

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА  
TRIBUNAL DE CUENTAS EUROPEO  
EVROPSKÝ ÚČETNÍ DVŮR  
DEN EUROPÆISKE REVISIONSRET  
EUROPÄISCHER RECHNUNGSHOF  
EUROOPA KONTROLLIKODA  
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ  
EUROPEAN COURT OF AUDITORS  
COUR DES COMPTES EUROPÉENNE  
CÚIRT INIÚCHÓIRÍ NA HEORPA



CORTE DEI CONTI EUROPEA  
EIROPAS REVĪZIJAS PALĀTA  
EUROPOS AUDITO RŪMAI

EURÓPAI SZÁMVEVŐSZÉK  
IL-QORTI EWROPEA TAL-AWDITURI  
EUROPESE REKENKAMER  
EUROPEJSKI TRYBUNAŁ OBRACHUNKOWY  
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EUROOPAN TILINTARKASTUSTUOMIOISTUIN  
EUROPEISKA REVISIONSRÄTTEN

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

## **INTRODUCTION**

1. The European Joint Undertaking for ITER<sup>1</sup> and the Development of Fusion Energy was set up in March 2007<sup>2</sup> for a period of 35 years. While the main fusion facilities are to be developed at Cadarache in France, the Joint Undertaking is located in Barcelona.

2. The tasks of the Joint Undertaking are<sup>3</sup>:

- (a) to provide the contribution of Euratom to the ITER International Fusion Energy Organisation<sup>4</sup>;
- (b) to provide the contribution of Euratom to the 'Broader Approach Activities' (complementary joint fusion research) with Japan for the rapid development of fusion energy; and
- (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

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<sup>1</sup> ITER: International Thermonuclear Experimental Reactor.

<sup>2</sup> Council Decision 2007/198/Euratom of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (OJ L 90, 30.3.2007, p. 58).

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

<sup>4</sup> The ITER International Fusion Energy Organisation was set up in October 2007 for an initial period of 35 years to implement the ITER project, which aims to demonstrate the scientific and technological feasibility of fusion energy. 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.

controlled nuclear fusion and have expressed their wish to become Members (at 31 December 2011: 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(1) of the Treaty on the Functioning of the European Union, the Court has audited the annual accounts<sup>5</sup> of the European Joint Undertaking for ITER and the Development of Fusion Energy, which comprise the “financial statements”<sup>6</sup> and the “reports on the implementation of the budget”<sup>7</sup> for the financial year ended 31 December 2011, and the legality and regularity of the transactions underlying those accounts.

6. This Statement of Assurance is addressed to the European Parliament and the Council in accordance with Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002<sup>8</sup>.

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<sup>5</sup> The Court received the provisional annual accounts on 1 March 2012. These accounts are accompanied by a report on the budgetary and financial management during the year which gives *inter alia* an account of the rate of implementation of the appropriations.

<sup>6</sup> The financial statements include the balance sheet and the economic outturn account, the cash flow table, the statement of changes in net assets and the annex to the financial statements, which includes a description of the main accounting policies and other explanatory information.

<sup>7</sup> The budget implementation reports comprise the budget outturn account and its annex.

<sup>8</sup> OJ L 248, 16.9.2002, p. 1.

#### The Management's responsibility

7. As authorising officer, the Director implements the revenue and expenditure of the budget in accordance with the Joint Undertaking's Financial Regulation, under his own responsibility and within the limits of the authorised appropriations<sup>9</sup>. The Director is responsible for putting in place<sup>10</sup> the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts<sup>11</sup> that are free from material misstatement, whether due to fraud or error, and for ensuring that the transactions underlying those accounts are legal and regular.

#### The Auditor's responsibility

8. The Court's responsibility is to provide, on the basis of its audit, a statement of assurance as to the reliability of the Joint Undertaking's annual accounts and the legality and regularity of the transactions underlying them.

9. The Court conducted its audit in accordance with the IFAC and ISSAI<sup>12</sup> International Auditing Standards and Codes of Ethics. Those standards require the Court to comply with ethical and professional requirements and to plan and perform the audit so as to obtain reasonable assurance as to whether the accounts are free from material misstatement and whether the underlying transactions are legal and regular.

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<sup>9</sup> Article 33 of Commission Regulation (EC, Euratom) No 2343/2002 (OJ L 357, 31.12.2002, p. 72).

<sup>10</sup> Article 38 of Regulation (EC, Euratom) No 2343/2002.

<sup>11</sup> The rules concerning the presentation of the accounts and accounting by EU bodies are laid down in Chapters 1 and 2 of Title VII of Regulation (EC, Euratom) No 2343/2002, as last amended by Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.7.2008, p. 23), and are integrated as such in the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy.

<sup>12</sup> International Federation of Accountants (IFAC) and International Standards of Supreme Audit Institutions (ISSAI).

10. The Court's audit involves performing procedures to obtain audit evidence of the amounts and disclosures in the accounts and of the legality and regularity of the transactions underlying them. The procedures selected, including its assessment of the risks of material misstatement of the accounts or of illegal or irregular transactions, whether due to fraud or error, depend on its audit judgement. In making those risk assessments, internal controls relevant to the entity's preparation and presentation of accounts are considered in order to design audit procedures that are appropriate in the circumstances. The Court's audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of the accounting estimates made by management, as well as evaluating 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 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.

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

13. In the Court's opinion, the transactions underlying the annual accounts of the Joint Undertaking for ITER and the Development of Fusion Energy for the financial year ended 31 December 2011 are, in all material respects, legal and regular.

14. The comments which follow in paragraphs 15 to 32 do not call the Court's opinions into question.

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

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

15. The utilisation rates for the available commitment and payment appropriations were 99,7 % and 85,7 % respectively. Out of the 611 million euro of commitment appropriations available for operational activities, 42 % were implemented through direct individual commitments while the remaining 58 % was implemented through global commitments.

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

16. The Court of Auditors has previously reported that the Joint Undertaking's internal control systems had not been fully established and implemented as required by its Financial Regulation<sup>13</sup>. On 31 May 2010 the Joint Undertaking's Internal Auditor issued a report which raised concerns about the financial circuits and the separation of duties.

17. In response to this, the Governing Board adopted a management improvement plan in June 2010 together with a proposal to change the organisational structure and reinforce the financial circuits. Although significant progress has been made<sup>14</sup>, a number of actions need to be implemented:

- an integrated tool to manage budget, financial and operational information is not yet in place;

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<sup>13</sup> Paragraph 21 of the 2009 report made reference to the reorganisation of the departmental structure of the Joint Undertaking, which in the Court's view raised issues concerning the separation of duties between financial and operational activities.

<sup>14</sup> During 2011 the selection and appointment of the Head of the ITER Department, the Head of Administration and the Head of the Budget and Finance Unit were concluded. The appointment of the Heads of projects teams and the implementation of the ABAC Contracts tool were almost complete by April 2012, and the financial circuits together with the administrative and financial manual, had been completed.

- a management system to monitor project and budget implementation is expected to be operational by the third quarter of 2012;
- the validation of the underlying systems by the accounting officer is not completely finished and should continue in 2012<sup>15</sup>;
- a comprehensive ex post audit strategy for grants and operational contracts has not been adopted (see paragraphs 22 and 23);
- the action plans adopted by the Joint Undertaking in response to the internal audits on the financial circuits, grant management and experts contracts have not been fully implemented<sup>16</sup>;
- a risk management exercise at corporate level has not been carried out.

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<sup>15</sup> The validation of the underlying systems by the Accounting Officer should include information on the direct testing carried out on a sample of transactions of the key controls of the Joint Undertaking.

<sup>16</sup> The action plans in response to the internal audits on financial circuits, grant management and experts contracts were adopted by the Joint Undertaking on 30 June 2010, 14 February 2011 and 19 November 2011 respectively.

***Procurement and grants***

18. As pointed out in its 2010 report <sup>17</sup>, the Joint Undertaking needs to enhance its efforts to increase competition. The number of offers received for the operational procurement procedures signed in 2011 was still low<sup>18</sup> and amounted to two on average; for grants the average number of proposals received was only one per call.

19. In one case the decision to cancel an open procedure and to use a negotiated procedure was not duly justified. 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). In another case both the choice of the negotiated procedure and the quantities and price contracted were not duly justified.

20. The Court's 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<sup>19</sup>;
- there is no system to track and manage changes in the contract requirements and thus identify and remedy cost deviations;

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<sup>17</sup> Paragraph 20 of the 2010 Court of Auditors' report made reference to the low level of competition for procurements and grants.

<sup>18</sup> The Joint Undertaking also used a high percentage of negotiated procedures (around two thirds of the operational contracts signed in 2011, excluding the framework contracts).

<sup>19</sup> Article 107 of the Joint Undertaking's implementing rules states that the pre-information notice is the means by which the Joint Undertaking may make known, by way of indication, the estimated total value of contracts and framework contracts, by category of service or groups of products, and the essential characteristics of works contracts which they intend to award using the restricted procedure or competitive dialogue during a budgetary year.



- the duration of the procurement process is often excessive and there are inefficiencies in preparing tender documents;
- cost estimates are not well documented.

21. The audit also revealed that the ex ante control procedures applied to payments made under contracts and grant agreements are not sufficiently documented<sup>20</sup>.

### ***Quality assurance audits and ex post controls on procurement and grants***

22. The Joint Undertaking has a system to perform audits<sup>21</sup> at the level of contractors with the aim of checking compliance with the quality assurance requirements<sup>22</sup>. However, the scope of these audits does not cover the financial aspects of the implementation of the contracts.

23. During 2011 the Joint Undertaking started ex post controls to assess the legality and regularity of the implementation of grants awarded. Despite the progress made<sup>23</sup>, the Joint Undertaking lacks an overall ex post control strategy. Such a strategy should cover the implementation of grant contracts and procurement contracts.

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<sup>20</sup> For instance, the review by the financial verifying officer of the technical acceptance reports is not documented.

<sup>21</sup> Out of the 18 quality audits carried out during 2011, 15 audits were closed by May 2012. The audits only qualified one project performance as unsatisfactory and identified seven situations of non-conformity with the procedures and 139 areas for improvement.

<sup>22</sup> The scope of the audits covers the quality plan, non-conformities, purchase control and subcontracting management, documentation and data management, changes and deviations management, quality control plan for the civil works, detailed project schedule, contract risk management and quality control plan for technical works.

<sup>23</sup> In November 2011 a new member was appointed to the internal control cell with the specific task of putting in place a procedure to carry out ex post controls on procurement and grants. F4E will also adhere to a Commission framework contract for ex-post audits.

## **OTHER MATTERS**

### ***Intellectual property rights and Industrial Policy***

24. On 28 March 2012 the Governing Board adopted the Joint Undertaking's policy on intellectual property rights and dissemination of information. However, detailed rules for its implementation had not been drawn-up at the time of the audit (April 2012) as required under the Statutes<sup>24</sup>.

25. The Governing Board has not yet adopted the industrial policy required under the Statutes<sup>25</sup>.

### ***Late payment of membership contributions***

26. Payments of the 2011 contributions by 12 members were subject to delays.

### ***Commission Internal Audit Service***

27. 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. The Joint Undertaking's Financial Regulation has been amended accordingly to introduce the provisions of the Framework Regulation<sup>26</sup> referring to the powers of the Commission's internal auditor.

### ***Financial Regulation and Implementing Rules***

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<sup>24</sup> Article 8(4) of the Statutes annexed to Decision 2007/198/Euratom states that "The Director shall draw up the rules on intellectual property rights and industrial policy, and on the dissemination of information".

<sup>25</sup> Article 6(3) of the Statutes annexed to Decision 2007/198/Euratom states that "The Governing Board shall adopt rules on industrial policy, intellectual property rights and on the dissemination of information in agreement with the Commission".

<sup>26</sup> Regulation (EC, Euratom) No 2343/2002.

28. On 9 October 2008 the Court issued Opinion No 4/2008 on Fusion for Energy's Financial Regulation. This opinion contained 50 recommendations. At its meeting of 1 June 2011 the Joint Undertaking's Governing Board decided to broadly accept the Court of Auditors' observations (37 recommendations were fully accepted, 11 accepted with comments and only two rejected), amending its Financial Regulation accordingly.<sup>27</sup>

29. However, the Court considers that certain provisions in the Joint Undertaking's implementing rules<sup>28</sup> depart from the implementing rules of the EU General Financial Regulation without sufficient justification.

### ***EU contribution to ITER construction phase***

30. In July 2010<sup>29</sup>, the Council agreed the revised budget estimate of the Joint Undertaking's contribution for the construction phase amounting to 6,6 billion euro (2008 value), thus doubling the initial estimate. As reported by the internal auditor<sup>30</sup>, the Joint Undertaking does not yet have a tool to regularly monitor the validity of the estimates and report on potential deviations.

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<sup>27</sup> Second amendment to the Fusion for Energy Joint Undertaking's Financial Regulation of 25 November 2011

<sup>28</sup> Thresholds referred to in Articles 80 and 100, competitive dialogue under Article 96 and composition of the opening committees under Articles 119 and 120.

<sup>29</sup> Council conclusion on ITER status of 7 July 2010 (Ref. 11902/10).

<sup>30</sup> Internal auditor's report on pre-procurement dated 13 January 2012.

***Follow up of previous observations*****Status of the financing of the ITER project for 2012-13**

31. On 1 December 2011 an agreement was reached by the Council, the European Parliament and the Commission on the financing of the 1 300 million euro of additional costs for the ITER project for 2012-2013<sup>31</sup>.

**Host State agreement**

32. According to the Host State Agreement signed with the Kingdom of Spain on 28 June 2007, the permanent premises should have been made available to the Joint Undertaking by June 2010. However, at the time of the audit (April 2012) this had not occurred.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 15 November 2012.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

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<sup>31</sup> OJ L 4, 7.1.2012, p.12.

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

**Competences and activities**

<p><b>Areas of Community competence deriving from the Treaty</b></p> <p><i>(Extracts from Articles 45 and 49 of the Treaty establishing the European Atomic Energy Community)</i></p>	<p>Chapter 5, on 'Joint Undertakings', of the Treaty establishing the European Atomic Energy Community, and in particular:</p> <p>Article 45:</p> <p>"Undertakings which are of fundamental importance to the development of the nuclear industry in the Community may be established as Joint Undertakings within the meaning of this Treaty, in accordance with the following Articles"</p> <p>Article 49:</p> <p>Joint Undertakings shall be established by Council decision. Each Joint Undertaking shall have legal personality.</p>
<p><b>Competences of the Joint Undertaking</b></p> <p><i>(Council Decision 2007/198/Euratom)</i></p>	<p><b>Objectives</b></p> <ul style="list-style-type: none"> <li>– To provide the contribution of the European Atomic Energy Community (Euratom) to the ITER International Fusion Energy Organisation;</li> <li>– To provide the contribution of Euratom to Broader Approach Activities with Japan for the rapid realisation of fusion energy;</li> <li>– To prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities including the International Fusion Materials Irradiation Facility (IFMIF).</li> </ul> <p><b>Tasks</b></p> <ul style="list-style-type: none"> <li>– Oversee preparation of the ITER project site;</li> <li>– provide components, equipment, materials and other resources to the ITER Organisation;</li> <li>– manage procurement arrangements vis-à-vis the ITER Organisation and, in particular, associated quality assurance procedures;</li> <li>– prepare and coordinate Euratom's participation in the scientific and technical exploitation of the ITER Project;</li> <li>– coordinate scientific and technological research and development activities in support of Euratom's contribution to the ITER Organisation;</li> <li>– provide Euratom's financial contribution to the ITER Organisation;</li> <li>– arrange to make human resources available for the ITER Organisation;</li> <li>– interface with the ITER Organisation and carry out any other activities in furtherance of the ITER Agreement.</li> </ul>
<p><b>Governance</b></p>	<p><b>Governing Board</b></p> <p>The Governing Board shall be responsible for the supervision of the Joint Undertaking in the pursuit of its objectives and ensure close collaboration between the Joint Undertaking and its Members in the implementation of its activities.</p> <p><b>Bureau</b></p> <p>The Bureau is a subsidiary body of the Fusion for Energy Governing Board and provides Support for communication and co-ordination between the Governing Board, F4E committees and F4E management.</p> <p><b>Administration &amp; Finance Committee</b></p> <p>The Administration and Finance Committee (AFC) assists the Governing Board in administrative and financial matters related to ITER, the Broader Approach and preparations for demonstration fusion reactors (DEMO).</p> <p><b>Audit Committee</b></p>

	<p>The Audit Committee (AC) is an advisory committee to the Governing Board having an overview of Financial Reporting and Accounting, Governance, Internal Control and Risk Management as well as External Audit and Internal Audit.</p> <p><b>Executive Committee</b></p> <p>The Executive Committee shall assist the Governing Board in the preparation of its decisions and shall carry out any other tasks which the Governing Board may delegate to it.</p> <p><b>Technical Advisory Panel</b></p> <p>The Technical Advisory Panel shall advise the Governing Board and the Director, as necessary, on the adoption and implementation of the project plan and work programmes.</p> <p><b>Director</b></p> <p>The Director shall be the chief executive officer responsible for the day-to-day management of the Joint Undertaking and shall be its legal representative.</p> <p><b>External Audit</b></p> <p>Court of Auditors.</p> <p><b>Internal Audit</b></p> <p>Established as of 1 July 2009.</p> <p><b>Discharge Authority</b></p> <p>Parliament, on a recommendation from the Council.</p>
<p><b>Resources available to the Joint Undertaking in 2011</b></p>	<p><b>Budget</b></p> <p>263,57 million euro, of which 93 % funded by Community contribution</p> <p><b>Staff at 31 December 2011</b></p> <p>239 permanent posts provided for in the establishment plan, of which 211 posts were occupied;</p> <p>Other staff:</p> <ul style="list-style-type: none"> <li>- Seconded National Experts: 5</li> <li>- Contract staff: 99</li> <li>- Local staff: n/a</li> </ul> <p>Total staff employed: 315</p> <p>Allocated to (approximately):</p> <ul style="list-style-type: none"> <li>- Operational activities: 160</li> <li>- Administrative tasks: 115</li> <li>- Mixed tasks: 40</li> </ul>
<p><b>Activities and services provided in 2011</b></p>	<ul style="list-style-type: none"> <li>- Operational Contracts: 38 awarded for a total value of 163,556 million euro</li> <li>- Administrative Contracts: 17 awarded (including 7 Joint Procurements) for a total value of 5,162 million euro</li> <li>- Grants: 22 awarded for a total value of 13,061 million euro</li> <li>- Budget Implementation: <ul style="list-style-type: none"> <li>- 99,7 % in commitment appropriations (99,7 % operational &amp; 98,7 % administrative)</li> <li>- 85,7 % in payment appropriations (86,6 % operational and 79,6 % administrative)</li> </ul> </li> <li>- Procurement Arrangements : <ul style="list-style-type: none"> <li>- 2 for the ITER project - 31,79 kIUA (equivalent to 50,135 million euro) out of a total of 1 135,9 kIUA foreseen for the European in kind contributions.</li> <li>- 10 for the Broader Approach - 62,67 kBAUA (equivalent to 42,490 million euro) out of a total of 236,4 kBAUA foreseen for all the European contributions.</li> </ul> </li> <li>- ITER Credit Awarded: 35,551 kIUA (equivalent to 56,066 million euro)</li> </ul>
<p>Source: Information supplied by the Joint Undertaking.</p>	

**F4E's replies to the final report of the European Court of Auditors with a view to a report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2011**

Par.	Observation	F4E Position	F4E Comments
16	<p>The Court of Auditors has previously reported that the Joint Undertaking's internal control systems had not been fully established and implemented as required by its Financial Regulation. On 31 May 2010 the Joint Undertaking's Internal Auditor issued a report which raised concerns about the financial circuits and the separation of duties.</p>	<p>F4E agrees with comments</p>	<p>F4E operates within two distinct control environments; (a) the EU Internal Control Standards, and (b) the ITER-wide Quality Requirements, which are designed to ensure the success of the ITER project and compliance with the requirements of the French Nuclear Safety Authority. F4E aims to meet these standards and requirements through a single F4E-wide Management System comprising policies, processes, procedures, etc. In the second half of 2010, the Director of F4E put in place a Management Improvement Plan with a focus on project management and other key processes.</p> <p>Major actions have already been undertaken to improve the project management system with the assistance of external persons from an industrial/project background. These improvements will allow better budget forecasting, improved detection of deviations and exceptions, and identification of preventive as well as corrective actions in order to optimize the budget implementation and to contain the cost of the EU contribution to the ITER construction. Full implementation is targeted for the end of 2012.</p> <p>Furthermore, F4E Management has been responding to the recommendations of the F4E Internal Auditor and to the recommendations of the Court of Auditors. The financial activities have been regrouped and reinforced in a new Budget and Finance unit including the control environment functions (ex-post, financial audits &amp; monitoring, etc.) while segregating the operational and financial activities. All middle and senior management posts have been filled in 2011 and the Budget and Finance Unit has been strengthened with other experienced staff in particular very qualified verifying agents with EU experience and knowledge.</p> <p>Regarding the financial circuit audit, it should be noted that in the first quarter of 2012, the budget and finance unit performed a self-assessment in relation to the level of implementation of the Financial Circuit's audit action plan. The assessment concluded an implementation level of nearly 86%.</p>

Par.	Observation	F4E Position	F4E Comments
17	<p>In response to this, the Governing Board adopted a management improvement plan in June 2010 together with a proposal to change the organisational structure and reinforce the financial circuits.</p> <p>Although significant progress has been made, a number of actions need to be implemented:</p> <ul style="list-style-type: none"> <li>• an integrated tool to manage budget, financial and operational information is not yet in place;</li> <li>• a management system to monitor project and budget implementation is expected to be operational by the third quarter of 2012;</li> <li>• the validation of the underlying systems by the accounting officer is not completely finished and should continue in 2012<sup>15</sup>;</li> <li>• a comprehensive ex post audit strategy for grants and operational contracts has not been adopted (see paragraphs 22 and 23); the action plans adopted by the Joint Undertaking in response to the internal audits on the financial circuits, grant management and experts contracts have not been fully implemented</li> <li>• a risk management exercise at corporate level has not been carried out.</li> </ul>	F4E partly agrees	<p>The new F4E organizational structure is now implemented. It is more project-oriented, gives more emphasis to the financial service, and strengthens the overall management of F4E following the introduction of the middle management level with appropriate delegations and the recruitment of new managers (Head of Administration Department, Head of ITER Department and Head of the Budget and Finance Unit). Furthermore :</p> <ul style="list-style-type: none"> <li>• Several important reports are being produced on a routine basis, e.g. on the progress of the big procurements and on budget implementation.</li> <li>• A first validation of the underlying systems has been done by the accounting officer for the 2011 financial year. In view of the change in the organizational structure and the strengthening of the control environment (ongoing in 2012), it is foreseen to continue the exercise of validation of the accounting systems for the year 2012, including a full audit testing.</li> <li>• As part of the Ex-Post audit strategy which F4E is currently establishing, the scope of the Quality Audits will be extended to perform checks on financial and contractual aspects of contracts. In this respect, a pilot exercise will be carried out before the end of 2012.</li> <li>• The risk management of the Project exists in the Project Plan for ITER and Broader Approach activities and are managed regularly with the Partners Regarding the Coprorate Risk at the organizational level, this exercise has been launched at the beginning of 2012 and the first result was discussed at the GB in June, F4E is now finalized it and is being preparing the GB report on Corporate risks and mitigated action which will be discussed regularly at the GB Meetings.</li> </ul>



Par.	Observation	F4E Position	F4E Comments
18	<p>As pointed out in its 2010 report 17, the Joint Undertaking needs to enhance its efforts to increase competition. The number of offers received for the operational procurement procedures signed in 2011 was still low<sup>18</sup> and amounted to two on average; for grants the average number of proposals received was only one per call.</p>	F4E disagrees	<p>F4E notes that the methodology used by the European Court of Auditors to calculate the average number of offers received, excludes framework contracts and thereby reduces the average number of offers from 4.8 to 2.4 offers.</p> <p>F4E reminds that the average number of proposals it receives per call is related to the extreme complex market in which it is active and refers to its reply to paragraph 29 for further explanations.</p>
20	<p>The Court's audit has confirmed the findings of an internal audit carried out in 2011 in the area of procurement, notably:</p> <ul style="list-style-type: none"> <li>• the pre-information notice is not used as an instrument for increasing ex ante publicity of forthcoming tenders;</li> <li>• there is no system to track and manage changes in the contract requirements and thus identify and remedy cost deviations;</li> <li>• the duration of the procurement process is often excessive and there are inefficiencies in preparing tender documents;</li> <li>• cost estimates are not well documented.</li> </ul>	F4E agrees with comments	<p>It needs to be stressed that the audit in the area of procurement concluded by a satisfactory opinion and that the recommendations resulted in an action plan comprising of 40 action which are currently being implemented.</p>

Par.	Observation	F4E Position	F4E Comments
21	The audit also revealed that the ex ante control procedures applied to payments made under contracts and grant agreements are not sufficiently documented.	F4E agrees with comments	As part of the work on the Integrated Management System in 2012, improvements to the monitoring and controlling systems are being implemented which include stronger ex-ante control instruments.
22	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. However, the scope of these audits does not cover the financial aspects of the implementation of the contracts.	F4E agrees with comments	As part of the Ex-Post audit strategy which F4E is currently establishing, the scope of the Quality Audits will be extended to perform checks on financial and contractual aspects of contracts. In this respect, a pilot exercise will be carried out before the end of 2012.
23	During 2011 the Joint Undertaking started ex post controls to assess the legality and regularity of the implementation of grants awarded. Despite the progress made, the Joint Undertaking lacks an overall ex post control strategy. Such a strategy should cover the implementation of grant contracts and procurement contracts.	F4E agrees with comments	<p>As a consequence of the experience gained during financial monitoring visits carried out in 2011, F4E is now in a position to define the strategy to cover the financial control for both procurements and grants. Given the reduced financial dimensions of grants versus standard and operational procurements, this strategy will focus the main effort of the financial control on the ex-post control of procurements.</p> <p>These two types of ex-post controls (quality and financial) will be included in a wide integrated management framework which combine the industrial control environment such as ISO requirements with the more administrative Internal Control Standards from the EU environment. Within this F4E wide integrated management framework, the quality audits will be integrated in the overall audit strategy in order to assure an additional control level in relation to procurements.</p>
24	On 28 March 2012 the Governing Board adopted the Joint Undertaking's policy on intellectual property rights and dissemination of information. However, detailed rules for its implementation have not been drawn-up as required under the Statutes.	F4E agrees with comments	The detailed rules for the implementation of the policy are reflected in the "Intellectual Property Clauses" of the model agreement. Such clauses were presented by F4E to the Executive Committee on 14th May 2012. The Executive Committee considered the Intellectual Property clauses proposed by F4E for the implementation of the F4E Intellectual Property rules and recommended their adoption to the Governing Board subject to the Committee's comments being taken into account. The final version of such rules was adopted by the Governing Board during its meeting of 28th/29th June 2012.

Par.	Observation	F4E Position	F4E Comments
25	The Governing Board has not yet adopted the industrial policy required under the Statutes.	F4E agrees with comments	A Working Group of the F4E Governing Board has prepared a draft Industrial Policy which was considered by the Governing Board during its meeting in June 2012. The Policy is now being finalised taking into account that prior approval of the Commission is required according to Article 6(3)(p) of the F4E Statutes with the aim of it being adopted by the Governing Board before the end of 2012.
26	Payments of the 2011 contributions by 12 members were subject to delays.	F4E agrees with comments	<p>F4E has established a new framework in 2011 for the collection of the Membership contribution, taken so in consideration the recurrence of the finding of the court:</p> <ul style="list-style-type: none"> <li>- on 25 November 2011, F4E Governing Board approved the proposal of F4E for the application mutatis mutandis of Article 56(3) of the F4E's Financial Regulation in order to allow imposing interest on those Members who fail to pay their contributions within the delay of the debit note. As noticed by the Court in the references to the F4E Financial Regulation, the provision was applying to procurement and grant agreement only at that time.</li> <li>- The governing board also decided that late interest would be requested to the Member having not paid their contribution 2011 by the end of October. Three members were late in their payments but the interest to be requested were below the threshold of 200€ in one case. The late interests due for 2011 have been requested together with the membership contribution 2012 and the detail information has been provided to the Court during the Audit.</li> <li>- The Governing Board decision has been formalised with the adoption of the following amendment to the F4E Implementing Rules in its meeting of 28 June 2012: <i>"Any amount receivable in relation to the Annual Membership contributions shall bear interest in accordance with paragraph 2b and 3 if not paid on the deadline referred to in Article 45(3)(b)."</i></li> </ul>

Par.	Observation	F4E Position	F4E Comments
28	<p>On 9 October 2008 the Court issued Opinion 4/2008 on Fusion for Energy's Financial Regulation. This opinion contained 50 recommendations. At its meeting of 1 June 2011 the Joint Undertaking's Governing Board decided to broadly accept the Court of Auditors' observations (37 recommendations were fully accepted, 11 accepted with comments and only two rejected), amending its Financial Regulation accordingly.</p>	F4E agrees with comments	<p>The distinct nature of work of the Joint Undertaking 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 addition, 'Fusion for Energy' operates in an extremely complex market in which monopoly or oligopoly situations are predominant. In order to be able to operate successfully in this context, and as foreseen by its Financial Regulation, the F4E Governing Board has adopted, in agreement with the European Commission, certain provisions in its Financial Regulations and Implementing Rules which derogate from the (framework) general financial regulation.</p> <p>In this context, the thresholds for low value contracts (Article 80 of the IRs), for the use of the negotiated procedure (Article 100 of the IRs), as well as for the competitive dialogue procedure (Articles 93-99 of the IRs) and for the composition of the opening committees (Art 119 and 120 of the IRs), have been adapted to the technological and market conditions of the ITER project, as opposed to the thresholds originally designed for the provision of goods and services for administrative purchases.</p>
29	<p>However, the Court considers that certain provisions in the Joint Undertaking's implementing rules depart from the implementing rules of the EU General Financial Regulation without sufficient justification.</p>	F4E disagrees	<p>In relation to the implementing rules which have been revised to take into account the comments from the Court (e.g. conditions to raise and grant loans or the rules for valuing in-kind contributions), the Joint Undertaking considers that the amended implementing rules provide sufficient guidance for the implementation of these activities. Any additional specification in the rules may result in making them rigid and inflexible, and thus rendering them impossible to adapt to the different possible situations which may arise in reality. In any case, the Joint Undertaking will provide all the explanations required in the way it may implement the conditions to raise or grant a loan, or in the way it has (or will) set the value for any specific in-kind contribution it may receive.</p>

Par.	Observation	F4E Position	F4E Comments
30	<p>In July 2010, the Council agreed the revised budget estimate of the Joint Undertaking's contribution for the construction phase amounting to 6,6 billion euro (2008 value), thus doubling the initial estimate.</p> <p>As reported by the internal auditor, the Joint Undertaking does not have a tool to monitor the validity of the estimates and report on potential deviations.</p>	F4E agrees with comments	<p>The estimates for the total value of the project are based on the Toschi report. F4E is now undertaking 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 the estimates.</p> <p>An integrated project monitoring tool which allows for the monitoring of potential cost deviations has been developed and is operational since September 2012 at F4E, migrating project management data ,such as schedules, and financial management to the new Work Breakdown Structure. Additional development is ongoing for Earn Value Management and the Baseline Cost Estimate by contract.</p>
32	<p>According to the Host State Agreement signed with the Kingdom of Spain on 27 June 2010, the permanent premises should have been made available to the Joint Undertaking by June 2010. However, at the time of the audit (April 2012) this had not occurred.</p>	F4E agrees with comments	<p>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.</p> <p>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)</p>