



FUSION FOR ENERGY

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

DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY AMENDING THE IMPLEMENTING RULES OF THE FINANCIAL REGULATION

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 it¹ (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 Communities² (hereinafter “the general Financial Regulation”);

Having regard to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities³;

Having regard to the Financial Regulation of the Joint Undertaking, adopted by its Governing Board on 22 October 2007 (hereinafter “the Financial Regulation”)⁴;

Having regard to the Decisions of the Governing Board of 8 July 2008⁵, of 10 June 2010⁶, of 2 December 2010⁷, and of 17 May 2011⁸, adopting amendments to the Implementing Rules of the Financial Regulation;

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”);

¹ OJ L 90, 30.3.2007, p. 58

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

³ OJ L 357, 31.12.2002, p.72

⁴ F4E(07)-GB03-11, adopted on 22/10/2007

⁵ F4E(08)-GB06-06a, adopted on 08/07/2008

⁶ F4E(10)-GB16-16

⁷ F4E(10)-GB18-18, adopted on 02/12/2010

⁸ F4E(11)-GB20-07i

Having regard to the Financial Regulation of the Joint Undertaking, as last amended by Decision of the Governing Board on 24-25 November 2011 (hereinafter “the Financial Regulation”)⁹;

Whereas:

- (1) In accordance with Article 5(1) of the Constituent instrument, “the Joint Undertaking shall have a distinct financial regulation based on the principles of the Framework Financial Regulation”,
- (2) In accordance with Article 135 of the Financial Regulation it is necessary that the Governing Board adopts amendments to the implementing rules taking into account the amendments to the Financial Regulation,
- (3) For small and medium value contracts with an estimated value less than or equal to EUR 1 000 000 awarded to implement the Broader Approach Activities in Japan it should not be necessary to obtain the approval of the Governing Board.

HAS ADOPTED THIS DECISION:

Article 1

The Implementing Rules of the Financial Regulation are amended as follows:

- (1) Article 5(1) is replaced by the following:
“1. Raising or granting loans shall be subject to the prior authorisation of the Governing Board, which shall take a decision within one month of the date on which the justified request is submitted to it by the Director.”
- (2) The following Article 8bis is added:
“The value of in-kind voluntary contributions received by the Joint Undertaking shall be determined by the Joint Undertaking based on the value of the corresponding contribution as stipulated in the international agreements or arrangements, or in a written agreement between the Joint Undertaking and the voluntary contributor(s).”
- (3) Article 10 is replaced by the following:
“Pending official publication, a summary of the budget figures shall be published on the official internet website of the Joint Undertaking, within 60 days following the date on which the budget is finally adopted.”
- (4) Article 11 is replaced by the following:
“In support of the draft budget, the following working documents shall be provided:
 - (a) in respect of staff of the Joint Undertaking, a statement of the policy for permanent, temporary and contract staff;
 - (b) a detailed statement of borrowing and lending policy.”
- (5) Articles 70 – 74 are deleted.
- (6) Article 81(2) is replaced by the following:

⁹ F4E(11)-GB21-10b, adopted on 25/11/2011

“2. The participation in procurement procedures may also be open to other economic operators than referred to in paragraph 1, if so decided by the Director, in justified cases such as:

- (a) the supply, service or work may not be obtained in the territory of a Member of the Joint Undertaking, or may not be obtained under reasonable terms and conditions; or
- (b) for the sector concerned, a monopoly situation may exist in the territory of the Members of the Joint Undertaking; or
- (c) different participation conditions than those set out in the paragraph 1 are required under an international agreement or other international arrangement.

The prior approval of the Governing Board shall be obtained by the Director except for contracts to be placed for Broader Approach in Japan with an estimated value of EUR 1 million or less. When such contracts have an estimated value between EUR 100 000 and EUR 1 million the prior approval of the Executive Committee shall be obtained by the Director.”

- (7) Article 81(3) is replaced by the following:

“3. The Joint Undertaking shall report annually to the Governing Board and the Budgetary Authority on the procurement procedures and signature of contracts carried out in year *n-1*.”

- (8) Article 108(1) is replaced by the following:

“1. The contract notice shall be the means by which the Joint Undertaking makes known its intention to initiate the procedure to award a contract, or group of contracts, pertaining to similar activities using a restricted procedure or competitive dialogue.

The contract notice shall be published in the Official Journal of the European Union, in the cases referred to in Article 91 of the Financial Regulation. A reference to that notice shall be published in the Joint Undertaking's official internet website.

In addition to the advertising provided for in the second subparagraph, the contract may be advertised in any other way. Any such advertising shall refer to the contract notice published in the Official Journal of the European Union.”

- (9) Article 114(1) is replaced by the following:

“1. The contract notice shall be the means by which the Joint Undertaking makes known its intention to initiate the procedure to award a contract, using an open procedure.

The contract notice shall be published in the Official Journal of the European Union, in the cases referred to in Article 91 of the Financial Regulation. A reference to that notice shall be published in the Joint Undertaking's official internet website.

In addition to the advertising provided for in the second subparagraph, the contract may be advertised in any other way. Any such advertising shall refer to the contract notice published in the Official Journal of the European Union which alone is authentic.”

- (10) The following Article 170bis is added:

“The maximum amount of financial support that can be paid to a third party by a beneficiary of a grant shall normally not exceed 10% of the total value of the grant, save in duly substantiated cases.”

Article 2

Article 81(2) is replaced by the following:

“2. The participation in procurement procedures may also be open to other economic operators than referred to in Paragraph 1, if so decided by the Director with the prior approval of the Governing Board, in justified cases such as:

- (a) the supply, service or work may not be obtained in the territory of a Member of the Joint Undertaking, or may not be obtained under reasonable terms and conditions; or
- (b) for the sector concerned, a monopoly situation may exist in the territory of the Members of the Joint Undertaking; or
- (c) different participation conditions than those set out in the paragraph 1 are required under an international agreement or other international arrangement.

The prior approval of the Governing Board referred to in subparagraph 1 shall not be required in case of procurement procedures used for the award of contracts with an estimated value less than or equal to EUR 1 000 000 to implement the Broader Approach Activities in Japan. In case the estimated value of such contracts is between EUR 100 000 and EUR 1 000 000, the prior approval of the Executive Committee shall be required.”

Article 3

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', with a horizontal line underneath the name.

Stuart Ward
Chair of the Governing Board