assurance requirements <sup>(30)</sup>.
24. As regards the overall control and monitoring of operational contracts (including financial and compliance verification), the Internal Audit Capability and the European Commission's Internal Audit Service covered this area in their 2014 audit plans <sup>(31)</sup>.
25. As regards ex-post audits on grants (as part of the F4E overall control and monitoring strategy), the exercise was not concluded at the time of the Court's audit.

## **OTHER MATTERS**

### **Legal framework**

26. The new Financial Regulation applicable to the general budget of the Union <sup>(32)</sup> was adopted on 25 October 2012 and took effect on 1 January 2013 <sup>(33)</sup>. The framework financial regulation for the bodies <sup>(34)</sup> referred to in Article 208 of the new Financial Regulation entered into force on 8 December 2013. At the time of the audit, the financial rules of the Joint Undertaking have not yet been amended to reflect these changes.

### **Annual activity report**

27. The Chair of F4E Governing Board refers in the 2014 annual activity report to the need to pursue all cost containment actions, while the Executive Director refers to the system of internal control being further enhanced and improved in order to appropriately mitigate the risks observed by the European Court of Auditors in the 'Emphasis of Matter' section of their 2013 annual report <sup>(35)</sup>.

## **FOLLOW-UP OF PREVIOUS OBSERVATIONS**

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

28. The Decision on the implementation of the Fusion for Energy Industrial Policy and the Policy on Intellectual Property Rights and dissemination of information was adopted by the Joint Undertaking's Governing Board on 27 June 2013.

<sup>(28)</sup> This resulted from the Joint Undertaking having to bear the cost of a failure in the production phase of the component.

<sup>(29)</sup> Of the 19 quality audits carried out in 2014, 17 were closed by March 2015. The audits identified 21 situations of non-conformity with the procedures and 129 areas for improvement.

<sup>(30)</sup> The audits covered the quality plan, situations of non-conformity (any condition that does not comply with a specified requirement), purchase control and subcontracting management, documentation and data management, changes and deviations management, the civil works quality control plan, the detailed project schedule, contract risk management and the technical works quality control plan.

<sup>(31)</sup> See paragraph 20, points 4 and 5.

<sup>(32)</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

<sup>(33)</sup> Article 214 of Regulation (EU, Euratom) No 966/2012 with the exemptions referred to.

<sup>(34)</sup> OJ L 38, 7.2.2014, p. 2.

<sup>(35)</sup> Paragraph 30 of the Court's 2013 report (OJ C 452, 16.12.2014, p. 50).

29. Several actions in relation to the implementation of intellectual property rights and industrial policy were finalised in 2014 <sup>(36)</sup> while some others are still being implemented <sup>(37)</sup>, and three were pending further developments <sup>(38)</sup>. Once the actions are implemented, F4E plans to carry out an impact assessment exercise in order to measure the impact of the different measures on the achievement of industrial policy objectives.

30. One of the measures adopted by F4E in 2013, in order to attract the interest of the industry in the ITER project and to increase competition, is to offer contractors exclusive rights to the exploitation of the Intellectual Property they produce in fields outside fusion and non-exclusive rights in the field of fusion.

31. To mitigate the risks related to the obligation for the Joint Undertaking to retain the right to access the full Intellectual Property Rights (background and foreground) involved in the European in-kind contributions and to be able to transfer this access right to the ITER organisation when required, the Joint Undertaking has adopted specific contractual clauses applicable to F4E activities.

### **Conflicts of interest**

32. The Rules on the management of conflicts of interest regarding staff members were adopted by F4E Governing Board and entered into force on 1 July 2014 <sup>(39)</sup>. In accordance with Article 6 of the Conflict of Interest Rule, a register has been established to monitor the main cases, with information on the staff member concerned, the type of conflict of interest and the situation giving rise to the conflict of interest. It has also set up the database for the general declaration of interest forms, referred to in Article 7 of the Conflict of Interest Rules

### **Host State agreement**

33. According to the Host State Agreement signed with the Kingdom of Spain on 28 June 2007, permanent premises should have been made available to the Joint Undertaking by June 2010. Following contacts between F4E and the Spanish Government, a formal offer was presented to the Joint Undertaking on 10 March 2015. The offer was presented to the Governing Board on 19 March 2015 and discussions with the Spanish authorities are currently taking place.

### **Rules implementing the Staff Regulations**

34. During 2014, the Joint Undertaking adopted several EC rules implementing the Staff Regulations <sup>(40)</sup>. At the time of the audit (March 2015), some specific EC rules were still to be adopted <sup>(41)</sup>.

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 20 October 2015.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

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<sup>(36)</sup> Inter alia on explicit limitation of liability for indirect/consequential damages to the value of the contract price; payment by F4E of additional costs incurred by the contractor as a consequence of the change in the applicable legislation; sharing of risks for errors in the input technical documentation; indemnity to contractors in the event of suspension of the contract over a minimum defined period; reimbursement of additional costs incurred by the contractor in the event of delays in the supply of the free-issue items; plan for the improvement of F4E Industry Portal and the implementation of further e-procurement solutions; developing harmonised guidelines for the definition and application of selection and award criteria.

<sup>(37)</sup> Guidelines on financial compensation for participation in a competitive dialogue.

<sup>(38)</sup> Extended waiver from nuclear liabilities; transition to mostly performance-based procurements; and exploring the possibility of a two-stage Competitive Dialogue.

<sup>(39)</sup> Decision of the Governing Board of Fusion for Energy adopting the rules on the prevention and management of conflicts of interest regarding staff members of the joint undertaking.

<sup>(40)</sup> In particular as regards pensions, remunerations and allowances, working conditions, medical expenses, ethics and conduct and staff assigned outside the EU.

<sup>(41)</sup> Inter alia on recruitment of temporary agents, use and engagement of contract staff, and procedures for the appraisal of officials and promotions.

## ANNEX

**European Joint Undertaking for ITER and the Development of Fusion Energy (Barcelona)****Competences and activities**

<p><b>Areas of Union competence deriving from the Treaty</b></p> <p><i>(Articles 45 and 49 of the Treaty establishing the European Atomic Energy Community)</i></p>	<p>Chapter 5, on 'Joint Undertakings', of the Treaty establishing the European Atomic Energy Community, and in particular:</p> <p>Article 45</p> <p>'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>Article 49</p> <p>'Joint Undertakings shall be established by Council decision. Each Joint Undertaking shall have legal personality.'</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>(Council Decision 2007/198/Euratom, amended by Council Decision 2013/791/Euratom and by Council Decision/Euratom 2015/224)</i></p>	<p><b>Objectives</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>Tasks</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>

<b>Governance</b>	<p><b>Governing Board, Director and other bodies</b></p> <p>The Governing Board is responsible for the supervision of the Joint Undertaking in the pursuit of its objectives and ensures close collaboration between the Joint Undertaking and its members in the implementation of its activities. Together with the Governing Board and the Director, who is the chief executive officer responsible for the day-to-day management of the Joint Undertaking and its legal representative, the Joint Undertaking has several bodies:</p> <p>Bureau, Technical Advisory Panel, Executive Committee, Administration &amp; Finance Committee, Audit Committee.</p> <p><b>Internal auditor:</b> internal audit capability and the European Commission's Internal Audit Service (IAS) since 1 January 2012.</p> <p><b>External auditor:</b> European Court of Auditors.</p> <p><b>Discharge authority:</b> the European Parliament, on a recommendation from the Council.</p>
<b>Resources available to the Joint Undertaking in 2014</b>	<p><b>Budget</b></p> <p>550,6 million euro final revenue (payment appropriations) of which 77 % funded by Community contribution.</p> <p><b>Staff at 31 December 2014</b></p> <p>262 EU official and temporary agent posts provided for in the establishment plan, of which 249 posts were occupied;</p> <p>144 contract agent posts occupied.</p>
<b>Activities and services provided in 2014</b>	<p>For detailed information concerning the activities and services provided in 2014, please consult the F4E website at: <a href="http://www.fusionforenergy.europa.eu/">http://www.fusionforenergy.europa.eu/</a></p>

Source: European Joint Undertaking for ITER and the Development of Fusion Energy.

## THE JOINT UNDERTAKING'S REPLIES

13. In the past years F4E has been asked to implement a project with inherent technical challenges and management boundary conditions which have hardly any precedent worldwide: in the context of the already huge challenges of implementing a first-of-a-kind technically complex device like ITER, technical specifications are based on inputs largely provided by another entity, the ITER Organization (IO), and deviations to specifications, even during contract implementation, are extremely frequent. F4E has been at the receiving end of these, having to implement them mostly without any compensation.

The adoption in 2011 by the ITER Council of the so called 'MAC-10 guidelines', defining the responsibilities to be assumed for funding design changes and originally introduced with the objective to streamline decision making processes, has aggravated instead of improving the situation described above. This has led to a modest Systems/Value Engineering endeavour in the IO integration, with cost overruns and further tensions developing amongst IO and all Domestic Agencies (DAs). This problem is severe for all DAs, but in particular for F4E, where the impact of constant changes on components affects the buildings almost by 'default', as evidenced by the papers provided to the F4E Governing Board (GB) in its December 2014 meeting.

Cost clearly depends on work scope (i.e. design), and even more so when alterations are required during the very construction phase. The fact that the latter is largely under the control of IO and its governance, and the former of F4E, clearly shows a misalignment of responsibilities.

This is indeed one of the most challenging aspects of the ITER project, as well identified in the European Parliament's 2013 study on cost effectiveness of the ITER project by Ernst and Young. Indeed the headings of the executive summary of this study state that 'Cost increases have largely emanated from the project-level and are outside of the direct control of F4E' and 'F4E is a sui generis organisation operating in a complex environment, which constrains the possibilities for cost-efficiency'. In short, due to the very set up of the Agreement and its instruments, a significant fraction of the costs which F4E has to absorb are not under its direct control.

Specifically on the matter of cost control, this being a key F4E objective, under the previous MAC-10 guidelines any control system limited within F4E would have not been able to limit the influx of changes from IO (who acts as owner and integrator). Only now, with the elimination of the MAC-10 guidelines and the introduction of a system to replace them for their intended purpose (the Reserve Fund of IO), as well as with the promise by the new IO management to implement a comprehensive configuration management system, it may be well possible, through gradual integration of technical management processes, to implement a more effective cost control system.

Largely based on the above, the project stakeholders (IO and the DAs — including F4E) have come to the conclusion that the current schedule is not realistic — a fact which has been also confirmed by several independent assessments in the last 2 years (2013-14). For this reason IO/F4E, together with the other Parties' DAs, are working on a new revised schedule which should be presented to the ITER Council in November 2015. The revised schedule shall then be assessed by the ITER Parties which should also take into account the available resources and the cost dimension, as these elements are closely related. It is therefore very probable that, as a result of the revised schedule, the overall cost estimate will have to be discussed and proposed. This will not affect the resources needed in the current MFF (Multiannual Financial Framework), but may have longer term consequences.

14. F4E is bound to implement the requirements and the changes in design imposed by IO, even though these might have cost impact and cost risks. At the same time, F4E is vigorously pursuing a large range of cost containment measures under close supervision of its GB to ensure that the budget ceiling allocated for the current MFF until 2020 is respected. Some of these measures are:

- Making better use of the different available types of procurement procedures allowing F4E to reduce costs and work more efficiently: this includes a more extensive use of the competitive dialogue and negotiated procedures, when allowed by the F4E Financial Regulation, that help us to identify cost effective solutions together with contractors;
- Improving value for money of procurement procedures by broadening competition among potential suppliers: this includes using staged procurement strategies with multiple suppliers developing prototypes in parallel during the early stages and then competing for the series production;

- Facilitating stronger value engineering, promoting efficient allocation of procurement obligations among different actors (IO and DAs), agreeing standards and exploiting economies of scale when possible.

Cost control will continue to be a priority at global project management level under the leadership of the new Director General (DG) of the ITER Organization since March 2015.

As far as costing is concerned at F4E level, a detailed Estimate at Completion at WBS (Work Breakdown Structure) level 6 for the EU in-kind contributions is being carried out by taking into account risks and uncertainties. This result will lead to the evaluation of the new contingency requirements.

15. As reported in previous occasions by F4E, the capped budget for the current MFF was established on the assumptions of the exercise carried out in 2008 (Toschi report) which were done at WBS levels 3 (System) and 4 (PA — Procurement Arrangement). This does not mean in any way that there is no system to monitor costs. In fact there is already a fully operational system to control and monitor costs at the level of the procurement arrangement, WBS level 4, and at the level of the system, WBS level 3 (as acknowledged by the Court in its report 2013). What indeed F4E did not have yet in place at the time of the audit (March 2015) was all the data at level 6 (contracts). This does not mean that F4E did not estimate costs at individual contracts, F4E did, but in the individual project teams and not in a centralised and uniform manner.

While since years F4E employs a number of data management tools to maintain/manage its operational and financial data (e.g. ABAC, ABAC Contracts, Primavera, IDM, etc.) integrated by a core 'Integrated Reporting System', F4E confirms that work is progressing to improve its system to manage cost data and deviations. The first part, the system and methodology to monitor cost estimates and deviations at contract level, has been presented in September 2015 to the Internal Audit Service (IAS) of the Commission during their visit on the PA Preparation follow up audit. The second phase will be the implementation of a fully integrated Enterprise Resource Planning (ERP) system which will integrate data and processes: from budgeting, through procurement, all the way to deviation management and delivery. The implementation of the ERP has been agreed at GB level together with the establishment of a dedicated fourth Department within the F4E organisation whose focus will be project management (cost, scope, quality, schedule, and risk) and its infrastructure (data models, tools, processes).

F4E confirms that an update, taking into account the past scope changes deriving from IO, of the cost baseline, as developed by the Toschi group in 2008, at level 4 was carried out and it is updated whenever changes to the baseline are approved (mainly through Project Change Requests) by the ITER Council. As the cost baseline at level 6 is concerned, the reconstruction of the Toschi cost estimates at such level has been possible only for some systems (e.g. the Magnet) as there are not enough data from the Toschi group results to allow a comprehensive (i.e. summing up to the whole scope) splitting of the level 4 values down to level 6.

Therefore the focus of the work has been to rebuild a new Cost Baseline altogether, not only including risks affecting prices (as done during the Toschi analysis) but also taking into account the Estimate at Completion process for all planned level 6 activities.

To that end, the F4E Director established a Task Force to define and apply a structured and traceable process to attain an Estimate At Completion at level 6 for the entire work to be completed by F4E to fulfil its obligations under the ITER Project. This also addresses the need to establish and maintain credibility of the cost estimates and the factors (e.g. risks and uncertainties) that affect the results and their reliability. The system and methodology has been already presented to the IAS during their follow up visit in September 2015.

An update of the EU contribution to the ITER project beyond its construction phase has not been carried out and it is not planned until relevant information will be provided by the project to allow such analysis.

16. F4E would like to point out that these two Action Plans aim, as far as is possible within the legal framework of the ITER Project, at measures that compensate for some of the weaknesses identified above.

Firstly, on 5 March 2015 the ITER Council (at which Europe is represented by the Commission), appointed the new DG of IO and endorsed an Action Plan which he had prepared in response, among other things, to the ITER 2013 Management Assessment. In addition to the release of a new ITER Project baseline (scope, schedule and cost) the IO's Action Plan proposed a number of specific measures such as:

- Setting up a new organisation characterised by a profound integration of the DAs and the IO's Central Team (IO-CT);

- Creating an Executive Project Board (EPB) composed of the IO DG and the DAs to allow for centralised and rapid decision-making on technical matters;
- Establishing a Reserve Fund to compensate DAs for cost increases that are incurred due to changes of the initial technical specifications by the IO-CT, hence so replacing the so called 'MAC-10 Guidelines' from 2011;
- Setting up common Project Teams of managers and staff from the IO-CT and DAs for specific areas and facilitating greater exchange and mobility of staff.

Secondly, the new F4E Acting Director prepared an Action Plan and presented it to F4E GB on 24 March 2015, where it was fully endorsed. F4E's Action Plan complements the ITER Action Plan in a number of respects but also identifies further improvements in F4E's own operations. The main elements are:

- Contribute to the realistic schedule allowing a more accurate commitment profiles and a better implementation of its budget in accordance to plans;
- Determining the cost estimates using an improved, more realistic, methodology and implementing a system for the management of funds. F4E has implemented a central and uniform system to manage costing data to better control estimates, costs and deviations. This will allow F4E to maintain to close control of the evolution of the budget and monitor cost deviations on a regular basis and ensure that the F4E Director and senior management can exercise an efficient and sound financial management of the project;
- Reinforcing F4E's Risk Management Framework including setting an appropriate risk appetite so as to improve F4E's agility and sound financial management;
- Making further F4E organisation changes aimed at improving the efficiency of the organisation, in particular, for project management tools and processes.
- Pursue the implementation of the audit recommendations issued by internal and external auditors to adequately mitigate the weaknesses of the F4E Internal Control System (Costing, Contract Management, Procurement activities, etc.), improve our internal processes and optimise our activities to further enhance our efficiency.

Since March 2015 these Action Plans are being implemented by IO and F4E and are expected to bring about improvements related to many of the observations raised by the ECA and the European Parliament in their report on the 2013 discharge. The implementation of these action plans is being closely followed at the highest levels of governance of the ITER Project, both in the IO and in F4E.

18. F4E provides, on behalf of Europe, the in-kind contribution to the ITER project in the form of components. Once the design of a component is sufficiently mature, a so called Procurement Arrangement is concluded between F4E and the ITER Organization setting out what has to be provided, by when. As work is executed to the satisfaction of the ITER Organization, F4E is gradually awarded ITER credit in recognition of the progress of work associated to specific milestones agreed in advance. This is the system agreed by the ITER partners in providing the right level of information for the ITER Council, hence ensuring an integrated reporting from all DAs and being the proper measure of the project progress.

In the financial statements 2014 (included in the F4E 2014 Annual Accounts) F4E included a table showing the value of procurement arrangements signed and the amounts of credits received from the IO so far, the latter being really low. The reason behind this is that the initial ITER Organization (IO) management distributed credits within PAs predominantly towards the end and this shortcoming induces some 'pessimism' in reports. This has been identified as a problem that needs to be solved and work has already started with IO to review credit distributions along the life of the PAs in a way that reflects more accurately the progress achieved by each DA. This is expected to be solved during the course of 2015.

It is for that reason that F4E included in the financial statements 2014 an estimate of the percentage of works completed, based on the amount of expenses related to PA's incurred in 2014 and comparing them to the estimated value of the contribution in kind to the project.

In addition to this, F4E prepares an Annual Progress Report and an Annual Activity Report which provide detailed information on the overall progress of the European contribution to the ITER Project, together with the achievement of the annual KPI's and Corporate Objectives. Moreover, F4E is subject to annual External Assessments where independent experts assess the project progress on the basis of existing reports to provide the GB and the European Council with an overview on the progress of the ITER Project.

19. The long delays accumulated by the project with respect to the current baseline (First Plasma in November 2020) have caused a shift in the commitments for many of the systems.

In fact, the multiple change requests coming from IO have slowed down the project and induced delays, caused countless deviations to existing contracts, and induced global project delays. Although these events were mostly out of F4E's control, it was asked to implement such deviations in accordance with the MAC-10 guidelines approved at the ITER Council (where Europe is represented by the Commission and not by F4E). Due to this frequent occurrence of changes F4E has also often decided to refrain from proceeding with some procurement actions that is until the specifications were deemed as relatively stable. Deviations applied to open contracts represent in fact a significant cause of cost increases and hence must be limited to the minimum in order to combat those issues regarding cost containment which the Court reports in other findings.

In addition, the rigidity of the budget profile under the multiannual financial framework is difficult to reconcile with the evolution observed in an innovative project of this nature that needs a more realistic schedule. As a result, the implementation of F4E's commitment appropriation was under pressure in the recent years. The plan for a European Strategic Fund for Investments allowed a shift of 500 million euro commitment appropriations from 2015 to 2018-20. This shift matches the implementation profile better and is more in line with the new realistic schedule.

As for the payment appropriations, such delays in the project have slowed down the signature of contracts and consequently have not allowed for the planned pre-financings and other foreseen payments.

The change of management in IO and the now ongoing rebaselining of the project should be the basis for an improvement of this problem in the future.

20. F4E welcomes that the Court recognises the significant progress made and considers the ongoing actions as part of the continuous improvement and development of its control systems.

In relation to the central system to monitor costs: we refer to our reply to paragraph 15. F4E has now put in place a central system to monitor and control cost data at contract level.

In relation to the action plans in response to internal audits: F4E is actively pursuing the implementation of the open actions according to the priorities set up by the Director and agreed by the Audit Committee and the Governing Board, addressing as a matter of urgency the recommendations rated as Critical and Very Important. Substantial progress has been made in the implementation of these action plans:

- For the audits on Grants Management, Experts Contracts and Operational Pre-procurement activities, the IAC performed follow up engagements. The results were discussed at the Audit Committee, which was satisfied with the result and therefore these audits are now considered as closed.
- The action plans adopted by F4E in response to the internal audits on Financial Circuits, Procurement Arrangement Preparation and TB03 Competitive Dialogue are now fully implemented and the IAS and the IAC are currently performing follow ups.
- For the audit on Selection and Recruitment, 34 actions are implemented, 2 actions in progress, 1 suspended and 1 obsolete.
- For the audit on Procurement in the area of ITER buildings, 31 actions have been implemented, 2 are still in progress and 1 has been cancelled.

IAC review of the monitoring of contract implementation in the area of the ITER buildings: the action plan in response to this audit was adopted in February 2015 and significant progress has been achieved: out of the 24 actions proposed, 20 have been implemented, 1 has been cancelled and 3 are in progress.

IAS review on the contract management: the action plan was adopted in November 2014 and the current status is as follows: out of the 19 actions proposed, 12 have been implemented and 7 are in progress.

Corporate Risks: The update of the 2015 high level risks will be carried out in view of the next AC in November including setting an appropriate risk appetite so as to improve F4E's agility and sound financial management.



21. F4E would like to stress that the relative large fraction of negotiated procedures is the consequence of the complex and innovative context in which it operates. This results often in a limited competition or (in extreme cases) to monopoly or even lack of participation to calls for tender. In particular, in 15 out of the 39 negotiated procedures concluded in 2014, the particular circumstances of the market and/or the services/works to be procured made the negotiated procedure the best procurement option, in accordance with Article 100.2 of F4E Implementing Rules.

The remaining 24 negotiated procedures correspond to low value contracts in accordance with Article 100.1 of F4E IR. It should be noted that these 24 contracts amount to 36 % of the total number of contracts signed (all type of procurement procedures) but only to 0,3 % in terms of value awarded. The low value negotiated procedures entail a much lower use of internal resources than the open, restricted or competitive dialogue ones (due to the procedural simplification), and therefore its use is considered by F4E as a valuable tool to be able to focus the limited internal resources on the high-value/high-risk procurements.

F4E would like to recall that the nature of the activities related to the scope of the ITER Project are such that limited competition is regrettably a matter of fact for which F4E can have only a modest impact. Most opportunities that were in F4E's hands in order to increase competition have been pursued (i.e. wide dissemination to industry in all member states through Industrial Liaison Officers (ILOs) and dedicated meetings, targeted and general purpose information days for industry in different locations around Europe, reinforcing efforts in relation to the stabilisation and better understanding of our supply chain, an internal policy about pre-information notices, intensification of market surveys, industry-standard Intellectual Property Rights (IPR) and liability provisions, etc.). F4E activities should be compared with similar first of a kind high-tech frontier projects worldwide. One cannot deny that even more effort to increase competition could be invested by F4E but this would clearly consume more internal resources and therefore impact negatively other areas.

Similarly, in relation to the very low number of proposals received for the grant calls, this fact is mainly due to two factors: on the one hand the extremely specialised nature of F4E's grants entails that the nature of the work is only of interest to a small number of applicants in Europe and on the other hand the success of the European fusion programme in creating a European research area in fusion with minimal duplication of efforts and close collaboration among teams active in one field. The latter manifests itself in pan-European consortia being behind most proposals in response to F4E calls.

22. In relation to the 5 procurement procedures, F4E would like to provide the following comments:

Amount allocated to the different contracts:

The Court notes that at the time of launching the procurement procedures (2013 and 2014) F4E had not allocated a value from the 6,6 billion euro to the different contracts. As reported previously by F4E, the 6,6 billion euro capped budget was established on the assumptions of the Toschi report which were done at WBS levels 3 (System) and 4 (PA) and not at level 6 (Contracts). This was because, at that time, the level of detail on how the total scope would have been split among different contracts was not homogeneous across the different systems. Hence, the necessity of monitoring the evolution of the scope and its related cost at levels 3 and 4 which allowed a direct comparison with the Toschi baseline and so against the 6,6 billion euro.

Deviation of the awarded value over the cost baseline:

The case reported by the ECA corresponds to a procurement procedure in the area of buildings, where the low level of definition of the design (at functional specification level) and the continuously changing requirements posed by IO, also due to the new requests from the French Safety Authority, caused an escalation of the costs in this area going beyond the initial assigned share of the budget.

To address the cost risks and minimise the cost impact resulting mainly from constant changes in the scope of the project deliverables which F4E has suffered in some areas under its responsibility, in particular for the buildings, a detailed analysis of the causes and the lessons learned was presented to F4E's Governing Board in December 2014. It has been shown that delays in the delivery of input data and continuous change requests by IO and the increase of Safety requirements after Fukushima accident slows down the progress of work by F4E and leads to countless deviations with huge cost impact.

Even if mitigation actions have been put in place by F4E to contain the costs, in many cases the implementation of changes imposed to the project, with their associated costs, has been unavoidable.

Deficiencies in the assessment of the financial offers:

F4E considers that there were no deficiencies in the assessment of the financial offers.

It has to be kept in mind that at the time of those procurement procedures the tracking and control of the evolution of the scope and its related cost was done at levels 3 and 4. It should also be emphasised that, whenever F4E has awarded a major contract, on top of the mandatory recommendation by the Executive Committee, specific meetings have always been carried out with the Authorising Officer in order to provide a complete picture, prior to the contract award, on both costing and risk aspects. When these procurement procedures were launched, the Project Team Manager had already estimated the possible cost of the procurement (i.e. through own assessment, expert's input or industrial estimate) and made sure that the original scope was covered and at a cost which would allow to keep the overall cost at WBS level 4 within the allocated ceiling. The now executed work, at central level, to define an EAC at WBS level 6 provides an improved approach for controlling and containing further the costs.

In the case of the contract containing options amounting to 32 million euro and additional costs, it has to be noted that such options are intended to cover potential risks for the whole procurement arrangement (TF Coils). The financial impact of risks was managed at the level of Procurement Arrangement (so at WBS level 4). Indeed in this specific system a total saving was achieved by F4E: the total financial value of the 3 contracts placed for manufacture the TF coils is actually ~50 million euro below the financial value allocated to the TF coils level 4 (corresponding to the 6,6 billion euro capped budget. This amount is well above the 32 million euro associated to the options of this contract, and it is therefore more than adequate to cover risks not only to this contract but also the other 2 contracts. It is also important to note that, thanks to the risk mitigation strategy adopted by F4E for these 3 contracts, these risks have presently a low probability (presently below 5 %).

Delays in procurement procedures:

F4E considers that these delays do not constitute a weakness in the procurement procedures as in fact they respond to the exceptional environment in which F4E operates (lack of competition and contractual complexities) and to the needs to seek cost savings by ensuring that the specifications are mature enough before launching the procurement procedures.

Unforeseen activity:

F4E had to introduce in the 2014 Work Programme a material procurement activity, which indeed was not originally foreseen in the baseline for the JT60SA Broader Approach project. This was launched following experts opinion, in order to overcome an unforeseen technical difficulty. The activity, and the potential risks and reputational damage associated with avoiding it, was discussed at the December 2013 Governing Board who agreed to proceed with this material procurement as a matter of urgency. This additional activity was anyhow carried out within the contingency allocated to this specific project and that notwithstanding the urgency, F4E managed to maintain reasonable competition and to obtain an economical price.

Assessment of technical award criteria:

The technical specifications were prepared on the basis of the outcome of the expert review and the requirements contained in the specs were fully defining the material requirements. The explicit acceptance of all the requirements by each of the two bidders (in the form of a duly filled 'Compliance Matrix') together with the description of the proposed manufacturing process and the risk assessment attached to the offers, were giving full assurance of the technical quality of the bids. On this ground the evaluation committee unanimously agreed that the assignment of the maximum technical ranking to both the offers was justified.

Use of pre-information notice:

F4E considers that this did not constitute a weakness in the procurement procedure as mitigating actions were taken in order to increase competition.

Indeed, in the 3 procedures identified by the ECA there was no publication of the pre-information notice, as this was not foreseen by internal procedures at the time (this changed in the meanwhile in order to address risks highlighted by other audits and now the use of pre-information notices is mandatory for procurements above 10 million euro). F4E considers to have mitigated the risk of poor competition by carrying out targeted actions (info days, events such as business forum, market surveys, use of ILO network, etc.). Such dissemination strategy is deemed to be more effective than the simple publication of a pre-information notice through the OJEU, as it is more directly addressing the concerned economic operators.

25. Of the 3 audits conducted in 2014, 2 final audit reports were received in December 2014 and have been shared with the Court. The preliminary audit report of the 3rd audit was received in December 2014 and discussions with the auditor and the beneficiary are currently ongoing.

The planning of the 2015 ex-post audit exercise on F4E grants started in September 2014 with the selection of 3 beneficiaries and the signature in February 2015 of the specific contracts with the external audit firms. The corresponding 3 preliminary audit reports have been received and are currently being analysed.

26. The F4E Financial Regulation (F4E FR) has to be amended to reflect the changes introduced by the revised Framework Financial Regulation (FFR) and the General Financial Regulation (GFR), in accordance with the observations made by the Court of Auditors.

The F4E FR and its Implementing Rules (F4E IR) were submitted to the Commission by F4E on 25 July 2014 and since then, discussions are ongoing. The Commission would like to provide a global opinion on the F4E FR and IR once the provisions of the procurement rules of the new Directive 2014/24/EU of 26 February 2014 are transposed to the GFR and its IR and to the FFR and its IR.

In order not to further delay the amendment of the F4E FR/IR, the GB agreed to follow a two-step procedure in this file at its last meeting of June 2015:

- F4E and the Commission should aim at finalising the discussions on F4E FR as soon as possible (without the procurement chapter).
- As soon as the new Commission procurement rules are available, F4E and the Commission should start discussions with the aim of presenting a new procurement chapter for the GB approval in spring 2016.

In the meantime on 3 July 2015 the Commission submitted to F4E the new draft procurement rules for considerations so depending on their approval process by the Council/EP (GFR) and by the Commission (RAP — Rules of Application of the GFR), a one-step procedure may still be possible.

29. The relevant GB decision establishes the means for implementing the obligations as regards Intellectual Property (IP) in relation to the availability of technologies and the granting of user rights: both of these aspects are addressed through the wording of F4E's model IP clauses. For what concerns the implementation of the other actions regarding industrial policy, it must be remarked that F4E had implemented, by the end of 2014, 24 out of the 32 actions foreseen.

F4E considers that its approach to Intellectual Property Rights increases competition as the contractual conditions are more attractive to contractors, which both contributes to cost containment and to spreading our presence throughout Europe.

33. In March 2015, the Spanish Government offered new premises to F4E in a building to be shared with the Comisión Nacional de los Mercados y la Competencia (CNMC). This offer was welcomed by F4E and its approval was subject to a detailed inspection and expert analysis.

In June 2015 an independent external architect performed an analysis in order to try to match the offer with the requirements. The result showed that there are still critical concerns, particularly concerning the available space in the short-to-mid-term, that need to be addressed by the Host State before the proposal can fully suit F4E needs.

F4E and the Host state are assessing the way to move forward to address these critical issues to be able to find a final solution in the short term.

34. In order to avoid a legal vacuum pending the formal adoption of outstanding Implementing Rules (IRs) to its Staff Regulations, F4E relied on two transitory measures as follows:

- Adoption of ad-hoc Director decisions detailing the implementation modalities of the relevant SR provisions. These typically mirrored the implementation principles and practices of the Commission albeit with certain adjustments to reflect the F4E specificities, and
- Adoption of Director decisions stating that model implementing rules applicable to agencies or European Commission rules would be applicable to the Joint Undertaking by analogy (except if otherwise mentioned).

Significant progress has been made and the number of IRs formally adopted by or applying by analogy to the Joint Undertaking currently stands at 26. A further 4 implementing rules are currently in the process of being adopted by Fusion for Energy by written procedure and are expected to be formally adopted by November 2015.

Regarding the remaining IRs to be adopted, following the 2014 EU Staff Reform:

- the Commission is currently adopting 5 new model IRs applicable to Agencies and Joint Undertakings. F4E will initiate the adoption process for these new rules as soon as they have been 'released' by the Commission. In keeping with Article 110 of the Staff Regulations, the JU will have 9 months to finalise its own adoption from the Commission's 'release' date.
  - there are a further 8 IRs which are pending feedback from the Commission following F4E's requests for opt-out or approval.
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**REPORT****on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking for the financial year 2014,  
together with the Joint Undertaking's reply**

(2015/C 422/06)

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## INTRODUCTION

1. The Joint Undertaking for the implementation of the Joint Technology Initiative on Fuel Cells and Hydrogen (FCH Joint Undertaking), located in Brussels, was set up in May 2008 <sup>(1)</sup> for the period up to 31 December 2017 and was granted its financial autonomy on 15 November 2010. In May 2014 <sup>(2)</sup>, the Council repealed the original Regulation and extended the lifetime of the Joint Undertaking, referred to as the 'Fuel Cells and Hydrogen 2 Joint Undertaking' (FCH 2 Joint Undertaking) <sup>(3)</sup>, under the Horizon 2020 Framework programme for Research and Innovation <sup>(4)</sup> for the period up to 31 December 2024.

2. The objectives of the FCH Joint Undertaking include supporting research, technological development and demonstration activities in the Member States and countries associated with the seventh framework programme <sup>(5)</sup> through coordination with industry and research organisations, with a focus on developing market applications and hence facilitating additional industrial efforts towards the rapid deployment of fuel cells and hydrogen technologies. Under Horizon 2020, the objective of the FCH 2 Joint Undertaking is to contribute to the implementation of the secure, clean and efficient energy challenge and the smart, green and integrated transport challenge and to contribute to the objectives of the Joint Technology Initiative on Fuel Cells and Hydrogen, through the development of a strong, sustainable and globally competitive fuel cells and hydrogen sector in the Union <sup>(6)</sup>.

3. The members of the Joint Undertaking are the European Union, represented by the Commission, the New Energy World Industry Grouping (NEW-IG) and the New European Research Grouping on Fuel Cells and Hydrogen (N.ERGHY).

4. The maximum EU contribution to the FCH Joint Undertaking, to cover running costs and research activities, is 470 million euro from the budget of the seventh framework programme (with a maximum of 20 million euro earmarked for administrative costs). The maximum EU contribution to the FCH 2 Joint Undertaking, to cover administrative costs and operational costs, is 665 million euro from the budget of the Horizon 2020 programme (of which administrative costs must not exceed 19 million euro <sup>(7)</sup>). The Industry and Research Groupings are expected to contribute 50 % of the administrative costs and should contribute to the programme through in-kind <sup>(8)</sup> contributions to the projects funded by the FCH 2 Joint Undertaking and through in-kind contributions to additional activities <sup>(9)</sup>, outside the work plan of the FCH 2 Joint Undertaking, contributing to the objectives of the FCH Joint Technology Initiative.

## INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

5. 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.

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<sup>(1)</sup> Council Regulation (EC) No 521/2008 of 30 May 2008 setting up the Fuel Cells and Hydrogen Joint Undertaking (OJ L 153, 12.6.2008, p. 1) amended by Council Regulation (EU) No 1183/2011 of 14 November 2011 (OJ L 302, 19.11.2011, p. 3).

<sup>(2)</sup> Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the Fuel Cells and Hydrogen 2 Joint Undertaking (OJ L 169, 7.6.2014, p. 108).

<sup>(3)</sup> This report refers to the 'Fuel Cells and Hydrogen Joint Undertaking' unless it is necessary to distinguish between the two programmes.

<sup>(4)</sup> The Horizon 2020 Framework programme for Research and Innovation, adopted by Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104), is the research and innovation programme for 2014-2020 and brings together all existing EU research and innovation funding.

<sup>(5)</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.

<sup>(6)</sup> The Annex summarises the Joint Undertaking's competences, activities and available resources. It is presented for information purposes.

<sup>(7)</sup> The administrative costs of the FCH 2 Joint Undertaking shall not exceed 38 million euro and shall be covered through financial contributions divided equally on an annual basis between the Union and the Members other than the Union.

<sup>(8)</sup> Article 13(3) of the Annex to Regulation (EU) No 559/2014 stipulates that the 'operational costs of the FCH 2 Joint Undertaking shall be covered through (a) a financial contribution by the Union (b) in-kind contributions by the constituent entities of the Members other than the Union or their affiliated entities participating in the indirect actions, consisting of the costs incurred by them in implementing indirect actions less the contribution of the FCH 2 Joint Undertaking and any other Union contribution to those costs'.

<sup>(9)</sup> As provided for in Article 4(2)(b) of the Annex to Regulation (EU) No 559/2014.

**STATEMENT OF ASSURANCE**

6. 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 Fuel Cells and Hydrogen Joint Undertaking, which comprise the financial statements<sup>(10)</sup> and the reports on the implementation of the budget<sup>(11)</sup> for the financial year ended 31 December 2014; and
- (b) the legality and regularity of the transactions underlying those accounts.

**The management's responsibility**

7. In accordance with Articles 16 and 22 of Commission Delegated Regulation (EU) No 110/2014<sup>(12)</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>(13)</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.
- (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**

8. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council<sup>(14)</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.

9. 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,

<sup>(10)</sup> These include the balance sheet and the statement of financial performance, the cash flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

<sup>(11)</sup> These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

<sup>(12)</sup> OJ L 38, 7.2.2014, p. 2.

<sup>(13)</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.

<sup>(14)</sup> Article 47 of Regulation (EU) No 110/2014.

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.

10. 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***

11. In the Court's opinion, the Joint Undertaking's annual accounts present fairly, in all material respects, its financial position as at 31 December 2014 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.

#### ***Opinion on the legality and regularity of the transactions underlying the accounts***

12. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2014 are, in all material respects, legal and regular.

13. The following comments do not call the Court's opinions into question.

### **COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT**

#### ***Implementation of the budget***

14. The initial and final 2014 budgets adopted by the Governing Board included commitment appropriations of 100,9 and 112,9 million euro and payment appropriations of 72,1 and 97,5 million euro respectively.

15. The utilisation rates for commitment appropriations were 99,5 % and 96 % respectively (98,9 % in 2013). The utilisation rates for payment appropriations were 66,3 % and 74,5 % respectively (56,7 % in 2013), reflecting the deferred payment of project cost claims anticipated in late 2014 to early 2015.

#### ***Calls for proposal***

16. At 31 December 2014, the FCH Joint Undertaking FP7 programme consisted of 155 grant agreements resulting from seven annual calls organised over the years 2008 to 2013. The first grant agreements under the H2020 programme will be signed in 2015.

17. The average time to grant (TTG) and time to pay pre-financing (TTP) for the FP7 programme were 370 days and 14 days respectively, improving to 280 days and 5 days respectively for the last FP7 programme grant call.

#### ***Multiannual funding***

18. The FP7 calls for proposals organised in 2008-2013 resulted in grant agreements totalling 450 million euro, the maximum EU contribution to the Joint Undertaking for research activities.



**OTHER MATTERS****Legal framework**

19. The financial rules of the FCH 2 Joint Undertaking were adopted on 30 June 2014 on the basis of the model financial regulation for public-private partnership bodies<sup>(15)</sup> and taking into account the requirements of Council Regulation (EU) 559/2014 establishing the FCH 2 Joint Undertaking.

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

20. In accordance with the IAS work plan for the FCH Joint Undertaking for 2014, the FCH Joint Undertaking Internal Audit Capability (IAC) carried out a follow-up audit on 'User access rights in FP7 IT tools' and performed other assurance and consultancy services including assessment of the level of in-kind contributions.

21. The FCH Joint Undertaking was not subject to any audits by the Commission's IAS in 2014. However, the IAS carried out a limited review of the use and dissemination of research results<sup>(16)</sup>. Action plans were drawn up and implemented for previous financial year audits by the FCH IAC and the Commission IAS.

**Accounting Officer**

22. The Governing Board of the FCH 2 Joint Undertaking appointed the Accounting Officer of the European Commission as Accounting Officer of FCH 2 Joint Undertaking as of 15 July 2014, in accordance with the possibility provided for in the Financial Rules of the FCH 2 Joint Undertaking.

**FOLLOW-UP OF PREVIOUS OBSERVATIONS****Monitoring and reporting of project research results**

23. As regards the monitoring and reporting of project research results<sup>(17)</sup>, FCH used the European Commission's tools together with its own tools in order to integrate its research results into the Commission's overall reporting system. For the first time, the latest Monitoring report from the Commission on FP7, published in March 2015<sup>(18)</sup>, includes quantitative data on FCH activities<sup>(19)</sup>. As regards qualitative data, since 2011 the Joint Undertaking has produced an annual Programme Review Report<sup>(20)</sup> which aims to evaluate the achievements of the portfolio projects funded by FCH Joint Undertaking against the Joint Undertaking's strategic objectives.

24. The Horizon 2020 legal framework requires specific monitoring of research results, based on quantitative and, where appropriate, qualitative evidence, including progress against performance indicators<sup>(21)</sup>. In order to meet the requirements of Horizon 2020 and to better contribute to the dissemination of FP7 research results (especially as funded projects come to an end)<sup>(22)</sup>, cooperation between the Joint Undertaking and the Commission shall be enhanced to improve the reporting and dissemination of research results<sup>(23)</sup>.

<sup>(15)</sup> Regulation (EU) No 110/2014.

<sup>(16)</sup> See footnote 22.

<sup>(17)</sup> Paragraphs 21 to 23 of the Court's 2013 report (OJ C 452, 16.12.2014, p. 67).

<sup>(18)</sup> [http://ec.europa.eu/research/evaluations/pdf/archive/fp7\\_monitoring\\_reports/7th\\_fp7\\_monitoring\\_report.pdf#view=fit&pagemode=none7th\\_fp7\\_monitoring\\_report.pdf#view=fit&pagemode=none](http://ec.europa.eu/research/evaluations/pdf/archive/fp7_monitoring_reports/7th_fp7_monitoring_report.pdf#view=fit&pagemode=none7th_fp7_monitoring_report.pdf#view=fit&pagemode=none)

<sup>(19)</sup> In the EC Monitoring Report this information is presented in aggregated values together with the information from the other joint technology initiatives.

<sup>(20)</sup> <http://www.fch.europa.eu/sites/default/files/FCH-PPR14-17Mar2015-web%20%283%29.pdf>

<sup>(21)</sup> Article 31 of Regulation (EU) No 1291/2013, establishing Horizon 2020 and Annex II (performance indicators) of Council Decision 2013/743/EU (OJ L 347, 20.12.2013, p. 965) of 3 December 2013 establishing the specific programme implementing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020).

<sup>(22)</sup> In this regard, in May 2014 the Commission's Internal Audit Service finalised a limited Review of the use and dissemination of research results by FCH Joint Undertaking. While acknowledging that the JU has implemented a management and control system as regards the monitoring of the beneficiaries' plans on the use and dissemination of research results, the IAS recommended that FCH JU reinforce the dissemination plan on the central dissemination of research results.

<sup>(23)</sup> See the Annual Progress Report from the European Commission to the European Parliament and Council on the activities of the JTI JUs (COM(2013) 935).

**Conflicts of interest**

25. The Commission is developing a common template for the joint undertakings. Meanwhile FCH's procedure remains in force.

**The Commission's Second Interim Evaluation**

26. As a result of the Commission's Second Interim Evaluation<sup>(24)</sup>, an action plan on the recommendations was adopted by the Governing Board on 11 November 2014. Most recommendations have been implemented<sup>(25)</sup>.

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 6 October 2015.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

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<sup>(24)</sup> Paragraph 26 of the Court's 2013 report (OJ C 452, 16.12.2014, p. 67).

<sup>(25)</sup> In particular: (a) key recommendations on governance, design and management have been taken into account in the Council Regulation 559/2014 establishing the FCH 2 JU and are effectively implemented (such as more resources to programme and knowledge management, accounting services from the Commission); (b) key recommendations on technology monitoring and policy support have been implemented by putting in place a dedicated tool Temonas to monitor technology progress; and (c) key recommendations on engagement with Member States are addressed in Council Regulation(EU) No 559/2014 providing for an extended role of the States Representative Group.

## ANNEX

**Fuel Cells and Hydrogen 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 providing for public-private partnerships in the form of joint technology initiatives which could be implemented through joint undertakings within the meaning of <i>Article 187 of the TFEU</i> and Regulation (EU) No 1291/2013 of the European Parliament and of the Council ('Horizon 2020') which aims to have a greater impact on research and innovation by combining Horizon 2020 and private sector funds within public-private partnerships in key areas where research and innovation can contribute to the Union's wider competitiveness goals, leverage private investment, and help tackle societal challenges.</p> <p>Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the FCH 2 Joint Undertaking.</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>as defined in Council Regulation (EU) No 559/2014</i></p>	<p><b>Objectives</b></p> <p>The Fuel Cells and Hydrogen 2 Joint Undertaking shall have the following objectives:</p> <ul style="list-style-type: none"> <li>(a) to contribute to the implementation of Regulation (EU) No 1291/2013, and in particular the secure, clean and efficient energy challenge and the smart, green and integrated transport challenge under Annex I, Part III of Decision 2013/743/EU;</li> <li>(b) to contribute to the objectives of the joint technology initiative on fuel cells and hydrogen, through the development of a strong, sustainable and globally competitive fuel cells and hydrogen sector in the Union.</li> </ul> <p>It shall, in particular, aim to:</p> <ul style="list-style-type: none"> <li>(a) reduce the production cost of fuel cell systems to be used in transport applications, while increasing their lifetime to levels which can compete with conventional technologies;</li> <li>(b) increase the electrical efficiency and the durability of the different fuel cells used for power production to levels which can compete with conventional technologies, while reducing costs;</li> <li>(c) increase the energy efficiency of the production of hydrogen mainly from water electrolysis and renewable sources while reducing operating and capital costs, so that the combined system of hydrogen production and conversion using the fuel cell system can compete with the alternatives for electricity production available on the market;</li> <li>(d) demonstrate on a large scale the feasibility of using hydrogen to support the integration of renewable energy sources into energy systems, including through its use as a competitive energy storage medium for electricity produced from renewable energy sources;</li> <li>(e) reduce the use of the EU-defined 'Critical raw materials', for instance through low-platinum or platinum-free resources and through recycling or reducing or avoiding the use of rare earth elements.</li> </ul>

**Governance**

as defined in Council Regulation  
(EU) No 559/2014

The **bodies of the FCH Joint Undertaking** are:

**1 — The Governing Board**

The Governing Board is the main decision-making body of the FCH Joint Undertaking.

**2 — The Executive Director**

The Executive Director is responsible for the day-to-day management of the Joint Undertaking and is its legal representative. He is accountable to the Governing Board.

**3 — The Scientific Committee**

Composed of up to 9 members reflecting a balanced representation of world-class expertise from academia, industry and regulatory bodies. Its tasks are to:

- (a) advise on the scientific priorities to be addressed in the annual work plans;
- (b) advise on the scientific achievements described in the annual activity report.

The **external advisory bodies** to the FCH Joint Undertaking are:

**4 — The FCH States Representatives Group**

It consists of one representative of each Member State and country associated to H2020.

The States Representatives Group shall be consulted and, in particular review information and provide opinions on the following matters:

- (a) the programme progress in the FCH 2 Joint Undertaking and the achievement of its targets;
- (b) the updating of strategic orientation;
- (c) the links to Horizon 2020;
- (d) the annual work plans;
- (e) the involvement of SMEs.

The States Representatives Group shall also provide information to and act as an interface with the FCH 2 Joint Undertaking on the following matters:

- (a) the status of relevant national or regional research and innovation programmes and identification of potential areas of cooperation, including deployment of FCH technologies to allow synergies and avoid overlaps;
- (b) specific measures taken at national or regional level with regard to dissemination events, dedicated technical workshops and communication activities.

	<p><b>5 — The Stakeholder Forum</b></p> <p>The SF is an important communication channel for FCH JU activities and is open to all public and private stakeholders and international interest groups in the Member States, associated countries and other countries. It is convened once a year. The SF is informed of the activities of the FCH Joint Undertaking and is invited to provide comments.</p> <p>The <b>internal and external auditors</b> and the <b>discharge authority</b> of the FCH Joint Undertaking are:</p> <p><b>6 — Internal audit</b></p> <ul style="list-style-type: none"> <li>— FCH JU Internal Audit Manager (i.e. internal audit capability — IAC),</li> <li>— Commission's Internal Audit Service (IAS).</li> </ul> <p><b>7 — External audit</b></p> <p>European Court of Auditors.</p> <p><b>8 — Discharge authority</b></p> <p>Parliament on a recommendation of the Council.</p>
<p><b>Resources available to the Joint Undertaking in 2014</b></p> <p><i>FCH Joint Undertaking 2014 final accounts</i></p>	<p><b>Budget (commitment appropriations)</b></p> <p>112,0 million euro</p> <p><b>Staff at 31 December 2014</b></p> <p>2014 establishment plan of 26 staff posts (24 Temporary members of staff and 2 Contract staff), of which 25 were filled at year-end 2014; these were assigned to support operational activities (18 FTE) and to administrative tasks (7 FTE).</p>
<p><b>Activities and services provided in 2014</b></p>	<p>See the FCH JU annual activity report for 2014 at <a href="http://www.fch.europa.eu/page/documents">http://www.fch.europa.eu/page/documents</a></p>

Source: Information supplied by the FCH Joint Undertaking.

**THE JOINT UNDERTAKING'S REPLY**

FCH 2 JU welcomes the positive opinion of the European Court of Auditors on the Fuel Cells and Hydrogen Joint Undertaking's annual accounts and underlying transactions for the financial year 2014 and takes note of the comments.

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**REPORT****on the annual accounts of the Innovative Medicines Initiative Joint Undertaking for the financial year 2014, together with the Joint Undertaking's replies**

(2015/C 422/07)

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## INTRODUCTION

1. The Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines (IMI Joint Undertaking), located in Brussels, was set up in December 2007<sup>(1)</sup> for a period of 10 years and started working autonomously on 16 November 2009. In May 2014<sup>(2)</sup>, the Council repealed the original Regulation and entrusted the Joint Undertaking, referred to as the 'Initiative on Innovative Medicines 2 Joint Undertaking' (IMI 2 Joint Undertaking)<sup>(3)</sup>, with new tasks under the Horizon 2020 Framework programme for Research and Innovation<sup>(4)</sup> and extended the lifetime of the Joint Undertaking for the period up to 31 December 2024.

2. The objective of the IMI Joint Undertaking under the Seventh Framework Programme<sup>(5)</sup> is to significantly improve the efficiency and effectiveness of the drug development process, with the long-term aim that the pharmaceutical sector produce more effective and safer innovative medicines. Under Horizon 2020, the objective of the IMI 2 Joint Undertaking is to improve health by speeding up the development of, and patient access to, innovative medicines, particularly in areas where there is an unmet medical or social need. It does this by fostering collaboration between the key players involved in healthcare research, including universities, the pharmaceutical and other industries, small and medium-sized enterprises (SMEs), patient organisations and medicines regulators<sup>(6)</sup>.

3. The Founding Members of the Joint Undertaking are the European Union, represented by the European Commission, and the European Federation of Pharmaceutical Industries and Associations (EFPIA). Other Members and Associated Partners may also join the programme.

4. The maximum EU contribution to the IMI Joint Undertaking, to cover running costs and research activities, is one billion euro to be paid from the budget of the Seventh Framework Programme. The EU financial contribution to the IMI 2 Joint Undertaking under Horizon 2020 will be up to 1,638 billion euro, of which up to 1,425 billion to match the contribution<sup>(7)</sup> of the pharmaceutical sector and up to 213 million to match contributions from other companies that decide to join IMI 2 as Associated Partners. The Members are to contribute equally to the running costs (which should not exceed 85,2 million euro for the IMI 2 Joint Undertaking).

## INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

5. 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.

### STATEMENT OF ASSURANCE

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

<sup>(1)</sup> Council Regulation (EC) No 73/2008 of 20 December 2007 setting up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines (OJ L 30, 4.2.2008, p. 38).

<sup>(2)</sup> Council Regulation (EU) No 557/2014 of 6 May 2014 establishing the Innovative Medicines Initiative 2 Joint Undertaking (OJ L 169, 7.6.2014, p. 54).

<sup>(3)</sup> This report refers to the 'Initiative on Innovative Medicines Joint Undertaking' unless it is necessary to distinguish between the two programmes.

<sup>(4)</sup> The Horizon 2020 Framework programme for Research and Innovation, adopted by Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104), is the research and innovation programme for 2014-2020 and brings together all existing EU research and innovation funding.

<sup>(5)</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 reaching the goals of growth, competitiveness and employment.

<sup>(6)</sup> The *Annex* summarises the Joint Undertaking's competences, activities and available resources. It is presented for information purposes.

<sup>(7)</sup> Article 13(3) of the Annex to Regulation (EU) No 557/2014 stipulates that the 'operational costs of the IMI 2 Joint Undertaking shall be covered through (a) a financial contribution by the Union (b) in-kind contributions by the Members other than the Union and the Associated Partners [...] consisting of the costs incurred by them in implementing indirect actions [...] less the contribution of the IMI 2 Joint Undertaking and any other Union contribution to those costs'.



- (a) the annual accounts of the IMI Joint Undertaking, which comprise the financial statements <sup>(8)</sup> and the reports on the implementation of the budget <sup>(9)</sup> for the financial year ended 31 December 2014, and
- (b) the legality and regularity of the transactions underlying those accounts.

### The management's responsibility

7. In accordance with Articles 16 and 22 of Commission Delegated Regulation (EU) No 110/2014 <sup>(10)</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>(11)</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.
- (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

8. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council <sup>(12)</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.

9. 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.

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

<sup>(8)</sup> These include the balance sheet and the statement of financial performance, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

<sup>(9)</sup> These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

<sup>(10)</sup> OJ L 38, 7.2.2014, p. 2.

<sup>(11)</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.

<sup>(12)</sup> Article 47 of Regulation (EU) No 110/2014.

**Opinion on the reliability of the accounts**

11. In the Court's opinion, the Joint Undertaking's annual accounts present fairly, in all material respects, its financial position as at 31 December 2014 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.

**Opinion on the legality and regularity of the transactions underlying the accounts**

12. In the Court's opinion, the transactions underlying the annual accounts of the Joint Undertaking for the year ended 31 December 2014 are, in all material respects, legal and regular.

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

**COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT****Implementation of the budget**

14. The 2014 budget included commitment appropriations amounting to 223 million euro and payment appropriations amounting to 171 million euro. The overall implementation rate was 92,4 % (99,5 % for 2013) for commitment appropriations and 73,9 % (97,5 % for 2013) for payment appropriations.

15. In the case of operational activities, the implementation rate was 93 % for commitment appropriations and 74 % for payment appropriations<sup>(13)</sup>. However, commitment appropriations were committed at a global level, meaning that no corresponding grant agreements have been signed by the end of 2014.

**Multi annual funding**

16. The FP7 calls for proposals organised in 2008 — 2013 resulted in grant agreements totalling 897 million euro, amounting to 93 % of the maximum EU contribution to the Joint Undertaking for research activities.

**OTHER MATTERS****Key controls and supervisory systems**

17. The performance of operational ex-ante controls on the payment of project costs was insufficiently documented in the following critical areas:

- (a) The ex ante control form used by the IMI Scientific Project Officers (SPO) focused on administrative compliance rather than on operational compliance as it did not clearly identify and comment upon the status of the project (on-going, on-going subject to deficiencies, suspended/cancelled) and its deliverables (no reservations, reservations requiring clarification, major reservations);
- (b) payment was made without an official listing of deliverables accepted by the SPO and without any reference to the assessment of deliverables by the SPO.

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<sup>(13)</sup> As regards administrative expenditure, the appropriations available for 2014 amounted to 8,9 million euro. The IMI Joint Undertaking achieved an implementation rate of 84 % for commitment appropriations and 70 % for payment appropriations.

### **Legal framework**

18. The financial rules of the IMI 2 Joint Undertaking were adopted on 7 July 2014 on the basis of the model financial regulation for public-private partnership bodies<sup>(14)</sup> and taking into account the requirements of Council Regulation (EU) 557/2014 establishing the IMI 2 Joint Undertaking.

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

19. In January 2014, the Commission's Internal Audit Service (IAS) finalised an audit on project monitoring and the reporting of operational performance at the IMI Joint Undertaking. As at April 2015, all recommendations have been addressed through agreed actions<sup>(15)</sup>. The IAS is monitoring the implementation of the action plan and an assessment is expected during 2015 with regard to closing the recommendations.

20. In addition, two audits were completed in early 2015, one on ex ante controls for operational expenditure and the other on risk assessment. The IMI Joint Undertaking has addressed the recommendation on ex ante controls through an action plan that has been accepted by the IAS.

### **FOLLOW-UP OF PREVIOUS OBSERVATIONS**

#### **Monitoring and reporting of project research results**

21. As regards the monitoring and reporting of project research results<sup>(16)</sup>, the IMI Joint Undertaking uses its own tools, in order to integrate its research results into the overall reporting system of the Commission. For the first time, the latest Monitoring report from the Commission on FP7, published in March 2015<sup>(17)</sup>, includes quantitative data from IMI Joint Undertaking activities<sup>(18)</sup>. As regards qualitative data, in addition to the information provided on the IMI website, the Joint Undertaking produces a half yearly bibliometric analysis of ongoing projects<sup>(19)</sup>, aiming to benchmark research published by IMI-supported projects with other selected public private partnerships. The IMI Joint Undertaking has also developed key performance indicators for the various aspects of project achievement and it measures progress on this basis.

22. The Horizon 2020 legal framework requires specific monitoring of research results, based on quantitative and, where appropriate, qualitative evidence, including progress against performance indicators<sup>(20)</sup>. In order to meet the requirements of Horizon 2020 and to better contribute to the dissemination of FP7 research results, cooperation between the Joint Undertaking and the Commission must be developed as much as possible<sup>(21)</sup> with special regard to the further integration of IMI Joint Undertaking data in to the Commission's systems.

#### **Conflicts of interest**

23. The Commission is developing a common template for the Joint Undertakings. Meanwhile, IMI's procedure remains in force.

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<sup>(14)</sup> Regulation (EU) No 110/2014.

<sup>(15)</sup> These include the two recommendations classified as 'very important' dealing with the 'review of the design and reporting of objectives and Key Performance Indicators (KPIs)' and 'strengthening the project monitoring and IT systems to enhance reporting'. Some actions related to the latter are still on-going.

<sup>(16)</sup> Paragraph 21 of the Court's 2013 report (OJ C 452, 16.12.2014, p. 67).

<sup>(17)</sup> [http://ec.europa.eu/research/evaluations/pdf/archive/fp7\\_monitoring\\_reports/7th\\_fp7\\_monitoring\\_report.pdf#view=fit&pagemode=none](http://ec.europa.eu/research/evaluations/pdf/archive/fp7_monitoring_reports/7th_fp7_monitoring_report.pdf#view=fit&pagemode=none)

<sup>(18)</sup> In the EC Monitoring Report this information is presented in aggregated values together with the information from the other Joint Technology Initiatives.

<sup>(19)</sup> <http://www.imi.europa.eu/sites/default/files/uploads/documents/BibliometricsReport5.pdf>

<sup>(20)</sup> Article 31 of Regulation (EU) No 1291/2013, establishing Horizon 2020 and annex II (performance indicators) of Council Decision 2013/743/EU (OJ L 347, 20.12.2013, p. 965) of 3 December 2013 establishing the specific programme implementing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020).

<sup>(21)</sup> See the Annual Progress Report from the European Commission to the European Parliament and Council on the activities of the JTI JUs (COM(2013) 935).

***The Commission's Second Interim Evaluation***

24. The recommendations of the Commission's Second Interim Evaluation were presented to the Governing Board on 29 October 2013. Follow up of the recommendation was proposed and some key actions <sup>(22)</sup> were integrated into the 2014 Annual Implementation Plan. The Executive Director has reported regularly to the Governing Board on the follow-up of the actions. Recommendations related to the establishment of the IMI2 JU <sup>(23)</sup> are currently being implemented and plans are in place for the Programme Office to carry out consolidated follow-up and assessment of the actions undertaken by the end of 2015.

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 6 October 2015.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

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<sup>(22)</sup> E.g. review of the Communication Strategy, socio-economic impacts translated within KPIs, further involvement of industry and in particular of SMEs, increasing flexibility in launching calls and use of non-EU in-kind contribution.

<sup>(23)</sup> E.g. involvement of industrial participants from other healthcare related sector, increased flexibility and transparency in terms of governance.

## ANNEX

**Innovative Medicines Joint Undertaking (Brussels)****Competences and activities**

<p><b>Areas of Union competence deriving from the Treaty</b></p> <p><i>Extracts from Articles 187 and 188 of the Treaty on the Functioning of the European Union</i></p>	<p>The Union may set up joint undertakings or any other structure necessary for the efficient execution of Union research, technological development and demonstration programmes.</p> <p>The Council, on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 187.</p> <p>The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 183, 184 and 185. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>Council Regulation (EU) No 557/2014 of 6 May 2014 establishing the Innovative Medicines Initiative 2 Joint Undertaking (OJ L 169, 7.6.2014, p. 54)</i></p>	<p><b>Objectives</b></p> <p>According to Article 2 of Council Regulation 557/2014 the IMI2 Joint Undertaking shall have the following objectives:</p> <ul style="list-style-type: none"> <li>(a) to support, in accordance with Article 25 of Regulation (EU) No 1291/2013, the development and implementation of pre-competitive research and of innovation activities of strategic importance to the Union's competitiveness and industrial leadership or to address specific societal challenges in particular as described in parts II and III of Annex I to Decision 2013/743/EU, and in particular the challenge to improve European citizens' health and well-being;</li> <li>(b) to contribute to the objectives of the Joint Technology Initiative on Innovative Medicines, in particular to: <ul style="list-style-type: none"> <li>(i) increase the success rate in clinical trials of priority medicines identified by the World Health Organisation;</li> <li>(ii) where possible, reduce the time to reach clinical proof of concept in medicine development, such as for cancer, immunological, respiratory, neurological and neurodegenerative diseases;</li> <li>(iii) develop new therapies for diseases for which there is a high unmet need, such as Alzheimer's disease and limited market incentives, such as antimicrobial resistance;</li> <li>(iv) develop diagnostic and treatment biomarkers for diseases clearly linked to clinical relevance and approved by regulators;</li> <li>(v) reduce the failure rate of vaccine candidates in phase III clinical trials through new biomarkers for initial efficacy and safety checks;</li> <li>(vi) improve the current drug development process by providing support for the development of tools, standards and approaches to assess efficacy, safety and quality of regulated health products.</li> </ul> </li> </ul>

<b>Governance</b>	<p>Governance bodies of the IMI2 JU are (i) the Governing Board, (ii) the Executive Director, (iii) the Scientific Committee, (iv) the States Representatives Group, and (v) the Stakeholder Forum. Other advisory groups may be set up by the Governing Board.</p> <p>The Governing Board is composed of 10 Board members representing equally the two Members of the Joint Undertaking: the European Union (represented by the European Commission) and the European Federation of Pharmaceutical Industries and Associations (EFPIA). The Governing Board has overall responsibility for the strategic orientation and the operations of the IMI2 Joint Undertaking and supervises the implementation of its activities.</p> <p>The Executive Director is the chief executive responsible for the day-to-day management of the IMI2 JU in accordance with the decisions of the Governing Board and is supported by a Programme Office. The Executive Director is the legal representative of the IMI2 JU and shall implement the budget of the JU.</p> <p>The Scientific Committee, the States Representatives Group and the Stakeholder Forum are advisory bodies of the IMI2 JU.</p> <p>A Strategic Governing Group set up by the Governing Board ensures the coordination of IMI2 JU's work in certain strategic areas and work to make the development of new topics more transparent and effective.</p>
<b>Resources available to the Joint Undertaking in 2014</b>	<p><b>Budget</b></p> <p>223 294 603 euro for commitments</p> <p>170 801 250 euro for payments</p> <p>The amounts include appropriations carried over from 2013 as well as the revision following the establishment of the IMI2 JU as from 27/6/2014.</p> <p><b>Staff as at 31 December 2014</b></p> <p>34 out of 37 posts provided for in the establishment plan (29 Temporary staff and 8 Contract staff) were occupied. 80 % of these resources are directly assigned to support operational activities.</p>
<b>Activities and services provided in 2014</b>	See Annual Activity Report 2014 of the IMI JU at <a href="http://www.imi.europa.eu">www.imi.europa.eu</a>

Source: Information supplied by IMI2 JU.

## THE JOINT UNDERTAKING'S REPLIES

### **Basis for a clean opinion on the reliability of accounts**

#### **Basis for a clean opinion on the legality and regularity of the transactions underlying the accounts**

*Paragraphs 11 and 12*

IMI welcomes the positive conclusion of the Court on the reliability of its accounts as well as on the legality and regularity of all transactions underlying the annual accounts.

IMI remains committed to managing its funding under the principle of sound financial management and through a trust-based approach with the participants in the projects whilst ensuring sufficient control and accountability. This balanced approach will also contribute towards ensuring a successful outcome of the IMI projects as many of them are already starting to generate impressive or promising results, in the interest of patients and society at large.

### **Implementation of the budget**

*Paragraph 15*

The 8 Grant Agreements corresponding to Call 2 of IMI2 JU were all signed in the first quarter of 2015.

### **Key controls and supervisory systems**

*Paragraph 17*

Ex-ante controls on payments of project costs will be reinforced, in line with the recommendations and action plan agreed with the Commission's Internal Audit Service (IAS).

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

*Paragraph 20*

An action plan has been developed and communicated to IAS on 06/03/2015. The IAS has considered the proposed action adequate. The action plan is being implemented by IMI.

### **Follow-up on previous observations**

*Paragraph 22*

IMI Calls and projects data have been exported and have been available in CORDA since September 2013. On the basis of the Delegation Agreement between the European Commission and the IMI2 JU, further integration of IMI2 call and project management IT system is currently under preparation with target date for completion by early 2016.

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**REPORT****on the annual accounts of the SESAR Joint Undertaking for the financial year 2014 together with the Joint Undertaking's reply**

(2015/C 422/08)

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## INTRODUCTION

1. The SESAR Joint Undertaking (SJU), located in Brussels, was set up in February 2007 <sup>(1)</sup> in order to manage the technological component of the SESAR (Single European Sky Air Traffic Management Research) project and started to work autonomously on 10 August 2007. In June 2014 <sup>(2)</sup>, the Council amended the original Regulation and extended the lifetime of the Joint Undertaking for the period up to 31 December 2024.
  
2. The SESAR project aims to modernise air traffic management (ATM) in Europe and is divided into three phases:
  - A 'definition phase' (2004-07) led by the European Organisation for the Safety of Air Navigation (Eurocontrol), with co-financing from the European Union budget through the Trans-European Networks — Transport programme. The outcome was the European ATM Master Plan, which defines the content and describes the development and deployment of the next generation of ATM systems.
  
  - A 2-term 'development phase' (term 1: 2008-16 funded by the 2008-13 programming period; term 2: extended to 2024 and with a maximum programme 2020 duration of 2016-24) managed by the SJU and leading to the production of new technological systems, components and operational procedures as defined in the European ATM Master Plan.
  
  - A 'deployment phase' (2014-24) to be led by industry and stakeholders for the large-scale production and implementation of the new ATM infrastructure.
  
3. Under the Horizon 2020 Framework programme for Research and Innovation <sup>(3)</sup>, the Council entrusted the SJU with continuing research and innovation relating to air traffic management and in particular to the coordinated approach, in the context of the Single European Sky, in order to achieve the performance targets defined. The SESAR II Programme under Horizon 2020 will be launched in the second half of 2015 and will be called SESAR 2020.
  
4. The SJU was designed as a public-private partnership. The founding members are the European Union represented by the Commission, and Eurocontrol, represented by its Agency. Following a call for expressions of interest, fifteen public and private enterprises from the air navigation industry became members of the Joint Undertaking. They comprise aircraft manufacturers, ground and airborne equipment manufacturers, air navigation service providers and airport authorities.
  
5. The budget for the development phase of the SESAR I Programme is 2 100 million euro, to be provided in equal parts by the EU, Eurocontrol and the participating public and private partners. The EU contribution is funded from the Seventh Research Framework Programme and the Trans-European Networks — Transport programme and, for SESAR 2020, from the Horizon 2020 programme. Around 90 % of the funding from Eurocontrol and the other stakeholders is in the form of in-kind contributions.

## 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.

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<sup>(1)</sup> Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) (OJ L 64, 2.3.2007, p. 1), amended by Regulation (EC) No 1361/2008 (OJ L 352, 31.12.2008, p. 12).

<sup>(2)</sup> Council Regulation (EU) No 721/2014 of 16 June 2014 amending Regulation (EC) No 219/2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) as regards the extension of the Joint Undertaking until 2024 (OJ L 192, 1.7.2014, p. 1).

<sup>(3)</sup> The Horizon 2020 Framework programme for Research and Innovation, adopted by Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104), is the research and innovation programme for 2014-20 and brings together all existing EU research and innovation funding.

**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 SESAR 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 2014, and
- (b) the legality and regularity of the transactions underlying those accounts.

**The management's responsibility**

8. In accordance with Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 <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.
- (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.

<sup>(4)</sup> These include the balance sheet and the statement of financial performance, 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> 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>(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.

<sup>(8)</sup> Article 107 of Regulation (EU) No 1271/2013.

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 2014 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.

***Opinion on the legality and regularity of the transactions underlying the accounts***

13. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2014 are, in all material respects, legal and regular.

14. The following comments do not call the Court's opinions into question.

**COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT**

***Implementation of the 2014 budget***

15. The initial and final 2014 budgets included commitment appropriations of 12,4 and 13,1 million euro and payment appropriations of 116,4 and 121,9 million euro respectively.

16. The utilisation rate for commitment appropriations was 99,4 % (99,6 % in 2013). The utilisation rate for payment appropriations was 79,8 % (94,4 % in 2013), reflecting the deferral from late 2014 to early 2015 of payment of 3 of 15 annual member cost claims.

***Multilateral Framework Agreement (MFA)***

17. At 31 December 2014, the SJU development phase consisted of project work by 16 members (including Eurocontrol) on programme activities involving more than 100 private and public entities and subcontractors. Of the 369 SESAR programme projects under the fourth amendment to the MFA, 348 (94 %) were being implemented or had been completed.

18. Of the 556 million euro in co-financing contributions payable by the European Union and Eurocontrol to the other 15 members under the fourth amendment to the MFA (since 1 January 2014), 100 % had been committed and 66 % (369 million euro) had been paid out at 31 December 2014, while the remaining 34 % (187 million euro) are expected to be paid by 31 December 2017.

**OTHER MATTERS**

***Legal framework***

19. The Financial Rules of the SJU for the 2014-20 programming period were adopted on 25 June 2015 by the Administrative Board <sup>(9)</sup>.

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

20. The SJU Internal Audit Capability (IAC) carried out audits of human resources/recruitment and on the validation of ABAC Workflow authorisations and performed other assurance and consultancy services.

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<sup>(9)</sup> The adoption by the SJU Administrative Board followed the adoption on 4 June 2015 by the Commission of a Commission Implementing Decision authorising derogations in respect of the Financial Rules of the SJU from Delegated Regulation (EU) No 1271/2013, with effect from 1 January 2014.

21. The IAS carried out an audit of risk management followed by a risk assessment. Three recommendations were raised as a result of the audit <sup>(10)</sup> and were accepted. An action plan is being implemented.

## **FOLLOW-UP OF PREVIOUS OBSERVATIONS**

### ***Monitoring and reporting of project research results***

22. As regards the monitoring and reporting of project research results <sup>(11)</sup>, the SJU uses its own system and tools to collect the data and disseminate the results of the operational and technological improvements developed by SESAR members and partners <sup>(12)</sup>. The results are reported on its web site <sup>(13)</sup>, in the annual release reports and in the annual activity reports.

23. On 5 December 2014, the Commission set up the SESAR Deployment Manager (SDM) <sup>(14)</sup>, to ensure that new technologies and solutions already tested and validated through the SESAR Joint Undertaking's research and development phases are deployed into everyday operations. The SDM is responsible for reporting and monitoring on the deployment of the solutions.

24. The JU is currently preparing a comprehensive report on the social and economic benefits of the completed projects, as well as information on the contribution of all the SESAR members to the programme. This report is expected to be available in the second half of 2015.

### ***Conflicts of interest***

25. The Commission is developing a common template for the Joint Undertakings. Meanwhile SESAR's procedure remains in force.

## ***The Commission's Second Interim Evaluation***

26. As a result of the Commission's Second Interim Evaluation <sup>(15)</sup>, specific actions <sup>(16)</sup> to address the two recommendations were discussed and adopted by the Governing Board in October and December 2014 <sup>(17)</sup>. These actions are ongoing and their status of implementation is being followed up.

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<sup>(10)</sup> The three recommendations were (i) design (linkage of risks to objectives), (ii) efficient operation, and (iii) management oversight and reporting.

<sup>(11)</sup> Paragraph 21 of the Court's 2013 report (OJ C 452, 16.12.2014, p. 58).

<sup>(12)</sup> SESAR's research and innovation project results are called SESAR Solutions. Solutions are operational and technological improvements developed by SESAR members and partners. These aim to contribute to the modernisation of the European and global ATM system, for the purpose of demonstrating clear business benefits for the ATM sector when translated into their effective implementation.

<sup>(13)</sup> <http://www.sesarju.eu/solutions>

<sup>(14)</sup> SESAR Deployment Manager is the entity that synchronises and coordinates the modernisation of Europe's air traffic management system under the oversight of the European Commission. The SDM is set up under a Framework Partnership agreement with the EC and is, as such, a separate entity from the SESAR Joint Undertaking. The SESAR Joint Undertaking (SJU) and the SESAR Deployment Manager (SDM) are formally two pillars of the same SESAR project under the Single European Sky initiative.

<sup>(15)</sup> Paragraph 26 of the Court's 2013 report.

<sup>(16)</sup> In particular a new Communications Strategy and a Programme Closure Management Plan (PCM Plan).

<sup>(17)</sup> The preparation and ongoing management of the PCM plan was agreed during the three Programme Closure Group meetings and the three Programme Closure meetings held between October 2014 and March 2015.

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This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 6 October 2015.

*For the Court of Auditors*

Vitor Manuel da SILVA CALDEIRA

*President*

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## ANNEX

**SESAR 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 219/2007 setting up the SESAR Joint Undertaking, as last amended by Regulation (EC) No 1361/2008 (OJ L 352, 31.12.2008).</p> <p>Council Regulation (EU) No 721/2014 of 16 June 2014 amending Regulation (EC) No 219/2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) as regards the extension of the Joint Undertaking until 2024.</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>(Council Regulation (EC) No 219/2007, as last amended by Regulation (EC) No 1361/2008)</i></p>	<p><b>Objectives</b></p> <p>The aim of the Joint Undertaking is to ensure the modernisation of the European air traffic management system by coordinating and concentrating all relevant research and development efforts in the Union. It shall be responsible for execution of the ATM Master Plan and, in particular, for carrying out the following tasks:</p> <ul style="list-style-type: none"> <li>— organising and coordinating the activities of the SESAR development phase in accordance with the ATM Master Plan, which resulted from the definition phase of the project headed by Eurocontrol, by combining and managing public and private-sector funding under a single structure;</li> <li>— ensuring the necessary funding for the activities of the SESAR development phase in accordance with the ATM Master Plan;</li> <li>— ensuring the involvement of stakeholders in the air traffic management sector in Europe, in particular air navigation service providers, airspace users, professional staff associations, airports and manufacturers; as well as the relevant scientific institutions or the relevant scientific community;</li> <li>— organising the technical work of research and development, validation and study, to be carried out under its authority, while avoiding fragmentation of such activities;</li> <li>— ensuring the supervision of activities related to the development of common products duly identified in the ATM Master Plan and, if necessary, organising specific invitations to tender.</li> </ul>
<p><b>Governance</b></p> <p><i>(Council Regulation (EC) No 219/2007, as last amended by Regulation (EC) No 1361/2008)</i></p>	<p><b>Administrative Board</b></p> <p>The Administrative Board is responsible for:</p> <ul style="list-style-type: none"> <li>(a) adopting the ATM Master Plan endorsed by the Council as referred to in Article 1 (2) of the Regulation and approving any proposal to modify it;</li> <li>(b) giving guidelines and taking the decisions necessary for the implementation of the development phase of the SESAR project, and exercising overall control over its implementation;</li> </ul>

- (c) approving the Joint Undertaking's work programme and annual work programmes referred to in Article 16(1), as well as the annual budget, including the staff establishment plan;
- (d) authorising negotiations and deciding on the accession of new members and on the related agreements as referred to in Article 1(3);
- (e) supervising the execution of agreements between members and the Joint Undertaking;
- (f) appointing and dismissing the Executive Director and approving the organisation chart and monitoring the Executive Director's performance;
- (g) deciding on the amounts and procedures for the payment of members' financial contributions and the assessment of contributions in kind;
- (h) adopting the financial rules of the Joint Undertaking;
- (i) approving the annual accounts and balance sheet;
- (j) adopting the annual report on the progress of the development phase of the SESAR project and its financial situation referred to in Article 16(2);
- (k) deciding on proposals to the Commission on the extension or dissolution of the Joint Undertaking;
- (l) establishing procedures for granting rights of access to tangible and intangible assets which are the property of the Joint Undertaking, and the transfer of such assets;
- (m) laying down rules and procedures for awarding the contracts necessary to implement the ATM Master Plan, including specific procedures in the event of conflicts of interest;
- (n) deciding on proposals to the Commission to amend the Statutes in accordance with Article 24;
- (o) exercising such other powers and performing such other functions, including the establishment of subsidiary bodies, as may be necessary for the purposes of the SESAR development phase;
- (p) adopting the arrangements for implementing Article 8.

**Executive Director**

The Executive Director shall perform his duties with complete independence within the powers assigned to him.

**Internal audit**

Internal Auditor of the European Commission

**External audit**

European Court of Auditors

**Discharge authority**

European Parliament, European Council and the Administrative Board of the JU

<b>Resources available to the Joint Undertaking in 2014</b>	<p><b>Budget</b></p> <p>13 119 600 euro for commitments</p> <p>121 942 760 euro for payments</p> <p><b>Staff at 31 December 2014</b></p> <p>The 2014 operating budget provides for an establishment plan of 39 temporary agents and three seconded national experts (SNEs). This gives a total of 42 posts, of which 37 were occupied at year end 2014:</p> <ul style="list-style-type: none"> <li>— 31 temporary staff, recruited externally,</li> <li>— 1 staff member seconded by the SJU Members in accordance with Article 8 of Regulation (EC) No 219/2007,</li> <li>— 3 contractual staff,</li> <li>— 2 SNEs.</li> </ul> <p><b>Assigned to</b></p> <p>Operational tasks: 20</p> <p>Administrative and support tasks: 16</p> <p>Mixed tasks: 1</p>
<b>Activities and services provided in 2014</b>	See the Joint Undertaking's annual activity report for 2014 at <a href="http://www.sesarju.eu/">http://www.sesarju.eu/</a>

Source: Information supplied by the SESAR Joint Undertaking.



**THE JOINT UNDERTAKING'S REPLY**

The Joint Undertaking has taken note about the Court's report.

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**REPORT****on the annual accounts of the ECSEL Joint Undertaking for the period 27 June to 31 December 2014,  
together with the Joint Undertaking's reply**

(2015/C 422/09)

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## INTRODUCTION

1. The Joint Undertaking for the implementation of the Joint Technology Initiative on Electronic Components and Systems for European Leadership (ECSEL Joint Undertaking), located in Brussels, was set up in May 2014<sup>(1)</sup> under the Horizon 2020 Framework programme for Research and Innovation<sup>(2)</sup> for the period up to 31 December 2024. The ECSEL Joint Undertaking replaces and succeeds the ENIAC and ARTEMIS Joint Undertakings, established by Regulations (EC) No 72/2008 and (EC) No 74/2008, the official closure of which took effect on 26 June 2014. The ECSEL Joint Undertaking started working autonomously on 27 June 2014.

2. The objective of the ECSEL Joint Undertaking is to contribute to the development of a strong and globally competitive electronics components and systems industry in the Union. It also aims to ensure the availability of electronic components and systems for key markets and for addressing societal challenges, and to maintain and grow semiconductor and smart system manufacturing capability in Europe. Finally, it aims to align strategies with Member States to attract private investment and contribute to the effectiveness of public support by avoiding unnecessary duplication and fragmentation of effort, and by facilitating the participation of actors involved in research and innovation<sup>(3)</sup>.

3. The founding members of the Joint Undertaking are the European Union, represented by the Commission, ECSEL Participating States (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom) and private members represented by the AENEAS, ARTEMISIA and EPoSS Associations representing companies and other research organisations active in the field of embedded and cyber-physical systems, smart system integration and micro- and nano-electronics.

4. The maximum EU contribution under Horizon 2020 to the ECSEL Joint Undertaking will be up to 1 185 million euro. At least a similar amount will come from the ECSEL Participating States. The private contribution will be at least 2 340 million euro. Administrative costs will be covered entirely by financial contributions whereas operational costs will be covered by financial contributions from the EU and the ECSEL Participating States and by in-kind contributions from private members.

## INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

5. 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.

### STATEMENT OF ASSURANCE

6. 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 ECSEL Joint Undertaking, which comprise the financial statements<sup>(4)</sup> and the reports on the implementation of the budget<sup>(5)</sup> for the period 27 June to 31 December 2014, and
- (b) the legality and regularity of the transactions underlying those accounts.

<sup>(1)</sup> Council Regulation (EU) No 561/2014 of 6 May 2014 establishing the ECSEL Joint Undertaking (OJ L 169, 7.6.2014, p. 152).

<sup>(2)</sup> The Horizon 2020 Framework programme for Research and Innovation, adopted by Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104), is the research and innovation programme for 2014-2020 and brings together all existing EU research and innovation funding.

<sup>(3)</sup> The Annex summarises the Joint Undertaking's competences, activities and available resources. It is presented for information purposes.

<sup>(4)</sup> These include the balance sheet and the statement of financial performance, 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.

### **The management's responsibility**

7. In accordance with Articles 16 and 22 of Commission Delegated Regulation (EU) No 110/2014<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.
- (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**

8. 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.

9. 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.

10. 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**

11. In the Court's opinion, the Joint Undertaking's accounts for the period 27 June to 31 December 2014 present fairly, in all material respects, its financial position as at 31 December 2014 and the results of its operations and its cash flows for the period then ended, in accordance with the provisions of its financial rules and the accounting rules adopted by the Commission's accounting officer.

<sup>(6)</sup> OJ L 38, 7.2.2014, p. 2.

<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.

<sup>(8)</sup> Article 47 of Delegated Regulation (EU) No 110/2014.

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

12. ECSEL has taken over the projects of the ARTEMIS and ENIAC Joint Undertakings. The payments made under these projects by ECSEL Joint Undertaking from 27 June to 31 December 2014 against certificates of acceptance of costs issued by the national funding authorities (NFAs) of the Member States amounted to 12,6 million euro, which represents 48 % of the total payments made by the Joint Undertaking.

13. ARTEMIS and ENIAC Joint Undertakings had concluded administrative agreements with the NFAs of the Member States, which continue to apply after the merger of the ARTEMIS and ENIAC Joint Undertakings into ECSEL Joint Undertaking. These arrangements provide that the *ex post* audits of these payments are delegated to the NFAs that will perform audits on behalf of the Joint Undertaking. The ARTEMIS and ENIAC Joint Undertakings' *ex post* audit strategy relied heavily on the NFAs to audit project cost claims<sup>(9)</sup>.

14. Although the audit of project cost claims has been delegated to the NFAs, the administrative agreements signed with the NFAs do not include practical arrangements for *ex post* audits.

15. The audit reports received from the NFAs covered approximately 61 % (as of April 2015) of the costs related to completed projects. However the ECSEL Joint Undertaking did not assess the quality of these audits. The Court performed an assessment of the audit strategies, including audit reports, of three NFAs which indicated that the methodologies used by the NFAs do not allow the ECSEL Joint Undertaking to calculate a reliable weighted error rate nor a residual error rate on the projects launched under ARTEMIS and ENIAC Joint Undertakings. Therefore it is not possible to conclude whether *ex post* audits for ARTEMIS and ENIAC projects are functioning effectively and whether this key control provides sufficient assurance as to the legality and regularity of the underlying transactions.

**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 12 to 15, the transactions underlying the annual accounts of the Joint Undertaking for the financial year ended 31 December 2014 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 initial 2014 operational budget included commitment appropriations amounting to 138,2 million euro and payment appropriations amounting to 71,3 million euro. At the end of the year the Governing Board adopted an amending budget increasing commitment appropriations to 158,2 million euro. The implementation rate for operational commitment appropriations was 99,7 %. However, commitment appropriations were committed at a global level, meaning that no corresponding grant agreements have yet been signed.

**OTHER MATTERS****Legal framework**

19. The financial rules of the ECSEL Joint Undertaking were adopted on 3 July 2014 on the basis of the model financial regulation for public-private partnership bodies<sup>(10)</sup> and taking into account the requirements of Council Regulation (EU) 561/2014 establishing the ECSEL Joint Undertaking.

<sup>(9)</sup> According to the *ex post* audit strategies adopted by ARTEMIS and ENIAC, the Joint Undertaking must assess at least once a year whether the information received from the Member States provides sufficient assurance as to the regularity and legality of the executed transactions.

<sup>(10)</sup> Delegated Regulation (EU) No 110/2014.

**Monitoring and reporting of project research results**

20. ECSEL will continue to publish information and documentation on the projects launched by its two predecessors. It uses its own monitoring tools in order to integrate its research results into the overall reporting system of the Commission. The latest Monitoring report from the Commission on FP7, published in March 2015<sup>(11)</sup>, includes quantitative data on ECSEL Joint Undertaking activities<sup>(12)</sup>. As regards reporting on qualitative data, ECSEL should increase the systematic dissemination of research results, in addition to the information provided in the JU's annual activity report, on its web site and in other specific reports<sup>(13)</sup>.

21. The Horizon 2020 legal framework requires specific monitoring of research results, based on quantitative and, where appropriate, qualitative evidence, including progress against performance indicators<sup>(14)</sup>. In order to meet the requirements of Horizon 2020 and to better contribute to the dissemination of FP7 research results, cooperation between the Joint Undertaking and the Commission should be enhanced<sup>(15)</sup>.

**Follow-up of previous observations<sup>(16)</sup>**

22. Article 26 of the ECSEL Joint Undertaking Financial Rules states that ECSEL shall have an internal audit function which shall be performed by the Commission's internal auditor and establishes its appointment, powers and duties.

23. In addition, as foreseen in Article 28 of the Financial Rules of the ECSEL Joint Undertaking, the Governing Board has established an internal audit capability and has approved the relevant internal audit charter defining its mission, objectives, reporting and working arrangements.

24. The ECSEL Joint Undertaking adopted a comprehensive policy to prevent conflicts of interest.

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 20 October 2015.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

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<sup>(11)</sup> [http://ec.europa.eu/research/evaluations/pdf/archive/fp7\\_monitoring\\_reports/7th\\_fp7\\_monitoring\\_report.pdf#view=fit&pagemode=none](http://ec.europa.eu/research/evaluations/pdf/archive/fp7_monitoring_reports/7th_fp7_monitoring_report.pdf#view=fit&pagemode=none)

<sup>(12)</sup> In the EC Monitoring Report this information is presented in aggregated values together with the information from the other Joint Technology initiatives. In the case of ECSEL, it mainly refers to the programmes launched by the former ARTEMIS and ENIAC JUs which merged to create ECSEL on 27 June 2014.

<sup>(13)</sup> In March 2015 ARTEMIS published a business impact and metrics report.

<sup>(14)</sup> Article 31 of Regulation (EU) No 1291/2013, establishing Horizon 2020 and Annex II (performance indicators) of Council Decision 2013/743/EU (OJ L 347, 20.12.2013, p. 965) of 3 December 2013 establishing the specific programme implementing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020).

<sup>(15)</sup> See the Annual Progress Report from the European Commission to the European Parliament and Council on the activities of the JTI JUs (COM(2013) 935).

<sup>(16)</sup> These observations were made in the Court's 2013 reports on ARTEMIS and ENIAC Joint Undertakings (OJ C 452, 16.12.2014, pp. 8 and 26).

## ANNEX

**ECSEL 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>Council Regulation (EU) No 561/2014 of 06 May 2014 establishing the ECSEL Joint Undertaking.</p> <p>Regulation (EU) No 1291/2013 of the European Parliament and of the Council.</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>(Council Regulation (EC) No 561/2014)</i></p>	<p><b>Objectives</b></p> <p>The ECSEL Joint Undertaking shall have the following objectives:</p> <ul style="list-style-type: none"> <li>(a) to contribute to the implementation of Regulation (EU) No 1291/2013, and in particular part II of Decision 2013/743/EU;</li> <li>(b) to contribute to the development of a strong and globally competitive electronics components and systems industry in the Union;</li> <li>(c) to ensure the availability of electronic components and systems for key markets and for addressing societal challenges, aiming at keeping Europe at the forefront of technology development, bridging the gap between research and exploitation, strengthening innovation capabilities and creating economic and employment growth in the Union;</li> <li>(d) to align strategies with Member States to attract private investment and contribute to the effectiveness of public support by avoiding an unnecessary duplication and fragmentation of efforts and by facilitating the participation of actors involved in research and innovation;</li> <li>(e) to maintain and grow semiconductor and smart system manufacturing capability in Europe, including leadership in manufacturing equipment and materials processing;</li> <li>(f) to secure and strengthen a commanding position in design and systems engineering including embedded technologies;</li> <li>(g) to provide access of all stakeholders to a world-class infrastructure for the design and manufacture of electronic components and embedded/cyber-physical and smart systems; and</li> <li>(h) to build a dynamic ecosystem involving Small and Medium-Sized Enterprises (SMEs), thereby strengthening existing clusters and nurturing the creation of new clusters in promising new areas.</li> </ul>
<p><b>Governance</b></p>	<p>The JU's governing body is the Governing Board. The Programme Office is led by an Executive Director. Industry is represented in the Private Members Board. The Commission, representing the Union, and the Participating States make up the Public Authorities Board.</p>
<p><b>Resources available to the Joint Undertaking in 2014</b></p>	<p><b>Budget</b></p> <p>160 114 500,00 euro for commitments</p> <p>104 144 250,00 euro for payments</p>

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	<b>Staff at 31 December 2014</b> 28 posts provided for in the establishment plan (14 temporary staff, 13 contract staff) and 1 seconded expert, of which 26 posts were occupied; these were allocated to: operational activities (13); administrative tasks (10); mixed tasks (3).
<b>Activities and services provided in 2014</b>	See the ECSEL Joint Undertaking annual activity report for 2014 at <a href="http://www.ecsel.eu">www.ecsel.eu</a>

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Source: Information supplied by the ECSEL Joint Undertaking.

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### THE JOINT UNDERTAKING'S REPLY

14. The ECSEL JU made arrangements with the national funding authorities (NFAs) within the boundaries established by the Council Regulations (EC) No 72/2008 <sup>(1)</sup> and 74/2008 <sup>(2)</sup> that entrust the task to define the total costs to the NFAs, based on their grant agreements 'in accordance with their national rules, in particular as regards eligibility criteria and other necessary financial and legal requirements.' These Regulations do not establish a competence for the JU to define rules for the NFAs, and do not empower it to perform on the spot checks and audits among the NFAs. These shortcomings have been recognized and alleviated in the Council Regulation (EU) No 561/2014 establishing ECSEL Joint Undertaking that empowers the Joint Undertaking to award the EU grants in strict compliance with the Horizon 2020 procedures.

15. The ECSEL JU confirms that its extensive assessments of the national assurance systems concluded that they can provide a reasonable protection of the financial interests of the JU members; however, as indicated by the ECA, the national methodologies do not allow the calculation of a weighted error rate nor a residual error rate for the projects launched under ARTEMIS and ENIAC Joint Undertakings. This technical difficulty does not result, however, in a negative opinion of the ECA, but understandably prevents it from confirming the legality and regularity of the transactions without formulating a reservation.

20. The ECSEL web site is under a continuous process of upgrading, being populated with an increasing number of dissemination items, both quantitative and qualitative. In addition, ECSEL is engaged in a permanent cooperation with the competent services of the Commission, and in particular the Common Support Center (CSC) for the development and implementation of the relevant tools for reporting and dissemination.

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<sup>(1)</sup> Council regulation (EC) No 72/2008 from 20th December 2007 establishing the ENIAC Joint Undertaking.

<sup>(2)</sup> Council regulation (EC) No 74/2008 from 20th December 2007 establishing the ARTEMIS Joint Undertaking.





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