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RECH 402  
ATO 71  
COMPET 578

**NOTE**

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From:	Presidency
To:	Delegations
No. prev. doc.:	11922/14 RECH 328 ATO 55 COMPET 447 + ADD1
No. Cion doc.:	COM(2014) 459 final+Annex 1
Subject:	Proposal for a Council Decision amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it

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Delegations will find attached a Presidency text on the Proposal for a Council Decision amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it in view of the Joint Research/Atomic Question Working Party of 27 October 2014.

Explanation:

~~Strikeout~~ = deletion in relation to doc. 11922/14

**Bold underlined** = new text

Proposal for a

## COUNCIL DECISION

**amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular the third ~~and fourth~~ paragraphs of Article 47 and Article ~~50~~<sup>48</sup> thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision 2007/198/Euratom<sup>1</sup> established the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "Joint Undertaking") to provide the contribution of the European Atomic Energy Community (hereinafter "Euratom") to the ITER International Fusion Energy Organisation and the Broader Approach Activities with Japan as well as to prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities.
- (2) Decision 2007/198/Euratom has been amended by Council Decision 2013/791/Euratom<sup>2</sup> to allow the financing of the activities carried out by the Joint Undertaking during the period 2014-2020.

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<sup>1</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>2</sup> Council Decision 2013/791/Euratom of 13 December 2013 amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (OJ L 349, 21.12.2013 p 100).

- (3) In its conclusions of 12 July 2010 on the Commission's Communication "ITER status and possible way forward"<sup>3</sup>, the Council requested the Commission to examine and address the way in which the Commission, the Member States and the Joint Undertaking should implement their responsibilities and tasks on ITER.
- (4) A detailed list of actions was identified in the Commission's Staff Working Paper "Towards a robust management and governance of the ITER project"<sup>4</sup> issued on 9 November 2010, to be undertaken either at the international level, mainly by the ITER Organization, or at the European level, mainly by the Joint Undertaking.
- (5) Following the accession of Croatia to the Union on 1 July 2013, there is a need to amend the Statutes of the Joint Undertaking to grant Croatia voting rights in the Governing Board of the Joint Undertaking. It is necessary to make further amendments to those Statutes in order to improve the management and the governance of the Joint Undertaking. To take into account amendments to the Treaty establishing the European Atomic Energy Community by the Treaty of Lisbon, it is also necessary to update the reference to the provisions on the Court of Justice of the European Union.
- (6) The Governing Board of the Joint Undertaking approved the amendments proposed by the Commission to Decision 2007/198/Euratom, in accordance with the Statutes of the Joint Undertaking.

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<sup>3</sup> COM(2010) 226 final of 4 May 2010.

<sup>4</sup> SEC(2010) 1386 final of 9 November 2010.

- (7) An Administration and Management Committee should be established to prepare opinions and recommendations for the adoption of key documents by the Governing Board. This Committee should also provide advice or recommendations on specific administrative and financial issues upon request of the Director or the Governing Board. The Governing Board should have the power to delegate tasks to this Committee. Any Member of the Joint Undertaking should have the right to nominate a representative to serve on this Committee.
- (8) A Procurement and Contracts Committee should be established to give recommendations to the Director of the Joint Undertaking on the award of contracts, grants and related matters. Members of this Committee should be nominated in a personal capacity by the Governing Board.
- (9) A Bureau should be established to assist the Governing Board in the preparation of its decisions. The Governing Board should have the power to delegate tasks to the Bureau. The members of the Bureau should be the Chair of the Governing Board, the Chairs of the Governing Board Committees, a representative of Euratom and a representative of the ITER Host State (France). The Governing Board should be entitled to appoint additional persons to the Bureau.
- (10) In accordance with Article 17 of the Treaty on European Union, the Commission is to ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. Therefore, the rights of the Commission should be strengthened to ensure consistency of the decisions of the Governing Board with Union law.

- (11) It is desirable to establish a network of designated organisations in the field of scientific and technological fusion research to provide stable and long-term research and development support to the Joint Undertaking, based on the knowledge and know-how developed by the European Fusion programme and those to be developed in the future.
- (12) It is necessary to take into account the relevant provisions of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>5</sup> and Commission Delegated Regulation (EU) No 1268/2012<sup>6</sup>, in particular the role of the Commission's internal auditor as internal auditor of the Joint Undertaking.
- (13) Decision 2007/198/Euratom as amended by Decision 2013/791/Euratom ensures the financing of the Joint Undertaking activities for 2014-2020. Article 12(1)(a) of the Statutes of the Joint Undertaking provides for the Euratom contribution to be made available through the Community research and training programmes, adopted pursuant to Article 7 of the Treaty. That provision should be amended to take into account that the financing for 2014-2020 will no longer be made available through the Euratom Framework Programme.
- (14) It is also appropriate to update Decision 2007/198/Euratom as regards the provisions on protection of the financial interests of the Members.
- (15) Decision 2007/198/Euratom should therefore be amended accordingly,

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<sup>5</sup> 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 (OJ L 298, 26.10.2012, p. 1).

<sup>6</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1) .

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2007/198/Euratom is amended as follows:

(1) Article 5 is amended as follows:

a) in paragraph 1 the following sentence is added:

"The Joint Undertaking may award grants and prizes in accordance with the rules of its financial regulation.";

b) paragraph 2 is deleted;

(2) the following Article 5aa is inserted:

"Article 5aa

Protection of the financial interests of the Members

The Joint Undertaking shall ensure that the financial interests of its Members are adequately protected by carrying out or commissioning appropriate internal and external controls.";

(3) paragraph 3 of Article 9 is replaced by the following:

"The Court of Justice **of the European Union** shall have jurisdiction in actions brought against the Joint Undertaking, including decisions of its Governing Board, under the conditions provided for in Articles 263 and 265 of the Treaty on the Functioning of the European Union";

(4) the Annex is amended in accordance with the Annex to this Decision.

*Article 2*  
*Application*

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*

*The President*

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The Annex is amended as follows:

(1) Article 5 is amended as follows:

(a) the title is replaced by the following:

"Bodies and Committees";

(b) paragraph 2 is replaced by the following:

"2. The Governing Board shall be assisted by the Administration and Management Committee and by the Bureau in accordance with Articles 8a and 9a.";

(c) the following paragraph 2a is inserted:

"2a. The committees of the Joint Undertaking shall be the Administration and Management Committee, the Bureau, ~~and~~ the Procurement and Contracts Committee **and the Technical Advisory Panel** ("hereinafter the Committees");

(d) paragraph 3 is replaced by the following:

"3. The Director shall seek advice from the Procurement and Contracts Committee in accordance with Article 8b.";

(e) the following paragraph 4 is added:

"4. The Governing Board and the Director shall seek advice from the Technical Advisory Panel in accordance with Article 9.";



(2) Article 6 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) points (b) and (c) are replaced by the following:

"(b) establish subsidiary bodies;

(c) appoint the chairs and members of the Committees and any subsidiary bodies established under point (b);

(ii) in point (d), the words "work programmes" are replaced by the words "work programme";

(iii) point (e) is replaced by the following:

"(e) adopt the annual budget (including the specific parts related to the administrative and staff costs) and give an opinion on the annual accounts;"

(iv) point (n) is replaced by the following:

"(n) approve the conclusion of agreements or arrangements regarding cooperation with third countries and with institutions, undertakings or persons of third countries or with international organisations with the exception of the procurement arrangements for the activities laid down in Article 3(1)(b)-(c) and 3(2)(a);"

(v) point (o) is replaced by the following:

"(o) assess the annual report on the progress of the Joint Undertaking with respect to its work programme and its resources;"

(vi) point (q) is deleted;

- (b) in paragraph 6, the third and the fourth subparagraphs are replaced by the following:

"The Commission may come to a view on the legality of the decision of the Governing Board within one month of the matter being referred to the Commission, failing which the decision of the Governing Board shall be deemed to have been upheld.

The Governing Board shall re-examine its decision in the light of the Commission's views to ensure, ~~as appropriate,~~ compliance with Community law.";

- (c) paragraphs 9 and 10 are replaced by the following:

"9. Unless otherwise decided in particular cases, the Director of the Joint Undertaking and the Chairs of the Committees shall participate in the meetings of the Governing Board.

10. The Governing Board shall adopt its rules of procedure by a two-thirds majority of the total votes. The Governing Board shall approve the rules of the procedure of the Committees by a two-thirds majority of the total votes.";

- (3) Article 7 is deleted.

- (4) paragraph 4 of Article 8 is amended as follows:

- (a) the first subparagraph is replaced by the following:

"The Director shall implement the work programme and direct the execution of the activities set out in Article 3. He shall supply the Governing Board and the Committees and any other subsidiary bodies with all information necessary for the performance of their functions.";

- (b) in points (c) and (i), the words "work programmes" are replaced by the words "work programme";

(c) points (j) and (k) are replaced by the following:

"(j) draw up such other reports as may be requested by the Governing Board or the Committees;

(k) assist the Governing Board and the Committees by providing their secretariats;"

(5) the following Articles 8a and 8b are inserted:

*"Article 8a*

*Administration and Management Committee*

1. Upon request of the Director or the Governing Board, the Administration and Management Committee shall provide advice or recommendations on specific matters related to administrative and financial planning of the Joint Undertaking and carry out any other tasks which the Governing Board may delegate to it.
2. The Administration and Management Committee shall in particular prepare opinions for and recommendations to the Governing Board on the budget, the annual accounts, the project plan, the work programme, the resources estimate plan, the staff establishment plan, the staff policy plan and other related matters.
3. The Governing Board shall appoint members of the Administration and Management Committee from amongst representatives, **with recognised standing and professional experience in Administration and Management**, nominated by the Members. One member of the Committee shall be Euratom.
4. Members of the Administration and Management Committee shall perform their duties in the general interest of the Joint Undertaking.
5. Subject to the prior approval of the Governing Board, the Administration and Management Committee shall adopt its rules of procedure.

*Article 8b*

*The Procurement and Contracts Committee*

1. The Procurement and Contracts Committee shall provide the Director with recommendations on the strategies in relation to procurement and grant activities and the award and follow-up of contracts and other related matters.
2. The Governing Board shall appoint the members of the Procurement and Contracts Committee from among persons of recognised standing and professional experience in contractual and procurement matters. Members of the Governing Board shall not be members of the Procurement and Contracts Committee.
3. The members of the Procurement and Contracts Committee shall not be bound by any instructions. They shall be independent in the performance of their duties.
4. Subject to the prior approval of the Governing Board, the Procurement and Contracts shall adopt its rules of procedure.";

(6) Article 9 is replaced by the following:

*"Article 9*

*Technical Advisory Panel*

1. 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 programme.
2. The Governing Board shall appoint the members of Technical Advisory Panel from among persons of recognised standing and professional experience in scientific and engineering matters concerning fusion and associated activities.

3. The members of the Technical Advisory Panel shall not be bound by any instructions. They shall be independent in the performance of their duties, in the general interest of the Joint Undertaking.
4. Subject to the prior approval of the Governing Board, the Technical Advisory Panel Committee shall adopt its rules of procedure.";

(7) the following Article 9a is inserted:

*"Article 9a*

*Bureau*

1. The Bureau 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.
2. The membership shall comprise the Chair of the Governing Board, the Chairs of the Committees, a representative of Euratom and a representative of the ITER host State. The Governing Board may appoint additional members to the Bureau.
3. The Chair of the Bureau shall be the Chair of the Governing Board.
4. Members of the Bureau shall perform their duties in the general interest of the Joint Undertaking.
5. Subject to the prior approval of the Governing Board, the Bureau shall adopt its rules of procedure.";

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

*"Article 11*

*Work programme and resource estimates plan*

The Director shall prepare each year the submission of the project plan to the Governing Board, the resource estimates plan and the detailed annual work programme and budget.";

- (9) in paragraph 1 of Article 12, point (a) is replaced by the following:

"(a) the Euratom contribution shall be made available through the Community research and training programmes adopted pursuant to Article 7 of the Treaty or through any other decision adopted by the Council.";

- (10) Article 14 is replaced by the following:

*"Article 14*

*Annual report*

The annual report shall record the implementation of the work programme by the Joint Undertaking. It shall in particular outline the activities conducted by the Joint Undertaking and evaluate the results with respect to the objectives and the timetable set, the risks associated with the activities carried out, the use of resources and the general operation of the Joint Undertaking. The annual report shall be prepared by the Director, assessed by the Governing Board and sent by the Governing Board, together with its assessment, to the Members, the Commission, the European Parliament and the Council.";

- (11) in the second subparagraph of Article 15(1), the words "15 June" are replaced by the words "1 June";

(12) the following Article 15a is inserted:

*"Article 15a*

*Networking with designated organisations in the field of scientific and technological fusion research*

1. In furtherance of its activities, the Joint Undertaking shall draw upon knowledge and facilities developed by competent public research organisations working in the field of fusion research and development.
2. The Governing Board, acting on a proposal from the Director, shall draw up a list to be made public of competent organisations designated by the Members which may carry out research and development activities in furtherance of the tasks of the Joint Undertaking, either individually or in networks. These activities may be eligible for financial support by the Joint Undertaking.
3. The implementing arrangements for the application of paragraphs 1 and 2 of this Article shall ensure transparency and competition among public research organisations and shall be laid down in the financial regulation and its implementing rules referred to in Article 13 and Annex III.";

(13) in Annex I the following row is inserted after the row for Bulgaria:

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Croatia	2
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";

(14) Annex II is amended as follows:

(a) point 2 is replaced by the following:

"2. The total amount of annual membership contributions for year n shall be calculated on the basis of the annual resources required for the administration of the Joint Undertaking in that year, as adopted with the resource estimates plan by the Governing Board.";

(b) in point 4, the following point (c) is added:

"(c) The Governing Board may levy further payments on a Member when this Member does not pay its contribution by the due date.";

(15) Annex III is amended as follows:

(a) point 3 is replaced by the following:

"3. The Joint Undertaking shall establish an internal audit capability.";

(b) in point (c) of point 5, the words "work programmes" are replaced by the words "work programme";

(c) in point 5, point (f) is replaced by the following:

"(f) rules and procedures for the internal financial control, including delegated powers;"

(d) in point 5, the following point (k) is added:

"(k) rules on management of grants.";



(e) in point 5, the following paragraph is added:

"For the purposes of point (d) the budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments;"

(f) the following paragraph 10 is added:

"10. The Joint Undertaking shall adopt provisions and rules for the establishment of a network with designated organisations referred to in Article 15a of the Statutes. Those rules shall ensure transparency and competition among European public research organisations and shall specify, in particular, the criteria for inclusion of an organisation on the list of competent organisations designated by the Members."

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