



## FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy

**THE GOVERNING BOARD**

### **GOVERNING BOARD DECISION ON THE 2<sup>nd</sup> AMENDMENT OF THE FINANCIAL REGULATION OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY**

THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY,

Having regard to the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter “the Joint Undertaking”) and conferring advantages upon it<sup>1</sup> (hereinafter “the Constituent instrument”) and in particular Article 5 thereof;

Having regard to the Statutes annexed to the Constituent instrument (hereinafter “the Statutes”) and in particular Article 6(3)(h), Article 13, and Annex III thereof;

Having regard to the Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>2</sup> (hereinafter “the general Financial Regulation”);

Having regard to the Governing Board Decision of 22 October 2007 adopting the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy;

Having regard to the Governing Board Decision of 18 December 2007 adopting amendments to the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy, following the final Opinion of the Commission of 6 November 2007 on the draft Financial Regulation of the Joint Undertaking<sup>3</sup>;

Having regard to the 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 the general Financial Regulation, as last amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008, (hereinafter “the Framework Financial Regulation”);

Having regard to the Opinion of the Court of Auditors of 9 October 2008 on the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy;

Having regard to Governing Board Decision of 1 June 2011 approving amendments to the Financial Regulation of the Joint Undertaking, in response to the Opinion of the Court of Auditors on the Financial Regulation of the Joint Undertaking;

Whereas:

- (1) The Joint Undertaking should have a distinct financial regulation based on the principles of the framework Financial Regulation, which may depart from the latter where the

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<sup>1</sup> OJ L 90, 30.3.2007, p. 58

<sup>2</sup> OJ L 248, 15.09.2002, p.1. Regulation as last amended by Regulation 1995/2006/EC/Euratom (OJ L 390, 30.12.2006)

<sup>3</sup> C(2007)5200 of 6 November 2007

specific operating needs of the Joint Undertaking so require and subject to prior consultation with the Commission.

- (2) The financial regulation should be amended taking into account amendments that have been made to the framework Financial Regulation and the Opinion of the Court of Auditors of 9 October 2008.

HAS ADOPTED THIS DECISION:

*Article 1*

The Financial Regulation is amended as follows:

- (1) Article 10(1) is replaced by the following:

“1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations may be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.

However, appropriations may, by decision of the Governing Board taken not later than 15 February, be carried over to the next financial year only, in accordance with the paragraphs 2 to 7.”

- (2) Article 10(3) is replaced by the following:

“3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure, to be defined in the detailed rules implementing this Regulation, as referred to in Article 135 (hereinafter “implementing rules”), have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.”

- (3) Article 10(6) is replaced by the following:

“6. Appropriations carried over which have not been committed by 31 March of year  $n+1$  shall be automatically cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations may be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.

Appropriations carried over in this way shall be identified in the accounts.”

- (4) Article 10(7) is replaced by the following:

“7. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically. By 1 June of the following year at the latest, the Joint Undertaking shall inform the Commission and the Budgetary authority about the implementation of the assigned revenue carried over.

The appropriations available corresponding to assigned revenue carried over shall be used first.”

- (5) Article 11 is replaced by the following:

“Where amounts are decommitted, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were committed, the appropriations concerned shall be cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations may be entered in the estimate of revenue and expenditure of the following financial years, in accordance with Article 28.”

- (6) Article 15(3) is replaced by the following:

“3. The Joint Undertaking may grant or raise loans in accordance with Article 4 and Annex III point 4 of the Statutes, with the necessary approval of the Governing Board. The conditions to take out and grant loans shall be defined in the implementing rules.”

- (7) The following Article 15(5) is added:

“5. The Joint Undertaking shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests, it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.”

- (8) Article 16(1) is replaced by the following:

“1. If the balance of the outturn account within the meaning of Article 116 is positive, it shall be repaid to the Commission up to the amount of the Community contribution paid during the financial year. The part of the balance exceeding the amount of the Community contribution paid during the financial year shall be entered in the budget for the following financial year as revenue. The Joint Undertaking shall provide, by 31 March of the year n at the latest, an estimate of the operating surplus from the year n-1, which is to be returned to the Community budget later in year n, in order to complete the information already available concerning the surplus of year n-2. This information shall be duly taken into account by the Commission when assessing the financial needs of the Joint Undertaking for the year n+1.

The difference between the Community contribution entered in the general budget and that actually paid to the Joint Undertaking shall be cancelled.”

- (9) Article 20(2) is replaced by the following:

“2. The value of voluntary contributions in-kind shall be determined by the Joint Undertaking. The conditions to determine the value of these contributions shall be defined in the implementing rules.”

- (10) Article 23(2) is replaced by the following:

“2. Beyond the limit referred in the first paragraph, the Director may propose to the Governing Board transfers of appropriations from one title to another. The Governing Board shall have four weeks in which to oppose such transfers; after this time-limit they shall be deemed to be adopted. In cases of urgency, the Governing Board may shorten the time-limit to at least five working days.”

- (11) Article 23(4) is replaced by the following:



“4. The Director shall inform the Governing Board as soon as possible of all transfers made. He shall inform the Budgetary Authority of all transfers carried out under paragraph 2.”

(12) Article 27(2) is replaced by the following:

“2. A summary of the budget and of amending budgets, as finally adopted, shall be published in the *Official Journal of the European Union* within three months following the date on which they become definitive. The summary shall show the five main revenue budget lines, the five main expenditure budget lines for the administrative and operational budget, the establishment plan and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the figures for the previous year.”

(13) Article 27(3) is replaced by the following:

“3. The budget, including the establishment plan and amending budgets, as finally adopted, as well as an indication of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission and shall be published on the website of the Joint Undertaking within four weeks of their adoption.”

(14) Article 27(4) is replaced by the following:

“4. The Joint Undertaking shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, including experts contracted. The published information shall be easily accessible, transparent and comprehensive. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data as laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council. Where information is published only in anonymous form, the Joint Undertaking shall, upon request, provide information on the beneficiaries concerned to the European Parliament in an appropriate manner.”

(15) Article 28(4) is replaced by the following:

“4. As part of the procedure for adopting the general budget, the Commission shall send the Joint Undertaking's statement of estimates to the budgetary authority and propose the amount of the contribution to the Joint Undertaking and the number of staff it considers that the Joint Undertaking needs. The Commission shall provide for the draft establishment plans of the Joint Undertaking and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are proposed.”

(16) The following Article 28(4bis) is added:

“4bis The Joint Undertaking shall also send to the Governing Board and the Commission by 31 March each year at the latest the following:

- (a) Its preliminary work programme;
- (b) Its updated multi-annual staff policy plan;

- (c) Information on the number of officials, temporary and contract staff as defined in the Staff Regulations and the Conditions of Employment of Other Servants (hereinafter "Staff Regulations") for the years n-1 and n, as well as an estimate for the year n+1;
- (d) Information on contributions in-kind granted by the host Member State to the Joint Undertaking;
- (e) An estimate of the balance of the outturn account within the meaning of Article 81 of the year n-1."

(17) Article 28(5) is replaced by the following:

"5. The budgetary authority shall adopt the establishment plan of the Joint Undertaking and any subsequent amendment thereto in accordance with Article 34(1). The establishment plan shall be published in an annex to "Section III – Commission" of the general budget."

(18) Article 28(6) is replaced by the following:

"6. The Governing Board shall adopt the budget and the establishment plan before the end of the previous financial year.

It becomes definitive after final adoption of the general budget setting the amount of the Community contribution and the establishment plan. If necessary the budget and the establishment plan shall be adjusted accordingly."

(19) Article 33(2) is replaced by the following:

"2. In the statement of expenditure:

- (a) the commitment and payment appropriations for the financial year in question;
- (b) the commitment and payment appropriations for the preceding financial year, and the expenditure committed and the expenditure paid in year n – 2;
- (c) appropriate remarks on each subdivision;
- (d) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years."

(20) Article 35 is replaced by the following:

"The Director shall perform the duties of authorising officer. He/she shall implement the revenue and expenditure of the budget in accordance with the financial rules of the Joint Undertaking, on his/her own responsibility and within the limits of the appropriations authorised. Without prejudice to the responsibilities of the authorising office as regards prevention and detection of fraud and irregularities, the Joint Undertaking shall participate in fraud prevention activities of the European Anti-Fraud Office."

(21) Article 46(2) is replaced by the following:

"2. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the Joint Undertaking's assets and of budget implementation. The

authorising officers shall forward all information that the accounting officer needs in order to fulfil his duties.”

(22) Article 50(5) is replaced by the following:

“5. The specialised financial irregularities panel set up by the Commission in accordance with the relevant provisions of the general Financial Regulation shall exercise the same powers in respect of the Joint Undertaking as it does in respect of Commission departments, unless the Governing Board decides to set up a functionally independent panel, or to participate in a joint panel established by several EU bodies. For cases submitted by the EU bodies, the specialised financial irregularities panel set up by the Commission shall include one staff member of an EU body.

On the basis of the opinion of this panel, the Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor and the internal auditor of the Joint Undertaking. If the opinion implicates the Director, the panel shall send it to the Governing Board and the Commission's internal auditor. The Director shall refer, in anonymous form, to opinions of the panel in his annual activity report and indicate the follow-up measures taken.

Any member of staff may be required to compensate, in whole or in part, any damage suffered by the Joint Undertaking as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties.

The appointing authority shall take a reasoned decision, after completing the formalities laid down by the Staff Regulations with regard to disciplinary matters.”

(23) Article 54(2) is replaced by the following:

“2. All other revenues of the Joint Undertaking shall bear interest for the benefit of its budget.”

(24) Article 56(3) is replaced by the following:

“3. The contracts and grant agreements concluded by the Joint Undertaking shall provide that any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Regulation (EC, Euratom) N° 2342/2002. The condition whereby interest on late payment is due to the Joint Undertaking, including the rate for default interests, shall be explicitly referred to in the contracts and grant agreements.”

(25) Article 60(1) is replaced by the following:

“1. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.”

(26) Article 62 is replaced by the following:

“The accounting officer shall keep a list of amounts due to be recovered, in which the Joint Undertaking's entitlements are grouped according to the date of the issue of the recovery order. He shall also indicate decisions to waive or partially waive recovery of

established amounts. The list shall be added to the Joint Undertaking's report on budgetary and financial management.

The Joint Undertaking shall establish a list of the Joint Undertaking's entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of res judicata and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection."

(27) Article 63 is replaced by the following:

"Where the Joint Undertaking collects fees and charges referred to in Article 5(1)(d), the following shall apply:

- (a) an overall provisional estimate of such fees and charges shall be made at the beginning of each financial year;
- (b) where fees and charges are entirely determined by legislation or decisions of the Governing Board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Joint Undertaking's entitlement shall be registered. The accounting officer shall keep a list of the debit notes and provide the number of the debit notes and the global amount in the Joint Undertaking's report on budgetary and financial management. Where the Joint Undertaking uses a separate invoicing system, the accounting officer shall regularly and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts;
- (c) as a general rule, the Joint Undertaking shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety.

If, by way of exception, a service has been provided without prior payment of the corresponding charge or fee, Sections 3, 4 and 5 of this Chapter shall apply."

(28) Article 64(3) is replaced by the following:

"3. The work programme of the Joint Undertaking adopted by the Governing Board shall constitute a financing decision for the activities it covers, provided that they are clearly identified and the underlying criteria are spelled out precisely. The work programme shall comprise detailed objectives and performance indicators."

(29) Article 75(1) is replaced by the following:

"1. The Joint Undertaking shall have an internal auditing function which must be performed in compliance with the relevant international standards."

(30) The following Article 75(2) is added:

"2. Without prejudice to Article 41(4), the Commission's Internal Auditor shall exercise the same powers with respect to the Joint Undertaking as with respect to Commission departments."

(31) Article 80 is replaced by the following:

“Participation in procurement procedures shall be open on equal terms to all natural persons who are nationals of a Member and legal persons who are legally established in the territory of a Member, under the conditions laid down in the implementing rules.

Participation in procurement procedures may also be open to natural and legal persons other than those referred to in sub-paragraph 1, if so decided by the Director, in accordance with and under the conditions laid down in the implementing rules.

The procedure for reporting on a regular basis to the Governing Board and the Budgetary Authority on the procurement procedures carried out shall be determined in the implementing rules.”

(32) Article 87(4) is replaced by the following:

“4. All request to participate or all tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the Joint Undertaking the award of the contract or to proceed with an electronic auction.”

(33) Article 91(1) is replaced by the following:

“1. All contracts exceeding the thresholds provided for in Article 91(2) shall be published in the Official Journal of the European Union.”

(34) Article 91(2) is replaced by the following:

“2. Contract notices shall be published in advance except in the cases referred to in Article 81(1) (d), as specified in the in the implementing rules, and for service contracts covered by Annex IIB to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.”

(35) Article 92(1) is replaced by the following:

“1. The Joint Undertaking may require contractors to lodge a guarantee in advance in the cases specified in the implementing rules.”

(36) Article 93 is replaced by the following:

“Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the Joint Undertaking shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the Joint Undertaking may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.

Where such errors, irregularities or fraud are attributable to the contractor, and if provided for in the contract, the Joint Undertaking may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.”



- (37) Article 103(4) is replaced by the following:  
“4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96 of the general Financial Regulation. Such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.”
- (38) Article 109(2) is replaced by the following:  
“2. Where implementation of the action requires financial support to be given to third parties, the beneficiary of a grant may give such financial support provided that the following conditions are met:  
(a) the financial support is not the primary aim of the action;  
(b) the conditions for the giving of such support are strictly defined in the grant agreement between the beneficiary and the Joint Undertaking, with no margin for discretion;  
(c) the amounts concerned are small. For the purpose of point c), the maximum amount of financial support that can be paid to a third party by a beneficiary shall be determined in the implementing rules.”
- (39) Article 129(1) is replaced by the following:  
“1. The European Parliament, upon a recommendation from the Council shall, before 30 April of year  $n + 2$ , give a discharge to the Director in respect of the implementation of the budget for year  $n$ . The Director shall inform the Governing Board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.”
- (40) Article 129(3) is replaced by the following:  
“3. If the European Parliament postpones the decision giving a discharge, the Director, in cooperation with the Governing Board, shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.”
- (41) Article 132 is replaced by the following:  
“Articles 117, 118 and 129 shall apply for the first time in respect of the budgetary year 2008.”
- (42) Article 135 is replaced by the following:  
“The Governing Board shall, as necessary, adopt detailed rules for implementing this Regulation, on a proposal from the Director.  
The Director shall transmit these implementing rules to the Commission for information.”

*Article 2*

This decision shall enter into force on 1 January 2012.

Done at Barcelona, 25 November 2011

For the Governing Board

A handwritten signature in blue ink, appearing to read 'Stuart Ward', is centered on the page.

**Stuart Ward**  
Chair of the Governing Board