

RESOLUTION OF THE EUROPEAN PARLIAMENT**of 17 April 2013****with observations forming an integral part of its Decision on discharge for the implementation of the budget of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2011**

THE EUROPEAN PARLIAMENT,

- having regard to the final annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2011,
 - having regard to the Court of Auditors' report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2011, together with the replies of the Joint Undertaking ⁽¹⁾,
 - having regard to the conclusions of the European Parliament Joint Delegation of the Committee on Budgets and the Committee on Budgetary Control to ITER in Cadarache of 16-18 May 2011,
 - having regard to the Council's recommendation of 12 February 2013 (05755/2013 – C7-0040/2013),
 - having regard to Article 319 of the Treaty on the Functioning of the European Union,
 - having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾, and in particular Article 185 thereof,
 - having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ⁽³⁾, and in particular Article 208 thereof,
 - having regard to Council Decision 2007/198/Euratom of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it ⁽⁴⁾, and in particular Article 5(3) thereof,
 - having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽⁵⁾, and in particular Article 94 thereof,
 - having regard to Rule 77 of, and Annex VI to, its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A7-0077/2013),
- A. whereas the European Joint Undertaking for ITER and the Development of Fusion Energy ('the Joint Undertaking') was set up in March 2007 for a period of 35 years,
- B. whereas the Joint Undertaking started to work autonomously on March 2008,
- C. whereas the Court of Auditors states that it has obtained reasonable assurances that the annual accounts of the Joint Undertaking for the financial year 2011 are reliable and that the underlying transactions are legal and regular,

⁽¹⁾ OJ C 6, 10.1.2013, p. 36.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

⁽³⁾ OJ L 298, 26.10.2012, p. 1.

⁽⁴⁾ OJ L 90, 30.3.2007, p. 58.

⁽⁵⁾ OJ L 357, 31.12.2002, p. 72.

- D. whereas on 9 October 2008 the Court of Auditors delivered Opinion No 4/2008 on the Joint Undertaking's Financial Regulation,
- E. whereas at the creation of the Joint Undertaking the indicative total resources deemed necessary for the period 2007 to 2014 were EUR 9 653 000 000;

Budgetary and financial management

1. Notes that the annual accounts of the Joint Undertaking fairly present, in all material respects, its financial position as of 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation;
2. Acknowledges that the transactions underlying the annual accounts of the Joint Undertaking for the financial year 2011 are, in all material respects, legal and regular;
3. Notes that the utilisation rates for the available commitment and payment appropriations were 99,7 % and 85,7 % respectively; points out that out of EUR 611 000 000 of commitment appropriations available for operational activities, 42 % were implemented through direct individual commitments while the remaining 58 % were implemented through global commitments;
4. Welcomes the appointment of the Head of the ITER Department, the Head of Administration and the Head of the Budget and Finance unit in 2011 following the adaptation of the management improvement plan to separate financial and operational functions in 2010;
5. Regrets that the Joint Undertaking's Internal Auditor raised concerns about the financial circuits and moreover the separation of duties; urges the Joint Undertaking to put in place without delay a proper systematisation of the financial circuits and to segregate all duties that are incompatible;
6. Expects the Joint Undertaking to:
 - fully implement and make use of an integrated tool to administer budget, financial and operational information;
 - fully implement the action plans adopted by the Joint Undertaking in response to the internal audits on the financial circuits, grant management and experts contracts;
 - complete the validation of the underlying systems by the accounting officer;
 - adopt a comprehensive *ex post* audit strategy for grants and operational contracts;
 - carry out a risk management exercise at corporate level;

Procurement and grants

7. Emphasises the fact that, as already pointed out in the Court of Auditors' 2010 report, the Joint Undertaking needs to enhance its efforts to increase competition as the number of offers received for the operational procurement procedures signed in 2011 was still low and amounted to two on average while for grants the average number of proposals received was only one per call; acknowledges that the Joint Undertaking's nature of work is characterised by the procurement of high technological components, never built before and without any commercial value, designed for the construction of an experimental fusion reactor in an extremely complex market in which monopoly or oligopoly situations are predominant; reiterates that the Joint Undertaking must find value for money in all possible acquisitions;

8. Regrets that in one case, the decision to cancel an open procedure and to use a negotiated procedure was not duly justified while in another case, the Joint Undertaking decided to negotiate with two companies which submitted offers under the open procedure (although one of them was not technically compliant); further regrets that in another situation both the choice of the negotiated procedure and the quantities and price contracted were not duly justified;
9. Is concerned that the Court of Auditors' audit has confirmed the findings of an internal audit carried out in 2011 in the area of procurement, notably:
 - the pre-information notice is not used as an instrument for increasing *ex ante* publicity of forthcoming tenders;
 - there is no system to track and manage changes in the contract requirements and thus identify and remedy cost deviations;
 - the duration of the procurement process is often excessive and there are inefficiencies in preparing tender documents;
 - cost estimates are not well documented;
10. Calls, in this respect, for a detailed progress report which makes specific proposals to gradually rectify these shortcomings;
11. Deplores the fact that the Court of Auditors' audit also revealed that the *ex ante* control procedures applied to payments made under contracts and grant agreements are not sufficiently documented;

Quality assurance audits and ex post controls on procurement and grants

12. Is concerned by the fact that while the Joint Undertaking has a system to perform audits at the level of contractors with the aim of checking compliance with the quality assurance requirements the scope of these audits does not cover the financial aspects of the implementation of the contracts; calls the Joint Undertaking to ensure that the audit system scope covers the protection of the financial interest of the Joint Undertaking covering financial and contractual aspects;
13. Takes note that despite having started in 2011 the *ex post* controls to assess the legality and regularity of the implementation of grants awarded the Joint Undertaking lacks an overall *ex post* control strategy to cover the implementation of grant contracts and procurement contracts; urges the Joint Undertaking to define and implement an overall *ex post* control strategy that covers in full their expended budgetary resources;

Intellectual property rights and Industrial Policy

14. Acknowledges that on 28 March 2012, the Governing Board adopted the Joint Undertaking's policy on intellectual property rights and dissemination of information; notes, however, that the Governing Board has not yet adopted the industrial policy required under the Statutes;

Late payment of membership contributions

15. Deplores the fact that payment of the 2011 contributions by 12 members were subject to delays;
16. Considers it to be essential that the deadline for paying membership contributions is respected by all Members of the Joint Undertaking; supports the fact that those measures were approved by the Governing Board for interest to be levied on Annual Membership Contribution in the event of late payment;

Commission Internal Audit Service

17. Notes that the mission charter of the Commission's Internal Audit Service was adopted by the Governing Board on 25 November 2011 together with a coordinated strategic audit plan for 2012-2014 and its Financial Regulation has been amended accordingly to introduce the provisions of the framework Regulation referring to the powers of the Commission's Internal Auditor; recalls that the Joint Undertaking started to work autonomously on March 2008;

Financial Regulation and Implementing Rules

18. Welcomes the fact that at its meeting of 1 June 2011 the Joint Undertaking's Governing Board decided to broadly accept the observations (37 recommendations were fully accepted, 11 accepted with comments and only two rejected) of the Court of Auditors' Opinion No 4/2008 on Fusion for Energy's Financial Regulation;
19. Takes note that the Court of Auditors considers that certain provisions in the Joint Undertaking's implementing rules depart from the implementing rules of the Union Financial Regulation without sufficient justification; welcomes the Joint Undertaking's clarification that the amended implementing rules provide sufficient guidance for the implementation of the activities the Joint Undertaking in what respects for instance the conditions to raise and grant loans or the rules for valuing in-kind contributions;

Union contribution to ITER construction phase

20. Recalls that in July 2010, the Council revised the budget estimate of the Joint Undertaking's contribution for the construction phase to EUR 6 600 000 000 (2008 value), thus doubling the initial estimate; is concerned that the Joint Undertaking is realising an exercise to align all the incurred cost up to date to the 2008 values in order to be able to establish the potential deviations from that budget estimates; takes note that the Joint Undertaking implemented a tool to regularly monitor the validity of the estimates and report on potential deviations; expects the Joint Undertaking to inform the discharge authority of the results of that analysis;

Host State agreement

21. Recognises that although a Host State agreement on the site and support, privileges and immunities was signed between the Kingdom of Spain and the Joint Undertaking, the permanent premises were yet not made available to the Joint Undertaking; notes, however, that the Joint Undertaking continues to occupy temporary premises sponsored by the Kingdom of Spain;

Other issues

22. Reiterates its invitation for the Court of Auditors to provide, within a reasonable deadline, a special report to Parliament on common issues which occur due to the nature of the joint undertakings, and which should be addressed by the joint undertakings together with their partners in order to ensure their added value and efficient execution of Union research, technological development and demonstration programmes; notes, furthermore, that that report should include an assessment of the effectiveness of the joint undertakings' establishment and structure.
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