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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
AGENCIES

COURT OF AUDITORS

REPORT

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

(2013/C 369/01)

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INTRODUCTION

1. The Artemis Joint Undertaking, located in Brussels, was set up in December 2007 ⁽¹⁾ for a period of 10 years.

2. The main objective of the Joint Undertaking is to define and implement a 'research agenda' for the development of key 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 ⁽²⁾.

3. The founding members of the Artemis Joint Undertaking are the European Union, represented by the Commission, certain EU Member States (Belgium, Denmark, Germany, Estonia, Ireland, Greece, France, Italy, Hungary, the Netherlands, Austria, Portugal, Romania, Slovenia, Spain, 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.

4. The maximum EU contribution to the Joint Undertaking, to cover running costs and research activities, is 420 million euro to be paid from the budget of the Seventh Framework Programme ⁽³⁾. Artemis-IA is to make a maximum contribution of 30 million euro to the running costs. The Artemis Member States are 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 are also to be provided by the research organisations participating in projects.

5. The Joint Undertaking started to work autonomously on 26 October 2009.

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.

⁽¹⁾ 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).

⁽²⁾ The Annex summarises the Joint Undertaking's competences and activities. It is presented for information purposes.

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

STATEMENT OF ASSURANCE

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

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

The management's responsibility

8. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽⁶⁾, 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 ⁽⁷⁾, 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

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

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

⁽⁶⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁷⁾ 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.

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 ⁽⁸⁾ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Joint Undertaking are free from material misstatement and the underlying transactions are legal and regular.

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

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

Opinion on the reliability of the accounts

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

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

13. The Joint Undertaking's *ex post* audit strategy ⁽⁹⁾ was adopted by a Governing Board decision on 25 November 2010 and is a key tool ⁽¹⁰⁾ for assessing the legality and regularity of the underlying transactions. The payments made in 2012 relating to certificates of acceptance of costs issued by the national funding authorities of the Member States (NFAs) amounted to 7,3 million euro, which represents 43 % of the total operational payments.

14. 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 Artemis Joint Undertaking received audit reports from the NFAs covering approximately 45 % of the costs related to completed projects. However, the Joint Undertaking did not assess the quality of these audits. Moreover, by the end of April 2013, the Joint Undertaking had not received information on the audit strategies of all NFAs ⁽¹¹⁾. It was therefore not in a position to assess whether *ex post* audits provide sufficient assurance as to the legality and regularity of the underlying transactions ⁽¹²⁾.

16. The information available on the implementation of the Joint Undertaking's *ex post* audit strategy is not sufficient for the Court to conclude whether this key control tool is functioning effectively.

⁽⁹⁾ 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'.

⁽¹⁰⁾ 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.'

⁽¹¹⁾ The documentation received so far is in most cases insufficient to allow the Joint Undertaking to assess these strategies or the way they are implemented, as no details are provided of audit arrangements (audit approach and methodology, size of the sample, the type of financial checks to be performed by the NFAs, etc.).

⁽¹²⁾ 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.

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

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

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

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

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

Implementation of the budget

19. Contrary to the Joint Undertaking's financial rules ⁽¹³⁾, its published 2012 budget did not show differentiated payment appropriations for operational expenditure.

20. The Joint Undertaking's 2012 budget included operational commitment appropriations amounting to 55,1 million euro. At the end of the year, the Governing Board decided to reduce the operational appropriations to 39,5 million euro but failed to follow the procedure established in Article 28 of the Joint Undertaking's financial rules ⁽¹⁴⁾.

21. The utilisation rates for (A) operational commitment appropriations (after the reduction of operational appropriations), (B) operational payment appropriations and (C) payment appropriations for administrative expenditure were as follows:

Operational commitment appropriations	Operational payment appropriations	Payment appropriations for administrative expenditure
100 %	62 %	76 %

22. The programme manager's budget implementation estimates for the end of 2012 and the actual payments under the different calls were as follows:

⁽¹³⁾ Article 8.1 of the financial rules states 'The budget shall contain non-differentiated appropriations and differentiated appropriations. The latter shall consist of commitment appropriations and payment appropriations.'

⁽¹⁴⁾ Article 28 of the financial rules states 'Any amendment to the Annual Budget Plan, including the establishment plan, shall be the subject of an amending Annual Budget Plan adopted by the same procedure as the initial budget, in accordance with the provisions of the Statutes and Article 27'.

	Yearly calls for proposals				
	2008	2009	2010	2011	2012
JU estimates for budget implementation at the end of 2012	100 %	82,5 %	49,6 %	14,6 %	nil
Actual payments made at the end of 2012	69 %	46 %	25 %	3 %	nil

The above figures are evidence of a low budget implementation rate mainly due to a complex financial process for the closure of the projects.

Calls for proposals

23. The Council Regulation setting up the Joint Undertaking envisaged a maximum total budget of 410 million euro to cover operational expenditure. The actual implementation rate and the anticipated value of calls for proposals together represent 206 million euro ⁽¹⁵⁾, or only 50,2 % of the total budget.

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

24. During 2012, the Joint Undertaking intensified its efforts to establish and implement effective financial, accounting and management control procedures. However, as reported in the Court's report for 2011, further work is needed, in particular regarding the internal control standards ⁽¹⁶⁾ and the financial verification of cost claims ⁽¹⁷⁾.

OTHER MATTERS

Internal audit function and the Commission's Internal Audit Service

25. Article 6(2) of the Regulation setting up the Joint Undertaking stipulates that it must have an internal audit capability. However, as at the end of 2012, this important element of the internal control system had not yet been set up.

26. The mission charter of the Commission's Internal Audit Service was adopted by the Governing Board on 25 November 2010. However, the Joint Undertaking's financial rules have not yet been amended to include the provisions of the framework Regulation referring to the powers of the Commission's Internal Auditor.

⁽¹⁵⁾ Artemis Joint Undertaking estimate of 15 May 2013.

⁽¹⁶⁾ On 22 September 2010, the Governing Board approved the Joint Undertaking's internal control framework, which comprises 16 internal control standards. Although significant progress has been made, some of these standards are still not fully implemented.

⁽¹⁷⁾ Regarding the financial verification of costs, full reliance is placed on the certificates provided by national authorities. Apart from checks of the staff assigned to projects (used only as an indicator of the staff costs for implementing activities), the Joint Undertaking performs no other financial checks.

Monitoring and reporting of research results

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

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

29. Nevertheless, the way the results of this monitoring are reported needs to evolve further to fully meet the provisions of Article 7 of Decision No 1982/2006/EC⁽¹⁸⁾ and Article 27 of Regulation (EC) No 1906/2006⁽¹⁹⁾

Annual activity report

30. The Executive Director's declaration of assurance included in the 2012 annual activity report expresses a reservation concerning the *ex post* audit strategy. However, the information included in the reservation is not sufficient as regards the implementation of the *ex post* audit strategy. The main concern is that the Joint Undertaking has not analysed the audit strategies of the NFAs and the audit reports received from them (see paragraphs 13-17).

Follow-up of previous observations

31. During 2012, the Joint Undertaking continued to make progress on the formalisation of security policies. However, further work is needed to finalise the Disaster Recovery Plan⁽²⁰⁾.

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

For the Court of Auditors

Vitor Manuel da SILVA CALDEIRA

President

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

⁽¹⁹⁾ Article 27 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (OJ L 391, 30.12.2006, p. 1) requires the Commission to monitor the implementation of indirect actions on the basis of the periodic progress reports submitted. In particular, the Commission must monitor implementation of the plan for the use and dissemination of foreground. It must also set up and maintain an information system allowing for this monitoring to take place in an efficient and coherent manner across the Seventh Framework Programme.

⁽²⁰⁾ (a) financial circuits in case of disaster; (b) backup procedure for securing the databases by regular and frequent backup and off-site storage; (c) initial agreement to use Commission installations to access the financial systems (ABAC, SAP) and the internet.

ANNEX

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

<p>Areas of Union competence deriving from the Treaty</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>Competences of the Joint Undertaking</p> <p><i>(Council Regulation (EC) No 74/2008)</i></p>	<p>Objectives</p> <ul style="list-style-type: none"> — The Artemis 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. — The Artemis JU aims to achieve effective coordination and synergy of resources and funding from the industry, the Framework Programme, national R & D programmes and intergovernmental R & D schemes, thus contributing to strengthening Europe's future growth, competitiveness and sustainable development. — 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. — 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. — The JU will support R & 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 Artemis Joint Undertaking's public funding follows the principles of equal treatment, excellence and competition.
<p>Governance</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 Artemis 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>

Resources available to the Joint Undertaking in 2012	Budget 57 446 787 euro for commitments. 27 217 532 euro for payments (operational). Staff at 31 December 2012 15 posts provided for in the establishment plan (8 temporary staff and 7 contract staff) of which 13 posts were occupied; these were assigned to: operational activities (8); administrative tasks (5); mixed tasks (0).
Activities and services provided in 2012	See the Artemis Joint Undertaking annual activity report for 2012 at http://www.artemis-ju.eu/reference_documents

Source: Information supplied by the Artemis Joint Undertaking.

THE JOINT UNDERTAKING'S REPLIES

15-17. We acknowledge the importance of the *ex post* audit strategy and the pertinence of the Court's observations. However, we would like to bring additional information:

1. The various financing schemes and national rules in place in the different Member States imply that *ex post* audit is only feasible on completed projects. In that perspective a new modification of Artemis *ex post* audit strategy was submitted to the Governing Board on December and finally approved on January 2013.
2. We have received information from 15 Member States about their *ex post* audit strategy that corresponds to more than 95 % of the paid JU funding from the beginning until end of 2012.
3. The *ex post* audit reports and 'End of Project Certificates' received from the Member States have been analysed from two different point of view:
 - (a) From the technical point of view their consistency with the final technical review report of the project.
 - (b) From the financial point of view their consistency with the budgetary framework and the historical records of payments.
4. The subsidiarity principle and segregation of tasks that allocate the financial verification according with the national rules to the Member States and the technical verification according to the adopted rules to Artemis, has been the main guide in Artemis operations. However we understand the concerns of the Court and we will adopt a deeper analysis of the *ex post* audit reports from the Member States.

19. The 2012 budget, as adopted on 25 January 2012, did indeed not reflect differentiated payment appropriations for operational expenditure. But this has been corrected in an amended 2012 budget, adopted by the Governing Board on 4 December 2012.

20. We agree with the observation: an administrative mistake resulted in a Governing Board approval of a revised ALP, forgetting to approve separately an accordingly revised budget.

25. Artemis refer to the answer given in 2011 to the same issue and in the report dated 3 March 2013, on discharge in respect of the implementation of the budget of the Artemis Joint Undertaking for the financial year 2011, for the Committee on Budgetary Control, the following is stated:

'Takes note that at the end of 2011, the Joint Undertaking's internal audit capability had not yet been set up; recalls that the Commission's Internal Audit Service is the Internal Auditor of the Joint Undertaking since 2010 and that carried out a risk assessment exercise and a strategic audit plan for 2012-2014 was presented to the Governing Board of the Joint Undertaking; acknowledges that taking into account the size of the Joint Undertaking will perform also the role of the Internal Audit Capability;'

We understand that this last comment fully support our position.

26. Same position as last year: we agree with the observation, but, for reasons of simplification and efficiency, we have decided to amend our Financial Rules for this point, at the time we'll have to amend them for the ongoing revision of the General Financial Regulation.

27-29. Artemis welcomes the recognition from the Court on the efforts in this field and will try to enhance the efforts on reporting and dissemination.

30. See our answer to observations 15 to 17.

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

(2013/C 369/02)

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INTRODUCTION

1. The Clean Sky Joint Undertaking, located in Brussels, was set up in December 2007 ⁽¹⁾ for a period of 10 years.

2. The objective of the Clean Sky Joint Undertaking is to accelerate the development, validation and demonstration of clean air-transport technologies in the EU for earliest possible deployment ⁽²⁾. The research activities coordinated by the Joint Undertaking are divided into six technological areas or 'Integrated Technology Demonstrators' (ITDs).

3. The founding members of the Joint Undertaking are the European Union, represented by the Commission, and industrial partners as the leaders of the ITDs, together with the associate members of the ITDs.

4. The maximum EU contribution to the Clean Sky Joint Undertaking, to cover running costs and research activities, is 800 million euro to be paid from the budget of the Seventh Framework Programme ⁽³⁾. Other members of the Joint Undertaking are to contribute resources at least equal to the EU contribution, including in-kind contributions.

5. The Joint Undertaking started working autonomously on 16 November 2009.

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 ⁽⁴⁾ and the

reports on the implementation of the budget ⁽⁵⁾ for the financial year ended 31 December 2012; and

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

The management's responsibility

8. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽⁶⁾, 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 ⁽⁷⁾, 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 ⁽⁸⁾ 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

⁽¹⁾ 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).

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

⁽³⁾ 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.

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

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

⁽⁶⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁷⁾ 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.

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

Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Joint Undertaking are free from material misstatement and the underlying transactions are legal and regular.

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

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

Opinion on the reliability of the accounts

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

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 2012 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 2012 final amending budget included commitment appropriations of 205,4 million euro and payment appropriations of 167,9 million euro. The utilisation rate for commitment appropriations was 84 %, while the rate for payment appropriations was 75 %⁽⁹⁾. The lower rate for

⁽⁹⁾ In the case of grant agreements with partners, the utilisation rate for payment appropriations was only 60 %.

payment appropriations reflects delays in the implementation of the budget, mainly as a result of delays in the implementation of activities⁽¹⁰⁾ and in the period between the publication of calls for proposals and the signing of grant agreements⁽¹¹⁾.

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

16. During 2012 the Joint Undertaking further improved its management, administrative, financial and accounting procedures. One of the main achievements in 2012 was the implementation of the 'GMT tool', a specific application for managing financial information relating to the implementation of grant agreements with members. However, the GMT tool still presents some limitations as regards the completeness of the operational information managed⁽¹²⁾.

17. With regard to the *ex ante* control of cost claims submitted by Clean Sky members, the audit certificates accompanying the cost claims of two beneficiaries were found to include reservations about the contracts of the staff employed on the project; in one of them the audit certificate also included reservations on the indirect cost rates applied. Despite these significant exceptions, the Joint Undertaking released the payments.

18. The following weaknesses were noted in respect of the *ex ante* control of cost claims submitted by Clean Sky partners:

- the checklists used for the *ex ante* control of cost claims were not always complete,
- the verifying officers did not prepare technical acceptance reports on the partners' activities,
- in at least one case, the tasks of financial verification and authorisation were performed by the head of administration, which is contrary to the provisions of the financial procedures manual and the principle of segregation of duties,
- the Joint Undertaking's partners are generally late in submitting cost claims. At the time of the audit, at least 70 out of 292 cost claims had not been submitted to the Joint Undertaking on time. In 15 cases, the delay exceeded one year.

19. The recommendations made in the accounting officer's 2012 validation of the underlying systems need to be duly followed up⁽¹³⁾.

⁽¹⁰⁾ See paragraph 24.

⁽¹¹⁾ The average time between the publication of a call for proposals and the signing of grant agreements was 12 months in 2012.

⁽¹²⁾ Information still has to be included on adjustments to cost claims resulting from *ex post* audits or other sources, and on the registration of partial payments.

⁽¹³⁾ See paragraph 24 of the Court's 2011 report.

OTHER MATTERS

Internal audit function and the Commission's Internal Audit Service

20. In 2012, resource constraints within the organisation and the launch of the first *ex post* audit exercise compelled the internal auditor to focus on the Joint Undertaking's core processes, including the preparation of the 2012 accounts. As a result, the audit tasks scheduled in the 2012 audit plan could not be completed. A similar situation was reported by the Court in 2011 ⁽¹⁴⁾.

21. In 2012, the Commission's Internal Audit Service audited the annual planning process for the management of grants ⁽¹⁵⁾. The audit concluded that the existing internal control system gave reasonable assurance as to the achievement of the business objectives set for this process, except for two very important reservations concerning delays in the implementation of the programme and the system for evaluating the utilisation of resources ⁽¹⁶⁾.

22. The mission charter of the Commission's Internal Audit Service was adopted by the Governing Board on 31 March 2011. However, the Joint Undertaking's financial rules have not yet been amended to include the provisions of the framework Regulation ⁽¹⁷⁾ referring to the powers of the Commission's internal auditor.

Monitoring and reporting of research results

23. The Seventh Framework Programme (FP7) establishes a monitoring and reporting system covering the protection, dissemination and transfer of research results ⁽¹⁸⁾.

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

25. Nevertheless, the way the results of this monitoring are reported needs to evolve further to meet the objectives of Article 7 of Decision No 1982/2006/EC ⁽¹⁹⁾ and Article 27 of Regulation (EC) No 1906/2006 ⁽²⁰⁾.

Follow-up of previous observations

26. Significant progress has been made as regards the IT aspects of the Joint Undertaking's business continuity plan and disaster recovery plan. According to the Joint Undertaking, these plans will be completed by the end of 2013.

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

For the Court of Auditors

Vitor Manuel da SILVA CALDEIRA

President

⁽¹⁴⁾ See paragraph 25 of the Court's 2011 report.

⁽¹⁵⁾ Final Report on Grant Management — Annual Planning of 18 February 2013.

⁽¹⁶⁾ The IAS report points out that it is difficult for the Joint Undertaking to perform a proper evaluation of this area, since the ITD budget is presented at work package level while the Joint Undertaking monitors the implementation of activities at the level of deliverables.

⁽¹⁷⁾ Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

⁽¹⁸⁾ FP7 monitoring reports: http://ec.europa.eu/research/evaluations/index_en.cfm?pg=fp7-monitoring

⁽¹⁹⁾ Article 7 of Decision (EC) No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) requires the Commission to continually and systematically monitor the implementation of the Seventh Framework Programme and its specific programmes and regularly report and disseminate the results of this monitoring.

⁽²⁰⁾ Article 27 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (OJ L 391, 30.12.2006, p. 1) requires the Commission to monitor the implementation of indirect actions on the basis of the periodic progress reports submitted. In particular, the Commission must monitor implementation of the plan for the use and dissemination of foreground. It must also set up and maintain an information system allowing for this monitoring to take place in an efficient and coherent manner across the Seventh Framework Programme.

ANNEX

Clean Sky Joint Undertaking (Brussels)**Competences and activities**

Areas of Union competence deriving from the Treaty <i>(Articles 187 and 188 of the Treaty on the Functioning of the European Union)</i>	<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 71/2008 of 20 December 2007 setting up the Clean Sky Joint Undertaking (OJ L 30, 4.2.2008, p. 1).</p>
Competences of the Joint Undertaking <i>(Council Regulation (EC) No 71/2008)</i>	Objectives <ul style="list-style-type: none"> — The Clean Sky Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and in particular Theme 7, 'Transport (including aeronautics)' of the specific 'Cooperation' programme, — accelerating in the EU the development, validation and demonstration of clean Air Transport Technologies for earliest possible deployment, — ensuring coherent implementation of European research efforts aiming at environmental improvements in the field of Air Transport, — creating a radically innovative Air Transport System based on the integration of advanced technologies and full scale demonstrators (ITDs), with the target of reducing the environmental impact of air transport through significant reduction of noise and gaseous emissions, and improvement of the fuel economy of aircrafts, — accelerating the generation of new knowledge, innovation and the uptake of research proving the relevant technologies and fully integrated system of systems, in the appropriate operational environment, leading to strengthened industrial competitiveness.
Governance	<p>The JU's governing body is the Governing Board. The Executive team is led by an Executive Director. Industry is represented through various means, such as ITD steering committees and the National States Representative Group.</p>
Resources available to the Joint Undertaking in 2012	Budget 205 364 690 euro Staff at 31 December 2012 24 posts provided for in the establishment plan (18 temporary staff and 6 contract staff), of which 23 posts were occupied; these were assigned to: operational activities (17); mixed tasks (6).
Activities and services provided in 2012	<p>See annual activity report 2012 of the Clean Sky Joint Undertaking at www.cleansky.eu</p>

Source: Information supplied by the Clean Sky Joint Undertaking.

THE JOINT UNDERTAKING'S REPLIES

15. Without putting into question the overall implementation rates stated by the Court, the JU would like to point out that for the larger part of its operational expenditure ⁽¹⁾ the actual implementation rate for CA was 97 % while the rate for PA was 84 %. The JU had received further claims which were not yet validated by year end to the value of a further 5 %, which would bring the actual implementation to 89 % reflecting a stronger implementation of activities. However, the JU acknowledges that for the expenditure relating to calls for proposals, further improvements need to be implemented to enable the JU to close more reports on time and execute higher payment appropriations overall ⁽²⁾. Overall the JU has experienced a descending trend in the last calls, by permanently seeking to improve its workflow and processes for the purpose of decreasing the time to grant. The average time between the publication of the call for proposal SP1-JTI-CS-2012-01 launched on 13 January 2012 and the signature of the JU grant agreement was in fact 278 days (9,1 months).

16. In the meantime, and before establishing the final accounts 2012, the CSJU financial team worked on the two limitations of the 'GMT tool' highlighted by the Court, which referred to information on adjusting cost claims and registration of partial payments. Both issues have been integrated and are now in operation in the tool itself.

To further improve the support provided by the system, CSJU is currently testing a new functionality allowing to record and follow-up the registration of the in-kind contributions provided by the members. This function is expected to be operational before the end of 2013.

17. With regard to the exceptions noted by the auditors preparing the CFS for two cost claims pertaining to the year 2010 reviewed by the Court, the JU had taken many steps during the validation exercise 2011 to clarify the issues noted and to properly react on the limitations of scope presented in the CFS, keeping on hold the related cost categories of personnel and indirect costs.

In one of the cases mentioned by the Court, a CFS was provided by the same auditors on the subsequent cost claim (2011) for this beneficiary, which provided reasonable assurance to the JU on the eligibility of the costs claimed also for the period before (2010). Hence, the JU released the related costs on hold.

In the other case detected by the Court, in which the CFS had stated a lack of evidence for personnel costs (missing employment contracts) and which were nevertheless finally validated by the JU, the *ex post* auditor of the JU concluded subsequently, that the alternative evidence presented by the beneficiary provided sufficient assurance to consider the related costs as eligible.

In order to establish clarity for beneficiaries, for the JU's financial officers and for external auditors regarding specific recurrent problems in cost claims (e.g. alternative evidence for employment contracts), the JU has started to develop implementing rules (formal management decisions) setting the minimum requirements for the eligibility of costs.

⁽¹⁾ Grant agreements for members account for 75 % of the JU operational budget.

⁽²⁾ In July 2013, the JU has noted a 100 % improvement on the rate of 2012 at the same month due to actions taken.

In addition to dealing with specific individual issues, the JU is aware of the general need for improving the quality and clarity of some CFS and has organised, similar to the years before, a dedicated workshop for all beneficiaries, including in 2013 also the CFS auditors to ensure, that all actors understand and follow the necessary procedures.

18. The JU acknowledges that the steps to accept cost claims were not always properly formalised and appropriate evidence not added to the file.

For the technical acceptance of the partner's reports, the JU has now been provided with the same level of access to the electronic acceptance workflow as the Commission services. This will help the JU project officers to better document their technical acceptance.

For the case referred to by the Court, both functions were taken exceptionally under the responsibility of the Head of Administration and Finance, which at the respective date was acting as a back-up of the Executive Director during his annual leave according to the Executive Director's decision. As CS is a small team, during annual leave of many actors, this can happen in exceptional cases. The JU avoided this situation completely for the last trimester of the year even in cases of absences.

Regarding the GAPs reporting, the JU has meanwhile established a robust monitoring process. As part of this process beneficiaries have been systematically reminded about their reporting obligations. This will be followed up with the necessary legal notifications in cases of serious under-performance regarding the required reporting.

19. The recommendations of the accounting officer's 2012 report are followed up. The grant management tool (GMT) functionalities are further developed (see point 16) and CSJU has performed a further validation exercise on the new functionalities in August 2013. Physical inventory of the furniture items has been performed. CSJU uses the Datawarehouse for budgetary reporting.

20. The Internal Audit Officer has updated the strategic audit plan for the year 2013 taking into account the assurance audits not performed in the years 2011 and 2012.

Despite the assurance audit tasks being not accomplished in the year 2012 as planned, the IAO covered potential internal control risks by providing extensive consultancy services and direct management support. As a result of a comprehensive risk assessment, the IAO developed mitigating actions for the JU's management with a view to enhancing internal controls in all core business processes.

21. Concerning the audit carried out by the IAS on the annual planning process for grant management, the JU's management has agreed actions to mitigate the observations issued by the auditors. The implementation of these actions is currently ongoing and will be assessed by the IAS in due course.

22. From the year 2014, CSJU is planned to be transferred into a new PPP, which will have a different regulatory framework including revised Financial Rules. Hence, the change of the existing CS Financial Rules will not be implemented anymore, as they will be applicable only until the end of 2013. We expect the model financial regulation for PPPs falling under Article 209 of the General Financial Regulation of the Commission to become effective from January 2014. On this basis the new Financial Rules of CSJU will be established.

In any case, the provisions of the presently applicable Framework Regulation referring to the powers of the Commission's internal auditor have been applied by CSJU in practical terms since 2011.

25. The JU will reinforce its monitoring on the reporting related to the use and exploitation of projects results/foreground and to the dissemination activities in order to ensure compliance with Article 7 of Decision No 1982/2006/EC and with the rules of the JU GAMs and GAPs.

The JU will request specific reports on IPR protection, use and exploitation and on the dissemination achieved within the ITDs Programs and Projects in order to ensure compliance with their reporting duty and to dispose of an adequate level of information as a result of such a reporting exercise.

With regard to the compliance with Article 27 of Regulation (EC) No 1906/2006, it should be noted that pursuant to preamble 27, joint undertakings do not fall within the scope of the Regulation.

However, the JU shares the objectives of Article 27 and will monitor the implementation of the plan for the use and dissemination of foreground.

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

(2013/C 369/03)

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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 ⁽¹⁾ for a period of 10 years.

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

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

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

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

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

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

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

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

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

STATEMENT OF ASSURANCE

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

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

The management's responsibility

8. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽⁶⁾, 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 ⁽⁷⁾, 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.

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

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

⁽⁶⁾ OJ L 357, 31.12.2002, p. 72.

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

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

The auditor's responsibility

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

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

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

Opinion on the reliability of the accounts

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

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

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

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

⁽⁹⁾ 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'.

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

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

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

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

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

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

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

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

Implementation of the budget

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

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

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

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

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

Calls for proposals

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

OTHER MATTERS

Internal audit function and the Commission's Internal Audit Service

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

Monitoring and reporting of research results

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

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

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

⁽¹⁵⁾ Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

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

ENIAC Member States' contribution

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

Follow-up of previous observations

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

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

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

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

For the Court of Auditors

Vitor Manuel da SILVA CALDEIRA

President

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

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

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

ANNEX

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

Areas of Union competence deriving from the Treaty <i>(Articles 187 and 188 of the Treaty on the Functioning of the European Union)</i>	<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>
Competences of the Joint Undertaking <i>(Council Regulation (EC) No 72/2008)</i>	<p>Objectives</p> <p>The ENIAC Joint Undertaking contributes to the implementation of the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) and the theme 'Information and Communication Technologies' of the specific 'Cooperation' programme implementing the Seventh Framework Programme (2007-2013) of the European Community for research, technological development and demonstration activities. It shall, in particular:</p> <ul style="list-style-type: none"> — 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; — support the activities required for the implementation of the research agenda (R&D activities), notably by awarding funding to participants in selected projects following competitive calls for proposals; — promote a public-private partnership aiming at mobilising and pooling Community, national and private efforts, increasing overall R&D investments in the field of nanoelectronics, and fostering collaboration between the public and private sectors; — ensure the efficiency and durability of the JTI on nanoelectronics; — achieve synergy and coordination of European R&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&D schemes (EUREKA).
Governance	<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>
Resources available to the Joint Undertaking in 2012	<p>Budget</p> <p>127 996 970,00 euro for commitments</p> <p>42 475 500,00 euro for payments</p> <p>Staff at 31 December 2012</p> <p>15 posts provided for in the establishment plan (7 temporary staff and 8 contract staff), of which 15 posts were occupied; these were allocated to: operational activities (6); administrative tasks (5); mixed tasks (4).</p>
Activities and services provided in 2012	<p>See the ENIAC Joint Undertaking annual activity report for 2012 at www.eniac.eu</p>

Source: Information supplied by the ENIAC Joint Undertaking.

THE JOINT UNDERTAKING'S REPLIES

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

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

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

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

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

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

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

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

(2013/C 369/04)

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INTRODUCTION

1. The European 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 ⁽¹⁾ for a period of 10 years.

2. The objective of the IMI Joint Undertaking 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 ⁽²⁾.

3. The founding members of the Joint Undertaking are the European Union, represented by the Commission, and the European Federation of Pharmaceutical Industries and Associations (EFPIA). Any legal entity directly or indirectly supporting research and development in a Member State or in a country associated with the Seventh Framework Programme ⁽³⁾ may apply to become a member of the IMI Joint Undertaking.

4. The maximum EU contribution to the IMI Joint Undertaking, to cover running costs and research activities, is 1 billion euro to be paid from the budget of the Seventh Framework Programme. The EU and EFPIA, as founding members, are to contribute equally to the running costs, each with an amount not exceeding 4 % of the total EU contribution. Other members are to contribute to the running costs in proportion to their contribution to research activities. The research companies which are members of EFPIA are to contribute to the funding of research activities through in-kind contributions ⁽⁴⁾ at least equal to the EU financial contribution ⁽⁵⁾.

5. The Joint Undertaking started to work autonomously on 16 November 2009.

⁽¹⁾ 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).

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

⁽³⁾ 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. It is also a key pillar for the European Research Area.

⁽⁴⁾ According to Article 11(4) of the Annex to Regulation (EC) No 73/2008 setting up the Joint Undertaking, in-kind contributions are 'non-monetary contributions by the research-based pharmaceutical companies that are members of EFPIA with resources (such as personnel, equipment, consumables, etc.)'. The contribution from research companies must at least match the financial contribution of the Union.

⁽⁵⁾ According to Article 11(5) of the Annex to Regulation (EC) No 73/2008, 'the participating research-based pharmaceutical companies that are members of EFPIA shall not be eligible to receive any financial support from the IMI Joint Undertaking for any activity'.

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 IMI Joint Undertaking, which comprise the financial statements ⁽⁶⁾ and the reports on the implementation of the budget ⁽⁷⁾ for the financial year ended 31 December 2012; and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

8. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽⁸⁾, 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 ⁽⁹⁾, 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.

⁽⁶⁾ These include the balance sheet and the economic outturn account, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

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

⁽⁸⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁹⁾ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

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

The auditor's responsibility

9. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council⁽¹⁰⁾ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Joint Undertaking are free from material misstatement and the underlying transactions are legal and regular.

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

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

Opinion on the reliability of the accounts

12. In the Court's opinion, the Joint Undertaking's annual accounts present fairly, in all material respects, its financial

position as at 31 December 2012 and the results of its operations and cash flows for the year then ended, in accordance with the provisions of its financial rules and the accounting rules adopted by the Commission's accounting officer.

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

13. The Joint Undertaking's *ex post* audit strategy⁽¹¹⁾ was adopted by a Governing Board decision on 14 December 2010 and is a key tool for assessing the legality and regularity of the underlying transactions. 56 *ex post* audits had been completed as of June 2013, covering 4,4 million euro (37,3 % of the accepted IMI JU's contribution for the first call validated by June 2011)⁽¹²⁾. The detected error rate resulting from these audits was 5,82 %.

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

14. In the Court's opinion, except for the possible effects of the matter described in paragraph 13, the transactions underlying the annual accounts of the Joint Undertaking for the year ended 31 December 2012 are, in all material respects, legal and regular.

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

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

Implementation of the budget

16. The 2012 annual budget and implementation plan were adopted by the Governing Board on 22 December 2011. For 2012, where operational activities are concerned, IMI achieved a 96 % execution rate for commitment appropriations (351 million euro) and a rate of 100 % for payment appropriations (103 million euro). Despite this high level of budgetary execution, a significant amount in commitment appropriations (162 million euro) is still no more than a global figure, meaning that, while calls have been launched, no corresponding grant agreements have been signed. IMI's financial statements show 543 million euro of carried-forward contractual obligations, which indicates a significant need for funding until 2017.

⁽¹¹⁾ Article 12(4) of Regulation (EC) No 73/2008 setting up the Joint Undertaking states that 'the IMI Joint Undertaking shall carry out on-the-spot checks and financial audits among the participants of the Research Activities funded by the IMI Joint Undertaking'. *Ex post* audits may identify ineligible expenditure claimed by beneficiaries which is then subject to recovery procedures.

⁽¹²⁾ The *ex post* audits completed correspond to the first representative sample of 60 audits launched at the end of 2011 and finalised in 2013. *Ex post* audits for the second representative sample, based on IMI JU's funding related to cost claims validated between July 2011 and November 2012, are ongoing and therefore no definitive results are available.

⁽¹⁰⁾ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

17. A high level of payment and commitment appropriations for administrative expenditure in 2012 were still unused at year's end (26,81 % of commitment appropriations and 39,8 % of payment appropriations).

Calls for proposals

18. In 2012, the Joint Undertaking launched four calls for proposals and signed 11 grant agreements. In 2012 it committed 351 million euro, or almost 37 % of its total available budget (960 million euro maximum funding stipulated in Regulation (EC) No 73/2008), for research activities. The time needed to sign agreements decreased in 2012, from 413 days for the final grant agreements under the fourth call to 161 days for the sixth call.

19. At the end of 2012, the cumulative total of approved commitments for research costs was 736 million euro. IMI needs in principle to commit a further 224 million euro for research activities (23 % of the 960 million euro maximum) by the end of 2013, and EFPIA members need to commit an equivalent amount in kind. By the end of 2012 EFPIA had committed 706 million euro, and it now needs to commit 254 million euro more to match IMI's 960 million euro contribution.

Comments on key controls of the Joint Undertaking's supervisory and control systems

20. In 2012 the Joint Undertaking has continued developing adequate and comprehensive internal control systems. Nevertheless, further work is needed in documenting and updating operational and administrative procedures (especially for *ex post* and accounting closure activities), which will mitigate the risks of error and inconsistent practices.

OTHER MATTERS

Internal audit function and the Commission's Internal Audit Service

21. In 2011, the Commission's Internal Audit Service carried out a risk assessment exercise, and on 3 November 2011 the strategic audit plan for 2012-2014 was approved by the Governing Board.

22. The mission charter of the Commission's Internal Audit Service was adopted by the Governing Board on 8 March 2011. However, the Joint Undertaking's financial rules have not yet been amended to include the provisions of the framework Regulation ⁽¹³⁾.

23. In 2012 the Commission's Internal Audit Service carried out an assurance review of IMI's negotiation, grant agreement preparation and pre-financing processes. The IAS concluded that the existing internal controls provided reasonable assurance as to whether, with the exception of specific issues related to the management of conflicts of interests, documentation of the negotiation process and the related controls, and

an IT application used during the negotiation process, the business objectives had been achieved. The Joint Undertaking's action plan to address the IAS recommendations was validated by the IAS on 29 October 2012.

Monitoring and reporting of research results

24. The Seventh Framework Programme (FP7) establishes a monitoring and reporting system covering the protection, dissemination and transfer of research results ⁽¹⁴⁾.

25. In the grant agreements signed with members and other beneficiaries, the Joint Undertaking has included specific provisions governing intellectual property rights and the dissemination of research activities and results, in accordance with Article 15 of the Council Regulation setting up the Joint Undertaking. Implementation of these provisions is monitored by the Joint Undertaking at different stages of the funded projects.

26. The Joint Undertaking regularly presents specific reports on ongoing projects ⁽¹⁵⁾. However, as part of its objective to contribute to the implementation of the Seventh Framework Programme, which is stated in Article 2 of Regulation (EC) No 73/2008, the Joint Undertaking should also determine, together with the two Founding Members (the Commission and EFPIA), which information is to be made available for the general monitoring report that is regularly produced on FP7, and for other reporting tools of the Commission.

Follow-up of previous observations

27. In 2012 the business continuity plan and disaster recovery plan were finalised.

28. The accounting officer has reported on the validation of the accounting system on 27 September 2012 and most of the weaknesses identified were addressed by the end of the year. However, the validation of the accounting system does not yet cover *ex post* audit results.

29. The methodology for evaluating in-kind contributions ⁽¹⁶⁾ was approved by the Governing Board on 11 November 2011. These contributions are validated by way of *ex-ante* certification and *ex post* audits. In 2012, the first 14 certified methodologies for in-kind contributions were accepted and the first three *ex post* audits covering in-kind contributions were launched.

⁽¹³⁾ Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

⁽¹⁴⁾ FP7 Monitoring reports: http://ec.europa.eu/research/evaluations/index_en.cfm?pg=fp7-monitoring.

⁽¹⁵⁾ In October 2012 and March 2013 IMI provided information on its research outputs through bibliometric analyses of ongoing projects.

⁽¹⁶⁾ In-kind contributions are eligible costs incurred by the legal entities participating in activities but not reimbursed by the Joint Undertaking.

30. Article 12(5) of the Council Regulation setting up the Joint Undertaking does not recognise the right of the Court of Auditors to audit the in-kind contributions of EFPIA companies, although they are recorded in IMI's financial statements. It is estimated that these contributions will represent approximately 1 billion euro over IMI's lifetime.

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

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

ANNEX

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

<p>Areas of Union competence deriving from the Treaty</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 73/2008 of 20 December 2007 setting up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines.</p>
<p>Competences of the Joint Undertaking</p> <p><i>(Council Regulation (EC) No 73/2008)</i></p>	<p>Objectives</p> <p>The Innovative Medicines Joint Undertaking (IMI JU) shall contribute to the implementation of the Seventh Framework Programme (FP7) and in particular the theme 'Health' of the 'Cooperation' specific programme. It has the objective of significantly improving 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. In particular it shall:</p> <ul style="list-style-type: none"> — support 'pre-competitive pharmaceutical research and development' in the Member States and countries associated with FP7 via a coordinated approach to overcome the identified research bottlenecks in the drug development process, — support the implementation of the research priorities as set out by the research agenda of IMI JY, notably by awarding grants following competitive calls for proposals, — ensure complementarity with other activities of FP7, — be a public-private partnership aiming at increasing research investment in the biopharmaceutical sector in the Member States and countries associated with FP7 by pooling resources and fostering collaboration between the public and private sectors, — promote the involvement of small and medium-sized enterprises in its activities, in line with the objectives of FP7.
<p>Governance</p>	<p>The bodies of IMI JU are the Governing Board, the Executive Director and the Scientific Committee. The Governing Board is composed of ten Board members representing equally the two founding members of IMI: the European Commission and the European Federation of Pharmaceutical Industries and Associations (EFPIA). The Executive Director, the chief executive responsible for the day-to-day management of IMI JU in accordance with the decisions of the Governing Board, is supported by an executive office. The Scientific Committee is an advisory body to the Governing Board. The Joint Undertaking is also supported by two external advisory bodies: the IMI States Representatives Group and the Stakeholder Forum.</p>

Resources available to the Joint Undertaking in 2012	Budget ⁽¹⁾ 373 763 361 euro for commitments 113 209 163 euro for payments Staff at 31 December 2012 36 posts provided for in the establishment plan (29 temporary staff and 7 contract staff), of which 35 posts were occupied. 80 % of these resources are directly assigned to support operational activities.
Activities and services provided in 2012	See the IMI JU annual activity report for 2012, to be published at www.imi.europa.eu

⁽¹⁾ Including appropriations carried over from 2011.
Source: Information supplied by IMI JU.

THE JOINT UNDERTAKING'S REPLIES

13. IMI JU welcomes the positive conclusion of the Court on the legality and regularity of all transactions underlying the annual accounts of the Joint Undertaking with the only exception of material errors detected by IMI JU through its first *ex post* audits in relation to interim payments for first call claims made prior to the financial year under review.

The estimated representative and residual error rates of 5,82 % and 3,64 % respectively that are used as the basis of the Court's qualified opinion reflect the outcome of 56 audits covering 65 first call cost claims that were accepted in 2010 and 2011 when IMI JU was still in its start-up phase. In addition,

- (a) The vast majority of financial errors identified in these audits of the 2010 and 2011 claims were relatively small in amounts to be adjusted (less than EUR 5 000 in favour of IMI JU) and clearly arose from misunderstandings of the rules or a lack of attention to the detail of the provisions of the grant agreements. The audits were also, by design, focused in most cases on new or unaudited beneficiaries under the EU research programmes. For such audits a higher rate of error can be expected.
- (b) The estimated error rate does not reflect the outcome of audits of interim payments made to beneficiaries in 2012 for which a new representative sample of 40 *ex post* audits is being conducted in 2013 and the first preliminary results are expected at the end of the year. These new audits cover a broader population of claims and beneficiaries, including the first claims of the second call projects as well as the second and third reporting periods of first call projects.
- (c) IMI has since taken a series of concrete preventive and monitoring measures to help reduce the common types of errors and minimise the inherent underlying risks related to grant management. These measures have included:
 - (i) the review and strengthening of internal *ex ante* control policies and procedures to be carried out by staff for interim payments after the experience of the first 2 years of operation;
 - (ii) timely revisions of the IMI model grant agreement that have led to more clarity on the legal conditions and requirements of the grant;
 - (iii) the introduction of IMI specific financial guidelines in January 2012 and the issue of an updated version in June 2013, providing participants and their appointed independent auditors for the certificates of financial statements with comprehensive information and guidance on the provisions of the IMI model grant agreement;

- (iv) the organisation of frequent financial workshops for participants which focus on recurrent causes of errors and prevention; and
- (v) the introduction in 2012 of integrated business solutions through IMI JU's dedicated submission and project management Information Technology tool SOFIA (Submission OF Information Application) allowing electronic submission and checking of cost claims, thereby reducing the margin of error.

In parallel, the appropriate controls have been taken by IMI JU to ensure that errors in favour of the Joint Undertaking that were detected from the first finalised *ex post* audits are duly corrected. This is being systematically achieved either through a recovery order or as a set-off against a future payment. In addition, errors that are considered as systematic are also being extended to non-audited claims submitted to the same audited beneficiary.

Moreover, IMI JU has continued to implement an intensive annual programme of *ex post* audits covering 40 % of the total value of interim payments made in the previous year in line with the Ex-Post Audit Strategy approved by the Governing Board. These audits have been highly effective and reliable basis for assessing and monitoring the overall regularity and legality of interim payments on a multiannual basis, and as a basis for detecting and correcting errors found in the audited claims. The Joint Undertaking also maintains close coordination with the European Commission and its agencies involved in the Seventh Framework Programme and shares information on common beneficiaries in order to optimise its audit coverage and effectively mitigate risks of non-compliance.

IMI JU remains committed to managing its funding through a trust-based approach with the participants in the projects whilst ensuring sufficient control and accountability. The risk-based preventive and corrective actions already taken by the Joint Undertaking provide a sufficient basis for sound financial management and the gradual reduction of the risk of error in interim payments to beneficiaries on a multiannual basis. 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.

With many projects only starting to generate expenditure, particularly in the case of projects from Calls 3 to 8, the full impact of IMI's actions can only be seen in the longer term, once more projects submit cost claims and *ex post* audits cover a greater part of the total population of beneficiaries.

17. The budget was based on the adopted Legislative Financial Statements and its execution followed the principles of sound financial management. Moreover, none of the funds budgeted for running costs were lost and unutilised funds from the European Commission were transferred to research activities. It is also important to keep in view that 50 % of the budget for running costs is financed through EFPIA.

19. Effective measures have been in place in 2013 to increase and accelerate the commitment of EU funding and the matching in-kind contributions from EFPIA members through the launch of several Calls for proposals throughout the year.

20. IMI JU agrees with the Court's assessment on internal control systems. The Joint Undertaking has established a mature, effective and reliable internal control system. This includes a systematic review and updating of policies and procedures in line with the internal control priorities set by management before the start of the year. The observations of the Court reflect IMI's set priorities for 2013 which will be duly implemented by the end of the year.

22. This issue has been superseded with the publication on 30 September 2013 of the Delegated Act of the European Commission on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council. IMI JU's financial rules will be duly amended to reflect this development.

23. In the final audit report of the Internal Audit Service of the European Commission, the IAS proposed 11 recommendations on how IMI can address each of these issues. All of these were transformed into concrete actions and implemented by IMI JU during the course of the fieldwork of the European Court of Auditors between August 2012 and July 2013. During this period the IAS also verified and closed 10 of the 11 recommendations, with the remaining one to be closed after an on-the-spot verification of IMI JU's actions.

26. IMI JU has already taken action on the Court's observation. The requirements for the general monitoring report have in fact been defined and the data was given to the European Commission in September 2013 for integration in CORDA.

28. With regard to the Court's comments on the scope of the validation of the accounting system, IMI JU highlights the fact that the *ex post* audit results were implemented in 2013 and will be first reflected in the 2013 Accounts.

REPORT**on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2012, together with the Joint Undertaking's replies**

(2013/C 369/05)

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INTRODUCTION

1. The European Joint Undertaking for ITER ⁽¹⁾ and the Development of Fusion Energy (F4E) was set up in March 2007 ⁽²⁾ 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 ⁽³⁾:

(a) to provide the contribution of Euratom to the ITER International Fusion Energy Organisation ⁽⁴⁾;

(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 and have expressed their wish to become members (as at 31 December 2012: 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, which comprise the financial statements ⁽⁵⁾ and the reports on the implementation of the budget ⁽⁶⁾ for the financial year ended 31 December 2012; and

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

The management's responsibility

6. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽⁷⁾, 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 ⁽⁸⁾, 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.

⁽¹⁾ ITER: International Thermonuclear Experimental Reactor.

⁽²⁾ 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).

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

⁽⁴⁾ The ITER International Fusion Energy Organisation was set up in October 2007 for an initial period of 35 years to implement the ITER project, which aims to demonstrate the scientific and technological feasibility of fusion energy. The Members are Euratom, the People's Republic of China, the Republic of India, Japan, the Republic of Korea, the Russian Federation and the United States of America.

⁽⁵⁾ The Court received the annual accounts on 1 July 2013 and a corrigendum to these accounts on 8 October 2013. These include the balance sheet and the economic outturn account, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

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

⁽⁷⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁸⁾ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

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

The auditor's responsibility

7. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council ⁽⁹⁾ 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 2012 and the results of its

operations and its cash flows for the year then ended, in accordance with the provisions of its financial rules and the accounting rules adopted by the Commission's accounting officer.

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

11. In the Court's opinion, the transactions underlying the annual accounts for the 1 year ended 31 December 2012 are, in all material respects, legal and regular.

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

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

Presentation of the accounts

13. In the notes to the financial statements, the table and the information included under Heading 4.3.1.1 'ITER Procurement Arrangements with the ITER International Organization' reflect the procurement arrangements signed (column 3) and the procurement arrangements credited so far (column 4). It does not show, however, the degree of advancement of the works in progress. This information is essential to reflect the status of the activities carried out so far by F4E as regards the procurement arrangements signed with the ITER International Organisation.

Implementation of the budget

14. The utilisation rates for the available commitment and payment appropriations were 99,9 % and 94,5 %, respectively. However, the utilisation rate for the payment appropriations referred to in the 2012 initial budget was 71 % ⁽¹⁰⁾. Of the 1 440 million euro in commitment appropriations available for operational activities, only 55,4 % was implemented through direct individual commitments, while the remaining 44,6 % was implemented through global commitments.

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

15. The Court of Auditors previously reported that the Joint Undertaking's internal control systems had not been fully established and implemented. Although significant progress was made during 2012, a number of actions still need to be implemented:

⁽⁹⁾ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

⁽¹⁰⁾ The original budget for payment appropriations was 503 million euro. It was then reduced to 377 million euro through the amending budgets of 28 March and 11 December 2012 (this amount includes the 2011 carry-over of 32,9 million euro in assigned revenue).

— a management system to regularly monitor the validity of project cost estimates and report on cost deviations (see paragraph 29),

— the accounting officer's validation of the underlying systems was initiated in 2012, but direct testing of the Joint Undertaking's key controls at transaction level was still required at the end of the year. In 2013 the Joint Undertaking contracted a consulting firm ⁽¹¹⁾ to complete the compliance validation work of the accounting system. While the overall conclusion is that F4E's accounting system is compliant with DG Budget Guidance, F4E's Financial Regulation, policies and procedures, several exceptions were reported ⁽¹²⁾,

— further efforts are necessary with regard to the systematic verification, prior to payment, of technical acceptance reports and the audit certificates on financial statements (see paragraphs 16 to 20),

— a comprehensive overall control and monitoring system for grants and operational contracts was presented to the Governing Board in December 2012 (see paragraph 23),

— the action plans adopted by the Joint Undertaking in response to internal audits ⁽¹³⁾ have not been fully implemented. As regards the Commission's Internal Audit Service report on the preparation of procurement arrangements ⁽¹⁴⁾, all ten recommendations are being implemented,

⁽¹¹⁾ Notwithstanding the added value of the consulting firm report, the exercise of validating the accounting systems falls under the responsibility of the Accounting Officer as laid down in Article 46 of the JU's Financial Regulation.

⁽¹²⁾ Among other exceptions, the report points out that the deadlines adopted in the action plans in response to the Internal Auditor, the Commission Internal Audit Service and the Court's reports have expired for many of the actions without having achieved full implementation. It also points out that the local reporting portal (DWH) does not yet provide an effective reconciliation between the accounting and the project management system.

⁽¹³⁾ Action plans in response to the internal audits on financial circuits, grant management, expert contracts, operational pre-procurement activities and procurement in the area of ITER buildings were adopted by the Joint Undertaking on 30 June 2010, 14 February 2011, 19 November 2011, 1 March 2012 and 21 September 2012 respectively.

⁽¹⁴⁾ Commission IAS report of 7 November 2012 on procurement arrangements.

— the corporate risk management system was presented to the F4E Audit Committee in July 2012. Ten areas of very high risk were identified. ⁽¹⁵⁾ Mitigating actions have yet to be implemented.

Operational procurement and grants

16. Negotiated procedures constituted 40 % ⁽¹⁶⁾ of all operational tendering procedures launched in 2012 ⁽¹⁷⁾ (65 % in 2011). The Joint Undertaking still needs to increase the competitiveness of procurement procedures and further reduce the use of negotiated procedures ⁽¹⁸⁾. Regarding grants, the average number of proposals received was only one per call.

17. Grant agreements concluded by the Joint Undertaking do not have a provision similar to Article II.25 of the European Commission's model grant agreement ⁽¹⁹⁾, which stipulates financial penalties for beneficiaries that make false declarations or seriously fail to meet their obligations. In one grant agreement the Joint Undertaking accepted the whole amount of indirect costs as eligible despite a scope limitation in the audit certificate in respect of consumables ⁽²⁰⁾.

18. The Joint Undertaking has not developed an internal procedure to systematically assess the risk of a payment being made while a non-conformity report is under review. In one payment related to an operational contract, the Joint Undertaking validated an invoice as ready for payment despite a major situation of non-conformity noted in the technical acceptance report, which was still under review by the ITER Organisation at the date of payment.

⁽¹⁵⁾ Among others: low budget implementation, lack of competition in operational procurement, delays in the reception of data from the ITER Organisation.

⁽¹⁶⁾ Out of this percentage, 25 % can be considered as exceptional negotiated procedures as the estimated contract value exceeded 250 000 euro.

⁽¹⁷⁾ 20 negotiated procedures out of 50 tendering procedures launched for operational procurement in 2012.

⁽¹⁸⁾ According to the Commission Vademecum on public procurement, negotiated procedures should be the exception rather than the rule.

⁽¹⁹⁾ Article II.25, on financial penalties, states that: '1) A beneficiary that has been guilty of making false declarations or has been found to have seriously failed to meet its obligations under this grant agreement shall be liable to financial penalties of between 2 % and 10 % of the value of the financial contribution of [the Union] [Euratom] received by that beneficiary. The rate may be increased to between 4 % and 20 % in the event of a repeated offence within five years following the first infringement.'

⁽²⁰⁾ The consumables item, which could not be quantified or verified, was part of the total 0,76 million euro in indirect costs submitted by the beneficiary.

19. For joint procurement procedures, the Joint Undertaking has not yet established appropriate criteria to verify whether the procurement rules of the other contracting authority are equivalent to its own, as required by Article 83 of the Joint Undertaking's implementing rules ⁽²¹⁾.

20. As regards the five operational procurement procedures audited, the following weaknesses were identified:

- in two procurement procedures, the Joint Undertaking did not advertise the contract by means of a pre-information notice, although the Commission Vademecum on public procurement advises that this be done in order to increase visibility and competition,
- in one procurement procedure, the early warning system (indicating, inter alia, whether the natural or legal person concerned is in a situation of exclusion) was not consulted before the award because the Joint Undertaking had no access at that time to the system,
- in one case, the Joint Undertaking made an advance payment of 10 % of the total amount although the bond provided to the Joint Undertaking was issued by a commercial bank that did not meet the BBB rating stipulated in the contract,
- in two procedures, the cost estimates were greatly underestimated ⁽²²⁾. This shows the difficulties faced by the Joint Undertaking in calculating the cost estimates of the EU contribution to the construction phase of the ITER project (see paragraphs 28 to 31).

⁽²¹⁾ According to Article 83(1) and (2) of the implementing rules to the F4E Financial Regulation, in the event of a joint procurement procedure between the Joint Undertaking and another contracting authority, the Joint Undertaking's procurement procedures shall apply. Where the share pertaining to or managed by the other contracting authority in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the Director, with the prior approval of the Executive Committee, may decide that the procurement procedures applicable to the other contracting authority may apply, provided that they can be considered as equivalent to those of the Joint Undertaking.

⁽²²⁾ In one of the procedures there was a difference of 9,3 million euro between the initial estimate of 2,8 million euro and the value of the contract resulting from the negotiated procedure, which was 12,1 million euro. In the other there was a difference of 3,7 million euro between the initial estimate of 2,3 million euro and the final estimate of 6 million euro.

Overall control and monitoring of operational procurement contracts and grants

21. The Joint Undertaking has a system for performing audits ⁽²³⁾ at the level of contractors with the aim of checking compliance with the quality assurance requirements ⁽²⁴⁾.

22. The Joint Undertaking visited six beneficiaries of grant agreements for *ex post* financial and compliance controls on grants. The errors detected during these controls amounted to 1,3 % of the total value of the cost claims audited (8,3 million euro).

23. In response to previous Court observations ⁽²⁵⁾, the Joint Undertaking presented, in November 2012 to the F4E Audit Committee and in December 2012 to the Governing Board, two documents on the overall control and monitoring strategy and the multiannual *ex post* control strategy, by which it extended its quality audits to include the verification of financial aspects of operational contracts.

OTHER MATTERS

Intellectual property rights and industrial policy

24. On 28 March 2012 the Governing Board adopted the F4E policy on intellectual property rights and the dissemination of information, and on 29 June 2012 it adopted detailed rules for implementing this policy. The F4E industrial policy was adopted by the Governing Board on 10-11 December 2012. A plan to systematically monitor and report on the observance of the rules adopted on intellectual property rights and the dissemination of information, and on compliance with the F4E industrial policy, has not yet been implemented.

Late payment of membership contributions

25. The 2012 contributions by eight members, totalling 1,2 million euro, were subject to delays ranging from 15 days to 4 months.

⁽²³⁾ Of the 25 quality audits carried out during 2012, 14 were closed by April 2013. The audits qualified two projects' performance as below standard, identified 12 situations of non-conformity with the procedures and 168 areas for improvement.

⁽²⁴⁾ The audits covered the quality plan, situations of non-conformity, 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.

⁽²⁵⁾ Paragraph 23 of the Court's 2011 report.

Rules implementing the Staff Regulations

26. F4E has not yet adopted all the rules implementing ⁽²⁶⁾ the Staff Regulations, as required by Article 10(2) of the Annex to the F4E Statutes.

EU contribution to ITER construction phase

27. The Council conclusions adopted on 7 July 2010 ⁽²⁷⁾ on the ITER status and the possible way forward approved a final figure of 6,6 billion euro.

28. On 13 January 2012, the internal auditor's report on pre-procurement activities for the ITER project pointed out that: (i) neither of the two cost estimating exercises carried out by that date had broken down the cost estimates of the EU contribution to the ITER construction phase by contract; (ii) the Joint Undertaking was exposed to significant financial risks linked to the evolution of commodity prices; and (iii) the Joint Undertaking did not yet have in place a tool for regularly monitoring the validity of the estimates and reporting on potential cost deviations.

29. In its progress report of September 2012 to the European Competitiveness Council, the Joint Undertaking stressed that there was a risk of cost deviations in the range of 180-250 million euro, or 3 % of the latest estimated project cost of 6,6 billion euro.

30. On 13 June 2013, the Joint Undertaking completed an exercise to update the cost estimate of the EU contribution to the construction phase of the project. As a result of this exercise, the current risk of increase is estimated at 290 million euro, or 4,4 % of the budget approved by the

Council. According to the Joint Undertaking, there has been a significant escalation in the costs of the components to be provided to the ITER project. These are mainly attributed to the system engineering and configuration management processes at the overall ITER project level. The Joint Undertaking also considers the current ITER reference schedule to be unrealistic.

31. In this regard, the cost estimates for two of the five operational procurement procedures selected for audit were significantly underestimated (see paragraph 20).

Annual activity report

32. According to Article 43 of the F4E Financial Regulation the annual activity report shall indicate the results of the Joint Undertaking's operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. However, because of the date of availability of the revised cost estimation (see paragraph 30), the 2012 F4E annual report does not include up to date information on the risks associated with deviations from the approved 6,6 billion euro budget.

Follow-up of previous observations

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. At the time of the audit (April 2013), this had not occurred.

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

For the Court of Auditors

Vitor Manuel da SILVA CALDEIRA

President

⁽²⁶⁾ Inter alia on recruitment of temporary agents, classification in grade and step upon engagement, part-time work, appraisal of the Director and modified provisions on family leave, parental leave and pension rights.

⁽²⁷⁾ Council conclusion on ITER status of 7 July 2010 (Ref.11902/10).

ANNEX

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

Areas of Union competence deriving from the Treaty <i>(Articles 45 and 49 of the Treaty establishing the European Atomic Energy Community)</i>	<p>Chapter 5, on 'Joint Undertakings', of the Treaty establishing the European Atomic Energy Community, and in particular:</p> <p>— Article 45</p> <p><i>'Undertakings which are of fundamental importance to the development of the nuclear industry in the Community may be established as Joint Undertakings within the meaning of this Treaty, in accordance with the following Articles ...'</i></p> <p>— Article 49</p> <p><i>'Joint Undertakings shall be established by Council decision. Each Joint Undertaking shall have legal personality.'</i></p>
Competences of the Joint Undertaking <i>(Council Decision 2007/198/Euratom)</i>	<p>Objectives</p> <p>— To provide the contribution of the European Atomic Energy Community (Euratom) to the ITER International Fusion Energy Organisation.</p> <p>— To provide the contribution of Euratom to Broader Approach activities with Japan for the rapid realisation of fusion energy.</p> <p>— 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).</p> <p>Tasks</p> <p>— Oversee preparation of the ITER project site,</p> <p>— provide components, equipment, materials and other resources to the ITER Organisation,</p> <p>— manage procurement arrangements vis-à-vis the ITER Organisation and, in particular associated quality assurance procedures,</p> <p>— prepare and coordinate Euratom's participation in the scientific and technical exploitation of the ITER project,</p> <p>— coordinate scientific and technological research and development activities in support of Euratom's contribution to the ITER Organisation,</p> <p>— provide Euratom's financial contribution to the ITER Organisation,</p> <p>— arrange to make human resources available for the ITER Organisation,</p> <p>— interface with the ITER Organisation and carry out any other activities in furtherance of the ITER Agreement.</p>
Governance	<p>Governing Board, Director and other bodies</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 & Finance Committee, Audit Committee.</p> <p>Internal auditor: internal audit capability and the European Commission's Internal Audit Service (IAS) since 1.1.2012.</p> <p>External auditor: European Court of Auditors.</p> <p>Discharge authority: the European Parliament, on a recommendation from the Council.</p>
Resources available to the Joint Undertaking in 2012	<p>Budget</p> <p>379,5 million euro final revenue (payment appropriations), of which 76,5 % funded by Community contribution.</p> <p>Staff at 31 December 2012</p> <p>— 262 EU official and temporary agent posts provided for in the establishment plan, of which 218 posts were occupied,</p> <p>— 125 contract agent posts occupied.</p>
Activities and services provided in 2012	<p>For detailed information concerning the activities and services provided in 2012, please consult the F4E website at http://www.fusionforenergy.europa.eu/</p>

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

THE JOINT UNDERTAKING'S REPLIES

13. As far as the ITER Procurement Arrangements are concerned, the official progress of the work is given, from the value point of view, by the Credit Allocation Scheme (CAS) milestones that F4E earn yearly on the way to the completion of the specific procurement. This is what ITER IO officially acknowledges as far as the progress is concerned. However, the value of the CAS milestones is peaked towards the end of the procurement and therefore the acknowledgment through credits is skewed. Therefore indeed the PA progress is directly monitored through the CAS milestones, but also indirectly through the achievement of the milestones of the associated contracts.

14. It should be noted that the ratio of individual commitments has increased by 13 % since 2012 and that the plan for implementation of the 2013 budget indicates that the percentage of individual commitment should be up to 80 % at the end of 2013. F4E is therefore progressively recovering its delays in the actual implementation of the contracts linked to specific annual budget/work programme. In addition the forecast of implementation confirms the use in 2013 of the full amount available on 2012 Global commitments.

15. F4E considers that the overall internal control system is in place and evolves with the organisational needs. The establishment and implementation of an internal control system evolves with the organisational changes and should be considered as a continuous ongoing process.

Since its establishment, F4E has taken the development of its overall control strategies as one of its key priorities. Various control systems have already been put in place and are providing management with the necessary assurance. In addition, in 2012, a team directly reporting to the Director was established dedicated to develop and implement the overall control strategy of F4E, to monitor the effectiveness of the internal control environment and to follow up all internal and external audit recommendations.

Aside from the overall conclusion and without significant impact on the validation, the independent consulting firm indeed identified several exceptions and/or areas for improvement. It needs to be noted that a number of these areas had been previously detected in other audits and/or assessments and have already been addressed in those action plans. The main issue addressed by the independent audit firm and requiring immediate action referred to operational asset. This recommendation has immediately been brought to the attention of F4E management and corrective measures have been formulated within an action plan.

Since its set up, the Joint Undertaking has placed extensive effort in the development of an integrated management and control Information System which allows the close monitoring of cost estimates and deviations (see paragraph 29).

In relation to the follow up of internal and external audits, it should be noted that despite the observation made by the ECA, the Audit Committee, in its meeting of 14 June 2013, recognised the improvements and expressed their appreciation for the progress made in the implementation of the action plans.

Risk Management has been established and is systematically embedded at project level. A Risk Manager has been assigned to follow up the risk register and its mitigating actions. The risk log is being updated for each GB meeting.

16. Due to their low average value, negotiated procedures correspond to 40 % of yearly operational procurement procedures but only to less than 10 % of the JU's yearly commitment: in this respect the use of low-value negotiated procedures allows the JU to focus the limited internal resources on the high value/high risk procurements, with a beneficial risk mitigating effect.

In relation to the very low number of proposals received for the grant calls, the JU acknowledges the issue: so far all the attempts to improve and widen participation to the calls for proposals were unsuccessful. This is deemed to be due to the extremely specialist nature of F4E's grants, which are only of interest to a small number of applicants in Europe.

It should be noted that in its study 'Potential for reorganization within the ITER project to improve cost-effectiveness' ordered by the Budgetary Control Committee of the European Parliament, Ernst & Young agreed that the regulations imposed on F4E are not well adapted to F4E's very particular objectives and constrain F4E's capacity to innovatively approach cost-effectiveness.

17. With respect to the first conclusion, F4E agrees with the statement that penalties are not foreseen in its Model Grant Agreement (MGA). The draft of the F4E Financial Regulation approved by the F4E Governing Board in 2007 foresaw the possibility for F4E to impose such penalties. This possibility has been removed from the text following a specific request from the European Commission submitted during a consultation process under Article 5 of the Statutes.

However F4E believes that absence of such provision in the MGA does not expose significantly F4E to the risk of not receiving essential deliverables in due course, or receiving deliverables which do not meet quality standards. Under the MGA F4E may always terminate the grant agreement and require in case of non-performance or poor performance, breach of substantial obligations and other circumstances specified in the MGA reimbursement of all or part of F4E's financial contribution.

With respect to the second conclusion, it should be pointed out that following the scope limitation of the Audit Certificate, F4E requested the beneficiary clarifications regarding indirect costs and subsequently requested the audit firm to present an amendment to the audit certificate. The payment was authorised based on the additional evidence received.

18. F4E would like to confirm that in the reorganisation of its financial circuits in June 2013, it took into account the preliminary finding of the auditors. To this extent, additional controls have been put in place at the level of the Technical Acceptance Report (TAR) whereby request for payments can only be passed if there are no outstanding non-conformities. In addition, the financial agents now also perform a review of the TAR, ensuring that technical report and the invoice are in conformity with the contractual conditions.

19. F4E verifies the equivalency of the other contracting party procurement rules with F4E procurement rules for each joint procurement for which the other party rules are used as required under Article 83 of F4E IR. F4E agrees with the Court that it may be appropriate to establish common standards upon which such equivalence will be verified by F4E on uniformed basis in the future joint procurements although it is not strictly required under Article 83 IR.

20. In relation to the use of pre-information notices, it was not the intention of the JU to use the pre-information notice for shortening the minimum time limit for receipt of tenders therefore it was considered more useful for visibility and competition purposes to hold information days with European industry before the publication of the contract notice, giving to economic operator the possibility to raise questions on general technical and administrative aspect of the call and also to liaise with possible business partners.

In relation with the non-compliance with Article 85 FR, the JU agrees with the findings by the Court; it must be pointed out that in the meanwhile the JU has been granted access to the EWS and the check is now performed for all awards.

At the time of the signature of a contract in December 2012, F4E was provided with a guarantee from a bank) which did not fulfil the rating requirements of the contract (to be at least BBB rated). This situation was detected by the Finance Team, at the time of the validation of the pre-financing payment, and the guarantee was consequently rejected. The Contractor was requested to provide a valid guarantee from a bank with the required rating. However, closing of the accounts was approaching and the Contractor provided sufficient assurance concerning the ongoing negotiations with another bank, the AD decided to proceed and authorise the pre-financing payment. This decision was based on the assessment that the damages caused to F4E by the loss of the payment appropriations would be much bigger than the risk of not being provided with a new guarantee, taking into account that pre-financing payment was still guaranteed by the initial bond. Finally the new bank guarantee was provided in the first week of February.

For what concerns one of the referenced procedures the cost estimate was indeed not correct, as it was not properly updated during the evolution of the design (before the call publication).

However for what concerns the second procedure, the large difference between the initial estimate and the first offer received is understood to be the result of a monopoly situation existing at the time in the European market.

The JU cancelled the first call and republished the same scope breaking it up into lots to allow for a wider competition. This resulted in a total price much closer to the JU's original estimate, in particular considering that the division in lots had detrimental effects on economies of scale and caused an increase in the non-recurring costs.

21-23. In 2013, F4E continued the further implementation of its overall control and monitoring strategy and the *ex post* and verification strategy which had been presented to its Governing Board in December 2012.

As regard the *ex post*, a pilot exercise was launched with an external audit firm to assess the eligibility of cost claimed by contractors in the frame of grant agreements. The outcome of the pilot exercise will permit F4E to fine-tune and further harmonise its *ex post* control processes.

Meanwhile, the annual planning of the Quality Assurance audits continues to be implemented as scheduled. Based on comments made by the Court of Auditors in previous annual reports, the scope of the QA audits is presently being re-assessed through a pilot exercise in order to extend with financially oriented checks on operational contracts, the so called 'lion *ex post* financial verifications of procurement contracts'.

It needs to be mentioned however, that the Audit Committee of F4E's Governing Board formulated its opinion against the proposed actions in response to the Court's observations on *ex post* financial verifications of procurement contracts in its 2011 annual report, as it goes against the principle of contracts agreed upon price. The Audit Committee requested to the Court to reassess their position in that regard. As a result, F4E redesigned its financial verifications of operational contracts as mentioned by the Court.

24. On 26 and 27 June 2013 the Governing Board adopted the document on the 'Implementation of the Industrial Policy' with the agreement of the European Commission. Such Policy together with the ones previously adopted establishes the policy and framework for the management of the Intellectual Property within Fusion for Energy.

The practical implementation of our obligations for the management of IP can be summarised as follows:

- The Market Analysis Policy includes provisions on the treatment of Intellectual Property in advance of the procurement process to guarantee the compliance of the procurement strategy with the Intellectual Property guidelines of F4E's Industrial Policy.
- The Contract Signature Checklist monitors the existence of the Background Declaration.
- The final observance of the IP rules by the contractor is monitored through the Technical Assessment Report whereby Technical Project Officers confirm that the deliverables include a report on IP and that such report is in line with the subject matter of the contract and it is consistent with the technical reported results.

Finally, to guarantee the confidentiality of the IP related information managed in our contracts an Information Security Policy is being implemented. The policy, will foresee the electronic storage on a dedicated server of IP confidential information. The adoption of such policy is imminent and its implementation for the management of IP related information should be ready by January 2014.

25. Although F4E agrees with the factual conclusion of the Court of Auditors, it would need to stress that since the observation was first made by the auditors in 2008, F4E has taken all necessary actions to redress the situation. The Governing Board has taken its responsibility to address the issue, while systematic reminders are sent to the late contributor and Member States that do not pay on time are requested to pay late interest according to Article 48 of the IR. Unfortunately, the internal procedures of some of the Member States make it sometimes impossible for them to respect the deadlines established by F4E's Financial Regulation.

As concerns the budgetary impact, it is important to underline that the membership contributions subject to the Court's observation represents 0,6 % of F4E's budget and in consequence; the delays a fraction of this percentage.

Finally, by the end of the budget year 2012, only an amount of 1 085 euro remained due.

Therefore late payments of membership contributions in 2012 had no measureable impact on the implementation of the budget and F4E.

Meanwhile, F4E will continue to ensure that the membership contributions will be paid within the shortest delay.

26. F4E agrees with the comment. It is correct that at the time of the audit, the implementing rules mentioned had not been formally adopted. However, we would like to underline that in order to avoid legal vacuum, the Director of Fusion for Energy had adopted decisions stating that the model implementing rules applicable to agencies or the Commission rules were applying to the Joint Undertaking by analogy (except if otherwise mentioned). In this respect, Fusion for Energy provided itself with a proper and transparent reference framework, which was consistently applied by the organisation until the formal rules adopted by the Governing Board were in place.

Concerning this last point, significant progress was made since the audit took place. The following implementing provisions have indeed been formally adopted by the Governing Board in December 2012: criteria of classification in grade and step upon engagement, part-time work, appraisal of the Director, family leave, parental leave and transfer of pension rights.

In relation with the provisions on the engagement and use of temporary, on appraisal, on prevention of harassment, certification and attestation, the IRs were sent to the Commission for approval between January and February 2013 (after conclusion of the internal consultation process) and F4E is expecting the Commission's approval before it can be adopted by the GB. This is expected to take place in December 2013.

The consultation of the Staff Committee is currently ongoing for the Implementing Rules on leaves and absences, sickness absences, middle management and interim occupation of management positions. These will be submitted to the Commission's approval shortly.

For implementing Rules such as the ones on engagement and use of Contract Agents, F4E is waiting for the models to be finalised by the Commission and therefore cannot yet be submitted under Article 110 of the Staff Regulations.

Finally, we would like to reiterate Fusion for Energy's commitment to increase the number of implementing rules to be adopted in the course of 2013 and beyond. With this in view, an estimated adoption calendar has been approved and internal arrangements aiming at facilitating the adoption process have been implemented. We are confident that additional progress will therefore be made.

27-31. In 2008 a working group at F4E, supported by experts from industry and public research organisations, estimated that the expected cost of delivering the then agreed European contribution to the construction of ITER was 5 940 million euro with a need for 663 million euro in contingency. The cost of the Broader Approach cooperation with Japan and administration of F4E, was estimated in 2008 to be 650 million euro, resulting in an overall cost estimate of 7 253 million euro in 2008 euro value including the abovementioned contingency.

The Council has made 6 600 million euro in 2008 euro value available in the period 2007-2020 for F4E to fulfil the European obligations in respect of ITER and the Broader Approach and requested F4E to make all possible savings to ensure that the capped budget would be respected.

Since 2008 the ITER project has evolved significantly in response to increased safety requirements in the aftermath of the Fukushima accident, new scientific insights and maturing of the design. While some requirements have been relaxed most changes have augmented the requirements and increased the scope of what Europe is required to deliver to ITER. Such changes are decided by the ITER Organisation (IO) and its governing bodies.

Recognising that the scope of the European deliverables to ITER has changed substantially and designs matured considerably since the 2008 cost estimation, a thorough revision of the entire cost estimation was conducted by F4E during the first 6 months of 2013.

Unlike the incremental updates of the cost estimate presented in previous reports to Council, this updated cost estimate also captures changes further in the future. The expected cost of the European deliverables to ITER, the SA and running F4E is now estimated at 6 890 million euro. When compared with the capped budget of 6 600 million euro for the budgeting period till 2020 this shows a negative contingency of 290 million euro.

The change in the contingency from – 165 million euro to – 290 million euro since the F4E report to Council last year is in large measure due to a significant escalation in the expected and realised costs of buildings resulting from increase in the scope of the buildings to be provided and from the schedule pressure on construction of the buildings.

As noted in an Ernst and Young study entitled 'Potential for reorganization within the ITER project to improve cost-effectiveness' launched in July 2012 by the Budgetary Control Committee of the European Parliament and concluded in February 2013, F4E has little or no control over such changes, this being the remit of the ITER Council and its subsidiary bodies.

Nevertheless and to ensure that the cap on the budget is respected F4E has developed and continues to develop and implement a broad range of cost containment measures including optimising procurement strategies and contractual conditions to reduce costs, and in cooperation with IO optimising designs for cost containment. The status of past measures and the collection of current measures together with the new cost estimation was presented to the GB on 26 June 2013 (paper F4E(13)-GB27-06). These measures do offer saving opportunities in excess of 300 million euro and thus provide the necessary tools to ensure that the cap on the budget for the period until 2020 will be respected.

32. The auditee agrees with this observation and points out that the information about the cost risks referred to in paragraph 30 was neither determined in the period that the 2012 annual report covers nor available at the time that it was being prepared and hence could not have been included in the annual report 2012 approved by the GB in June 2013. Furthermore, it has to be noted that such information is reported by F4E to the European Council and Parliament at least once a year in the F4E Progress report which presented on (a) the progress achieved in implementing the cost containment and savings plan, (b) as well as the performance and management of the Agency and the ITER project, and (c) the fulfilment of the scheduled activities within its annual budget. The 2013 report contains all the related information.

33. The Host Agreement signed between 'Fusion and for Energy' and the Kingdom of Spain in 2007 does indeed foresee that Spain will provide F4E with permanent premises no later than 3 years after the signature of the agreement. The Agreement also foresees that in the meantime, and before the final premises are made available, Spain will provide temporary premises.

While Spain has not yet provided permanent premises, the Joint Undertaking occupies temporary premises free of cost, as Spain pays for the full cost of the premises (rent and maintenance as foreseen by the Host Agreement, while F4E pays for the tenant's part of the temporary premises).

In order to provide the final premises, Spain launched an informal procedure to select an appropriate site and architectural project. The selection of the site and project is foreseen to take place before the end of 2013.

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

(2013/C 369/06)

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INTRODUCTION

1. The SESAR Joint Undertaking, located in Brussels, was set up in February 2007 ⁽¹⁾ in order to manage the activities of the SESAR (Single European Sky Air Traffic Management Research) project.

2. The SESAR project aims to modernise air traffic management (ATM) in Europe and is divided into three phases:

(a) A 'definition phase' (2004-2007) 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.

(b) A 'development phase' (2008-2016, funded by the 2008-2013 programming period – see Annex for synopsis) managed by the SESAR Joint Undertaking and leading to the production of new technological systems, components and operational procedures as defined in the European ATM Master Plan.

(c) A 'deployment phase' (2014-2020) to be led by industry and stakeholders for the large-scale production and implementation of the new ATM infrastructure.

3. The Joint Undertaking 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, 15 public and private enterprises from the air navigation industry became members of the Joint Undertaking. They include air navigation service providers, representatives of the ground and aerospace manufacturing industry, aircraft manufacturers, airport authorities and airborne equipment manufacturers.

4. The budget for the development phase of the SESAR project is 2,1 billion 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. Around 90 % of the funding from Eurocontrol and the other stakeholders is in the form of in-kind contributions.

5. The SESAR JU started to work autonomously on 10 August 2007.

⁽¹⁾ 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).

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 SESAR Joint Undertaking, which comprise the financial statements ⁽²⁾ and the reports on the implementation of the budget ⁽³⁾ for the financial year ended 31 December 2012; and

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

The management's responsibility

8. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽⁴⁾, 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 ⁽⁵⁾, 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.

⁽²⁾ These include the balance sheet, the economic outturn account, the cash-flow statement, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

⁽³⁾ These comprise the reports on implementation of the budget and a summary of budgetary principles and other explanatory notes.

⁽⁴⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁵⁾ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

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

The auditor's responsibility

9. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council ⁽⁶⁾ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Joint Undertaking are free from material misstatement and the underlying transactions are legal and regular.

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

11. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

Opinion on the reliability of the accounts

12. In the Court's opinion, the Joint Undertaking's annual accounts present fairly, in all material respects, its financial position as at 31 December 2012 and the results of its operations and 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 2012 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 budget

15. The final 2012 budget adopted by the Administrative Board reported commitment appropriations of 156,6 million euro and payment appropriations of 124,2 million euro. The utilisation rates for commitment and payment appropriations were 95,0 % and 86,3 % respectively.

16. The provisional 2012 budget outturn account shows 12,4 million euro, with receipts comprising member contributions and other sources of revenue of 107,4 and 0,1 million euro respectively, plus the previous year's budget surplus of 15,6 million euro. This total is netted against payments of 107,3 million euro. Year-end cash and cash equivalents amount to 15,7 million euro.

Multilateral Framework Agreement

17. At 31 December 2012, the SESAR Joint Undertaking development phase consisted of work by 16 members on programme activities involving more than 100 private and public entities and subcontractors. Of the 336 projects selected, 312 (92,8 %) were being implemented.

18. Of the co-financing contributions paid to members by the European Union and Eurocontrol (595 million euro), 437,5 million euro had been committed and 233,8 million euro had been paid at 31 December 2012. It is anticipated that the remaining 158 million euro will be committed by 31 December 2013, and that 361,2 million euro will be paid by 31 December 2016.

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

Validation of accounting systems

19. The accounting officer confirmed the validation of the underlying business processes in April 2013, reflecting the fact that no significant changes were made to the internal control system during the 2012 financial year.

⁽⁶⁾ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

Assessment of in-kind contributions

20. On the basis of the award of programme activities as formalised in the Multilateral Framework Agreement and subsequent amendments, net in-kind contributions over the life of SESAR are estimated, at 31 December 2012, to be 1 300 million euro. The Executive Director validated net in-kind contributions of 139,2 million euro during 2012.

Internal control matters

21. The Court notes that improvements are required in the following *ex ante* control areas:

- improvements could be made to the documentation of controls on the monitoring of project deliverables, project performance analysis, subcontractor monitoring and cost claim certificates,
- a technical review report produced by external experts at an airborne equipment manufacturer in relation to projects carried out by it for the SESAR and Clean Sky Joint Undertakings concluded that improvements could be made to the exchange of data and results between the two Joint Undertakings, as well as to coordination at management and expert levels and to the establishment of criteria for allocating projects between them. The conclusions and recommendations resulting from the review are progressively being implemented and followed up with Clean Sky Joint Undertaking.

OTHER MATTERS

Internal audit function and the Commission's Internal Audit Service

22. In accordance with the IAS/IAC coordinated strategic audit plan for the SESAR Joint Undertaking for 2012-2014, a

programme/project audit and an IT risk assessment were carried out by the IAS. The SESAR IAC examined three calls for tenders and audited the implementation of four internal control standards. It also provided follow-up to the IAC's 2010 and 2011 reports, as well as other assurance services.

Monitoring and reporting of research results

23. The SESAR Joint Undertaking's policies and practices on the protection, dissemination and transfer of research activities and intellectual property rights (IPR), and the related monitoring and reporting systems, are governed by Regulation (EC) No 219/2007 ⁽⁷⁾.

24. Detailed rules are given in membership agreements (MA) and the Multilateral Framework Agreement (MFA) between the SESAR Joint Undertaking and its members. In particular, Article 15 of the MFA states that the Administrative Board must further define how the rules on IPR are to be implemented.

25. The IPR provisions of these three documents are largely based on the rules set out in the FP7 and TEN-T, account being taken of the particular characteristics of the SESAR Joint Undertaking as a public-private partnership.

26. Implementation of these provisions is monitored by the SESAR Joint Undertaking at different stages of the funded projects, and reports are issued to the Administrative Board. In June 2013, the Joint Undertaking reported on IPR monitoring by providing the Administrative Board with a report devoted exclusively to the Joint Undertaking's monitoring of the IPR provisions to date.

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

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

⁽⁷⁾ Article 10.3 and Article 18 of SESAR JU Council Regulation.

ANNEX

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

Areas of Union competence deriving from the Treaty <i>(Articles 187 and 188 of the Treaty on the Functioning of the European Union)</i>	<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>
Competences of the Joint Undertaking <i>(Council Regulation (EC) No 219/2007, as last amended by Regulation (EC) No 1361/2008)</i>	Objectives <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"> — 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, — ensuring the necessary funding for the activities of the SESAR development phase in accordance with the ATM Master Plan, — 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, — organising the technical work of research and development, validation and study, to be carried out under its authority, while avoiding fragmentation of such activities, — 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.
Governance <i>(Council Regulation (EC) No 219/2007, as last amended by Regulation (EC) No 1361/2008)</i>	Administrative Board <p>The Administrative Board is responsible for:</p> <ul style="list-style-type: none"> (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; (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; (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;

	<p>(f) appointing and dismissing the Executive Director and approving the organisation chart and monitoring the Executive Director's performance;</p> <p>(g) deciding on the amounts and procedures for the payment of members' financial contributions and the assessment of contributions in kind;</p> <p>(h) adopting the financial rules of the Joint Undertaking;</p> <p>(i) approving the annual accounts and balance sheet;</p> <p>(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);</p> <p>(k) deciding on proposals to the Commission on the extension or dissolution of the Joint Undertaking;</p> <p>(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;</p> <p>(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;</p> <p>(n) deciding on proposals to the Commission to amend the Statutes in accordance with Article 24;</p> <p>(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> <p>(p) adopting the arrangements for implementing Article 8.</p> <p>Executive Director</p> <p>The Executive Director shall perform his duties with complete independence within the powers assigned to him.</p> <p>Internal audit</p> <p>Internal Auditor of the European Commission</p> <p>External audit</p> <p>European Court of Auditors</p> <p>Discharge authority</p> <p>European Parliament, European Council and the Administrative Board of the JU</p>
<p>Resources available to the Joint Undertaking in 2012</p> <p><i>SESAR Joint Undertaking 2012 final accounts</i></p>	<p>Budget</p> <p>156 564 786 euro for commitments</p> <p>124 198 884 euro for payments</p> <p>Staff at 31 December 2012</p> <p>The 2012 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 41 were occupied at year end 2012, compared to 35 in 2011:</p> <ul style="list-style-type: none"> — 29 temporary staff, recruited externally, — 7 staff seconded by the SJU Members in accordance with Article 8 of Regulation (EC) No 219/2007, — 3 contractual staff, — 2 SNEs.

	Assigned to Operational tasks: 25 Administrative and support tasks: 15 Mixed tasks: 1
Activities and services provided in 2012	See the Joint Undertaking's annual activity report for 2012 at http://www.sesarju.eu/
<i>Source:</i> Information supplied by the SESAR Joint Undertaking.	

THE JOINT UNDERTAKING'S REPLY

21. The SESAR Joint Undertaking is committed towards the improvement of its system and procedures allocating the resources available to enhance its risk management, controls and governance processes to ensure the achievement of the SESAR programme objectives.

REPORT**on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking for the financial year 2012, together with the Joint Undertaking's reply**

(2013/C 369/07)

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INTRODUCTION

1. The Fuel Cells and Hydrogen Joint Undertaking (FCH Joint Undertaking), located in Brussels, was set up in May 2008 ⁽¹⁾ for the period up to 31 December 2017.

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 ⁽²⁾ 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 ⁽³⁾.

3. The founding members of the Joint Undertaking are the European Union, represented by the Commission, and the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping. The Research Grouping N.ERGHY became a member in July 2008.

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, of which the proportion earmarked for running costs must not exceed 20 million euro. The Industry Grouping is expected to contribute 50 % of the running costs and should contribute to the funding of operational activities through in-kind ⁽⁴⁾ contributions at least equal to the EU financial contribution.

5. The Joint Undertaking was granted its financial autonomy on 15 November 2010.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

6. The audit approach taken by the Court comprises analytical audit procedures, testing of transactions at the level of the Joint Undertaking and an assessment of key controls of

the supervisory and control systems. This is supplemented by evidence provided by the work of other auditors (where relevant) and an analysis of management representations.

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 Fuel Cells and Hydrogen Joint Undertaking, which comprise the financial statements ⁽⁵⁾ and the reports on the implementation of the budget ⁽⁶⁾ for the financial year ended 31 December 2012; and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

8. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002 ⁽⁷⁾, 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 ⁽⁸⁾, 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.

⁽¹⁾ Council Regulation (EC) 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 1183/2011 of 14 November 2011.

⁽²⁾ 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.

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

⁽⁴⁾ According to Article 12(3) of the Annex to Regulation (EC) No 521/2008, which stipulates that the 'operational costs of the FCH Joint Undertaking shall be covered through the financial contribution of the Community, and through in-kind contributions from the legal entities participating in the activities'.

⁽⁵⁾ These include the balance sheet and the economic outturn account, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

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

⁽⁷⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁸⁾ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

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

The auditor's responsibility

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

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

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

Opinion on the reliability of the accounts

12. In the Court's opinion, the Joint Undertaking's annual accounts present fairly, in all material respects, its financial position as at 31 December 2012 and the results of its

operations and its cash flows for the year then ended, in accordance with the provisions of its financial rules and the accounting rules adopted by the Commission's accounting officer.

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 2012 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 budget

15. The final 2012 budget adopted by the Governing Board reported commitment appropriations of 83,3 million euro and payment appropriations of 56,9 million euro. The utilisation rates for commitment and payment appropriations were 99,4 % and 83,1 % respectively.

16. The provisional 2012 budget outturn account reported a total budget outturn of 8,2 million euro, with receipts comprising member contributions and other sources of revenue of 56,3 and 2,0 million euro respectively, plus the previous year's budget outturn of 7,5 million euro, netted against payments of 55,2 million euro and carryovers of 2,4 million euro. Year-end cash and cash equivalents amount to 12,3 million euro.

Calls for proposals

17. At 31 December 2012, the FCH Joint Undertaking programme consisted of 103 grant agreements resulting from four annual calls (2008-2011), with a further 28 grant agreements anticipated from the recently completed 2012 call.

18. The calls for proposals organised in 2008, 2009, 2010 and 2011 resulted in grant agreements totalling 295 million euro, and in 2012 a fifth call for proposals was launched for 78 million euro. These amounts represent 67 % and 18 % respectively of the maximum EU contribution to the Joint Undertaking for research activities. In January 2013, a sixth call was launched for the remaining amount (68,5 million euro).

⁽⁹⁾ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

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

19. In accordance with the IAS/IAC coordinated strategic audit plan for the FCH Joint Undertaking for 2011-2013, the FCH JU internal audit capability carried out an audit on *ex ante* controls for eligibility of declared costs and related payments⁽¹⁰⁾ and performed various consultancy services, including preparation and participation in the communication campaigns of FCH JU on financial control and audit matters.

Monitoring and reporting of research results

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

21. In the grant agreements signed with members and other beneficiaries, the Joint Undertaking has included specific

provisions governing intellectual property rights and the dissemination of research activities. Implementation of these provisions is monitored by the Joint Undertaking at different stages of the funded projects.

22. Now that the first projects have been completed, the FCH Joint Undertaking's monitoring of the implementation of the plan for the use and dissemination of foreground could be improved, either through the information system set up by the Commission in accordance with Article 27 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council⁽¹¹⁾ to allow for the entire FP7 to be monitored in an efficient and coherent manner, or through an equivalent tool.

Follow-up of previous observations

23. In 2012 the business continuity plan and disaster recovery plan were finalised.

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

For the Court of Auditors

Vitor Manuel da SILVA CALDEIRA

President

⁽¹⁰⁾ The final report issued 28 June 2012 noted, amongst other, opportunities for improvement, in particular regarding the clarification of certain aspects of *ex ante* control strategy objectives and scope, the quality of some design aspects of the Certificates on Financial Statements and the streamlining of control checklists.

⁽¹¹⁾ Article 27 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (OJ L 391, 30.12.2006, p. 1) requires the Commission to monitor the implementation of indirect actions on the basis of the periodic progress reports submitted. In particular, the Commission must monitor implementation of the plan for the use and dissemination of foreground. It must also set up and maintain an information system allowing for this monitoring to take place in an efficient and coherent manner across the Seventh Framework Programme.

ANNEX

Fuel Cells and Hydrogen Joint Undertaking (Brussels)**Competences and activities**

<p>Areas of Union competence deriving from the Treaty</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 Union 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 TFEU.</p> <p>Council Regulation (EC) No 521/2008 of 30 May 2008 setting up the FCH Joint Undertaking, as amended by Regulation (EU) No 1183/2011 (OJ L 302, 19.11.2011, p. 3).</p>
<p>Competences of the Joint Undertaking</p> <p><i>as defined in Council Regulation (EC) No 521/2008, amended by Regulation (EU) No 1183/2011</i></p>	<p>Objectives</p> <p>The Fuel Cells and Hydrogen Joint Undertaking shall contribute to implementation of the Seventh Framework Programme and, in particular, the specific 'Cooperation' programme themes of 'Energy', 'Nanosciences, nano-technologies, materials and new production technologies', 'Environment (including climate change)', and 'Transport (including aeronautics)'.</p> <p>It shall in particular:</p> <ul style="list-style-type: none"> (a) aim at placing Europe at the forefront of fuel cell and hydrogen technologies worldwide and at enabling the market breakthrough of fuel cell and hydrogen technologies, thereby allowing commercial market forces to drive the substantial potential public benefits; (b) support research, technological development and demonstration (RTD) in the Member States and countries associated with the Seventh Framework Programme (the associated countries) in a coordinated manner, so as to overcome market failure and focus on developing market applications and thereby facilitating additional industrial efforts towards the rapid deployment of fuel cells and hydrogen technologies; (c) support implementation of the RTD priorities of the JTI on Fuel Cells and Hydrogen, notably by awarding grants following competitive calls for proposals; (d) aim to encourage increased public and private research investment in fuel cells and hydrogen technologies in the Member States and associated countries.
<p>Governance</p> <p><i>as defined in Council Regulation (EC) No 521/2008, amended by Regulation (EU) No 1183/2011</i></p>	<p>The bodies of the FCH Joint Undertaking are:</p> <ol style="list-style-type: none"> 1. The Governing Board <p>The Governing Board is the main decision-making body of the FCH Joint Undertaking.</p> <ol style="list-style-type: none"> 2. The Executive Director <p>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.</p> <ol style="list-style-type: none"> 3. The Scientific Committee <p>Composed of up to 9 members reflecting a balanced representation of world-class expertise from academia, industry and regulatory bodies. Its tasks are to:</p>

	<p>(a) advise on the scientific priorities for the annual and multiannual implementation plans proposal;</p> <p>(b) advise on the scientific achievements described in the annual activity report;</p> <p>(c) advise on the composition of the peer review committees.</p> <p>The external advisory bodies to the FCH Joint Undertaking are:</p> <p>4. The FCH States Representatives Group</p> <p>It consists of one representative of each Member State and associated country. Its most important tasks are to provide an opinion on programme progress at the FCH JU, monitor compliance and respect of targets and coordinate with national programmes to avoid overlapping.</p> <p>5. The Stakeholders' General Assembly</p> <p>The SGA 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 third countries. It is convened once a year. The SGA is informed of the activities of the FCH Joint Undertaking and is invited to provide comments.</p> <p>The internal and external auditors and the discharge authority of the FCH Joint Undertaking are:</p> <p>6. Internal audit</p> <p>— FCH JU Internal Audit Manager (i.e. internal audit capability – IAC),</p> <p>— Commission's Internal Audit Service (IAS).</p> <p>7. External audit</p> <p>European Court of Auditors.</p> <p>8. Discharge authority</p> <p>Parliament on a recommendation of the Council.</p>
<p>Resources available to the Joint Undertaking in 2012</p> <p><i>FCH Joint Undertaking 2012 and 2011 final accounts</i></p>	<p>Budget (commitment appropriations)</p> <p>94,9 million euro</p> <p>Staff at 31 December 2012</p> <p>The 2012 operating budget provides for an establishment plan of 20 staff posts, all of which were filled at year end 2012.</p> <p>These comprised 18 temporary staff recruited externally and 2 contractual staff, of whom 6 were assigned to operational tasks, 7 to administrative and support tasks and 7 to mixed tasks.</p>
Activities and services provided in 2012	See the FCH JU annual activity report for 2012 at http://www.fch-ju.eu/page/documents

Source: Information supplied by the FCH Joint Undertaking.

THE JOINT UNDERTAKING'S REPLY

22. The FCH JU will explore with the Commission the possibility to use its system to improve further the monitoring of the implementation of the plan for use and dissemination of foreground.

In parallel to the monitoring of the participants efforts to use and disseminate the results, the FCH JU is increasing its own capacity to use and analyse the results of projects, notably to assess the achievement of its programme. To that effect, the FCH JU has recruited a Knowledge Management and Policy Officer who will take duty on 16 November 2013. This Officer will use a newly developed IT tool, result of the TEMONAS (TEchnology MONitoring and ASsessment) project (completed in May 2013), to analyse and synthesize the results of the completed projects.

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