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COVER NOTE

from:	Mr Vítor CALDEIRA, President of the Court of Auditors
date of receipt:	7 December 2012
to:	Mrs Erato KOZAKOU-MARCOULLIS, President of the Council of the European Union

Subject:	Report on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking for the financial year 2011 together with the replies of the Joint Undertaking
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Madam,

I enclose in all the official languages of the European Union a copy of the Court of Auditors' report on the annual accounts of the Fuels Cells and Hydrogen Joint Undertaking for the financial year 2011.

This report is accompanied by the Joint Undertaking's replies and will shortly be published in the Official Journal of the European Union.

(Complimentary close).

(s.) Vítor CALDEIRA

Encl.: Report on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking for the financial year 2011 together with the replies of the Joint Undertaking.

Report on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking
for the financial year 2011

together with the replies of the Joint Undertaking

INTRODUCTION

1. The Fuel Cells and Hydrogen Joint Undertaking (FCH Joint Undertaking) located in Brussels, was set up in May 2008¹ for the period up to 31 December 2017.
2. The objectives of the FCH Joint Undertaking include supporting research, technological development and demonstration activities in the Member States and countries associated with the Seventh Framework Programme² in a coordinated manner, together with industry and research organisations, in order to focus on developing market applications and hence facilitating additional industrial efforts towards a rapid deployment of fuel cells and hydrogen technologies³.
3. The Members of the Joint Undertaking are the European Union, represented by the Commission, the New Energy World Industry Grouping (NEW-IG) and the Research community (N.ERGHY).
4. The maximum EU contribution to the FCH Joint Undertaking to cover running costs and research activities is 470 million euro financed from the budget of the Seventh Framework Programme, of which the proportion earmarked for running costs must not exceed 20 million euro. New-IG should contribute 50 % of the running costs and N.ERGHY should contribute 1/12 of

¹ Council Regulation (EC) No 521/2008 of 30 May 2008 setting up the Fuel Cells and Hydrogen Joint Undertaking (OJ L 153, 12.6.2008, p. 1).

² The Seventh Framework Programme, adopted by Decision No 1982/2006/EC of the European Parliament and of the Council (OJ L 412, 30.12.2006, p. 1), brings all the research-related EU initiatives together under one roof and plays a crucial role in achieving the goals of growth, competitiveness and employment. It is also a key pillar for the European Research Area.

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

the running costs and should contribute to operational costs through in-kind⁴ contributions at least equal to the financial contribution of the Union.

5. The Joint Undertaking was granted its financial autonomy on 15 November 2010.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

6. 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

7. Pursuant to the provisions of Article 287(1) of the Treaty on the Functioning of the European Union, the Court has audited the annual accounts⁵ of the Fuel Cells and Hydrogen Joint Undertaking, which comprise the “financial statements”⁶ and the “reports on the implementation of the budget”⁷ for the

⁴ According to Article 12(3) of the Annex to Regulation (EC) No 521/2008 setting up the Joint Undertaking, which stipulates that the “operational costs of the FCH Joint Undertaking shall be covered through the financial contribution of the Union, and through in-kind contributions from the legal entities participating in the activities, the contribution from the participating legal entities shall at least match the financial contribution of the Union”.

⁵ 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 with summary information on the transfers of appropriations among the various budget items.

⁶ The ‘financial statements’ include the balance sheet and the economic outturn account, the cash-flow statement, the statement of changes in net assets and the notes to the financial statements which include a description of the accounting policies and other explanatory information.

⁷ The budget implementation reports comprise the budget outturn account, its reconciliation with the economic outturn account and a report on the budget execution in 2011.

financial year ended 31 December 2011, and the legality and regularity of the transactions underlying those accounts.

8. 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 1605/2002⁸.

The Management's responsibility

9. As authorising officer, the Director implements the revenue and expenditure of the budget in accordance with the Joint Undertaking's financial rules, under his own responsibility and within the limits of the authorised appropriations⁹. The Director is responsible for putting in place¹⁰ the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts¹¹ 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

10. 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.

⁸ OJ L 248, 16.9.2002, p. 1.

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

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

¹¹ 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 incorporated in the financial rules of the FCH Joint Undertaking.

11. The Court conducted its audit in accordance with the IFAC and ISSAI¹² 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.

12. 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.

13. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

¹² International Federation of Accountants (IFAC) and International Standards of Supreme Audit Institutions (ISSAI).

Opinion on the reliability of the accounts

14. 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 rules.

Basis for a qualified opinion on the legality and regularity of the transactions underlying the accounts

15. An ex-post audit strategy was adopted by the Governing Board in January 2011 and is a key control for assessing the legality and regularity of the underlying transactions¹³. Only eight of twelve ex-post audits were completed as of September 2012 covering 4,8 million euro (27 % of all cost claims received by the FCH Joint Undertaking in 2011). Six of the audits did not present material errors but the other two detected significant errors¹⁴, the larger of which (764 000 euro) has been corrected in the following year.

Qualified opinion on the legality and regularity of the transactions underlying the accounts

16. In the Court's opinion, except for the effects of the matters described in paragraph 15, the transactions underlying the annual accounts of the Joint Undertaking for the year ended 31 December 2011 are, in all material respects, legal and regular.

¹³ Article 12(4) of Regulation (EC) No 521/2008 setting up the Joint Undertaking states that "The FCH Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the FCH Joint Undertaking's public funding". Ex-post audits may identify ineligible expenditures claimed by the beneficiaries which are then subject to recovery procedures.

¹⁴ Until the remaining audits have been completed, it is not appropriate to calculate an error rate.

17. The comments which follow in paragraphs 18 to 27 do not call the Court's opinions into question.

COMMENTS ON THE BUDGETARY AND FINANCIAL MANAGEMENT

Implementation of the Budget

18. The 2011 final budget included commitment and payment appropriations amounting to 117 million euro and 60 million euro respectively. The utilisation rates for the available commitment and payment appropriations were 99,8 % and 87,9 % respectively. An amount of 112 million euro representing commitment appropriations available for operational activities (Title III of the budget) was implemented through a global commitment relating to the 2011 call for proposals.

19. The budgetary procedure outlined in the FCH Joint Undertaking's financial rules¹⁵ was not followed; the derogation granted by the Commission to enter cancelled appropriations in the estimates of revenue and expenses for the following three years was misinterpreted. The Joint Undertaking chose to use payment appropriations amounting to 3,3 million euro¹⁶ (representing payment appropriations carried over from 2010 to 2011) even though 6,3 million euro in payment appropriations authorised for the current financial year were still available¹⁷. As a consequence of the FCH Joint Undertaking's interpretation of

¹⁵ Article 10 of the FCH Joint Undertaking's financial rules states that "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 up to the following three financial years, in accordance with Article 27.

However they may, by decision of the Governing Board taken not later than 15 February, be carried over to the next financial year only."

¹⁶ 3,3 million euro of unused payment appropriations for operational activities from 2010 were introduced in the budget through the second budget amendment adopted by the Governing Board on 22 November 2011.

¹⁷ Article 10(4) of the FCH Joint Undertaking's financial rules states that "The FCH Joint Undertaking shall first use the appropriations authorised for the current

the budgetary procedure, the budgetary outturn of the year is incorrect, as 6,3 million euro¹⁸ in payment appropriations carried over from 2011 to 2012 were not included in the calculation. Furthermore, the budgetary outturn account for 2010 does not reflect the 3,3 million euro in payment appropriations carried over from 2010 to 2011.

20. Unused global commitments from 2010 amounting to 10,4 million euro and with a final date of implementation at 31 December 2011, were not decommitted by the end of 2011 but were decommitted in January 2012.

Calls for proposals

21. The calls for proposals organised in 2008, 2009 and 2010 resulted in signed grant agreements totalling 183,4 million euro¹⁹, and in 2011 a fourth call for proposals was launched amounting to 111,6 million euro, which represents 41 % and 25 % respectively of the maximum EU contribution to the Joint Undertaking for research activities²⁰. The evaluation of the call was finalised in 2011 and the selected projects are currently in the negotiation process. In January 2012 a fifth call for proposals was launched amounting to 79 million

financial year and shall not use the appropriations carried forward until the former are exhausted.”.

¹⁸ In the provisional annual accounts for the financial year 2011 it is stated that “unused payment appropriations from 2011 operations (6 267 731 euro) [...] will be reactivated (carried over) in FCH Joint Undertaking 2012 budget through a budget amendment [...]” (FCH Joint Undertaking provisional annual accounts for the financial year 2011, p. 42).

¹⁹ The committed appropriations also include the European Free Trade Area (EFTA) contributions of 2,4 % from countries associated to the 7th Framework Programme.

²⁰ In accordance with Article 5 of Regulation (EC) No 521/2008 setting up the FCH Joint Undertaking and Article 12 of its Annex, the maximum EU contribution covering running costs and research activities of the Joint Undertaking shall be 470 million euro, of which the contribution for running costs shall not exceed 20 million euro. If part of the contribution for the running costs is not used, it can be made available for the research activities.

euro, a further 18 % of the maximum EU contribution. This shows satisfactory progress in budget implementation.

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

22. At the end of 2011, the underlying business processes had been validated by the Accounting Officer²¹ as required by the Joint Undertaking's financial rules. In her report a number of weaknesses²² were identified and will be followed up by the Accounting Officer in 2012.

Annual assessment of the level of the in-kind contribution

23. The method for evaluating the level of the in-kind contribution²³ has been finalised²⁴ and was jointly assessed by the Internal Audit Service (IAS) and the Internal Audit Capability (IAC) in April 2012²⁵. The aggregated level of in-kind contributions validated by the Authorising Officer as at 8 February 2012 (the cut-off date used for the preparation of the 2011 Provisional Accounts) was

²¹ Article 43(e) of the FCH Joint Undertaking's Financial Rules stipulate that the Accounting Officer shall be responsible for "laying down and validating the accounting systems".

²² Examples of identified weaknesses include the need to establish and maintain an exhaustive register of legal commitments and the need to more effectively follow up and supervise the swift and correct implementation of amendments to legal commitments.

²³ In-kind contributions are the eligible costs incurred by the legal entities participating in the activities which are not reimbursed by the FCH Joint Undertaking (FCH Joint Undertaking methodology for in-kind contributions).

²⁴ Article 12(7) of the Annex to Regulation (EC) No 521/2008 setting up the FCH Joint Undertaking stipulates that "The methodology for evaluating contributions in kind shall be defined by the FCH Joint Undertaking in compliance with its financial rules and based on the Rules for Participation of the Seventh Framework programme".

²⁵ Article 12(7) of the Annex to Regulation (EC) No 521/2008 setting up the FCH Joint Undertaking stipulates the assessment is to be carried out on a yearly basis by an 'independent auditor' and the results presented to the Commission within 4 months of the end of each financial year.

347,6 million euro. The assessment report concluded that this amount should be reduced by 0,93 million euro²⁶ euro (or 0,3 %).

Treasury management

24. At the end of December 2011 the balance on the FCH Joint Undertaking's bank account was 9,2 million euro²⁷. Between the months of August 2011 and December 2011 the FCH JU's cash balance ranged between approximately 30 million euro and 60 million euro. The Joint Undertaking is expected to implement all the measures necessary to minimise the cash balances held on account to the levels that are required.

OTHER MATTERS

Follow-up of previous observations

25. During 2011, the Joint Undertaking set up a Business Continuity Plan and made progress on the formalisation of the IT security policies. The Business Continuity plan including a disaster recovery plan was adopted by the FCH JU on 12 June 2012.

26. The financial rules of the Joint Undertaking have not yet been amended to include the provision referring to the powers of the Commission's Internal Auditor²⁸.

²⁶ The adjustment stems from eight projects of the 2008 call for proposals, where certain participants had presented their budgeted costs on the basis of a 60 % flat rate system for the calculation of indirect costs instead of the 20 % flat rate applicable to the FCH Joint Undertaking (Annual assessment of the level of in-kind contributions – Final report).

²⁷ The cash balance at the end of 2010 amounted to 5 million euro.

²⁸ Paragraph 20 of the Court of Auditors' report on the 2010 annual accounts of FCH Joint Undertaking (OJ C 368, 16.12.2011, p. 40).

27. The Host State Agreement²⁹ between the Joint Undertaking and the Belgian authorities concerning office accommodation, privileges and immunities and other support to be provided was signed on 3 February 2012.

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 13 November 2012.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

²⁹ Paragraph 21 of the Court of Auditors' report on the 2010 annual accounts of FCH Joint Undertaking.

Fuel Cells and Hydrogen Joint Undertaking

Competences and activities

Areas of Union competence deriving from the Treaty	<p><i>Articles 187 and 188 of the Treaty on the Functioning of the European Union</i></p> <p>Decision No 1982/2006/EC concerning the Seventh Framework Programme – provides for a Union contribution to the establishment of long-term public/private partnerships in the form of Joint Technology Initiatives which could be implemented through Joint Undertakings within the meaning of <i>Article 187 of the TFEU</i>.</p>
Competences of the Joint Undertaking <i>(Regulation (EC) No 521/2008, amended by Regulation (EU) No 1183/2011)</i>	<p>Objectives</p> <p>The Fuel Cells and Hydrogen Joint Undertaking shall contribute to the implementation of the Seventh Framework Programme and in particular the Specific Programme “Cooperation” themes for “Energy”, “Nanosciences, Nanotechnologies, Materials and New Production Technologies”, “Environment (including Climate Change)”, and “Transport (including Aeronautics)”.</p> <p>It shall in particular:</p> <ul style="list-style-type: none"> (a) aim at placing Europe at the forefront of fuel cell and hydrogen technologies worldwide and at enabling the market breakthrough of fuel cell and hydrogen technologies, thereby allowing commercial market forces to drive the substantial potential public benefits; (b) support Research, Technological development and Demonstration (hereinafter referred to as RTD) in the Member States and countries associated with the Seventh Framework Programme (hereinafter referred as Associated countries) in a coordinated manner to overcome the market failure and focus on developing market applications and thereby facilitate additional industrial efforts towards a rapid deployment of fuel cells and hydrogen technologies; (c) support the implementation of the RTD priorities of the JTI on Fuel Cells and Hydrogen, notably by awarding grants following competitive calls for proposals; (d) Aim to encourage increased public and private research investment in fuel cells and hydrogen technologies in the Member States and Associated countries. <p>Tasks</p> <ul style="list-style-type: none"> (a) to ensure the establishment and the efficient management of the Joint Technology Initiative on Fuel Cells and Hydrogen; (b) to reach the critical mass of research effort to give confidence to industry, public and private investors, decision makers and other stakeholders to embark on a long-term programme; (c) to leverage further industrial, national and regional RTD investment; (d) to integrate RTD, and focus on achieving long-term sustainability and industrial competitiveness targets for cost, performance and durability and overcome critical technology bottlenecks; (e) to stimulate innovation and the emergence of new value chains including SMEs; (f) to facilitate the interaction between industry, universities and research centres including on basic research; (g) to promote the involvement of SMEs in its activities, in line with the objectives of the Seventh Framework Programme; (h) to encourage the participation of institutions from all Member States and associated countries; (i) to perform broadly-conceived socio-techno-economic research to assess and monitor technological progress and nontechnical barriers to market entry; (j) to perform research to support the development of new, and review existing regulations and standards to eliminate artificial barriers to market entry and support inter-changeability, interoperability, cross-border hydrogen trading, and export markets whilst ensuring safe operation and not inhibiting innovation; (k) to undertake communication and dissemination activities, and to provide reliable information to improve public awareness and create public acceptance concerning hydrogen safety, and the benefits from the new technologies to the environment, security of supply, energy costs, and employment; (l) to establish and implement a Multiannual Implementation Plan;

	<p>(m) to commit the Union funding and mobilise the private-sector and other public-sector resources needed to implement its RTD activities;</p> <p>(n) to ensure the sound operation of the RTD activities and sound financial management of the resources;</p> <p>(o) to communicate and disseminate information on the projects, including the names of the participants, the results from the RTD activities, and the amount of the financial contribution from the FCH Joint Undertaking;</p> <p>(p) to notify the legal entities that have concluded a Grant Agreement with the FCH Joint Undertaking of the potential borrowing opportunities from the European Investment Bank, in particular the Risk Sharing Finance Facility set up under the Seventh Framework Programme</p> <p>(q) to ensure a high level of transparency and fair competition under equal access conditions for all applicants to the RTD activities of the FCH Joint Undertaking, whether or not they are members of the Research Grouping or the Industry Grouping, (in particular SMEs);</p> <p>(r) to follow the international developments in the area and engage in international cooperation when appropriate;</p> <p>(s) to develop close cooperation and ensure coordination with the Research Framework Programme and other European, national and trans-national activities, bodies and stakeholders;</p> <p>(t) to monitor progress toward the objectives of the FCH Joint Undertaking;</p> <p>(u) to carry out any other activity needed to achieve its objectives.</p>
Governance	<p>The bodies of the FCH Joint Undertaking are:</p> <p>(a) the Governing Board;</p> <p>(b) the Executive Director;</p> <p>(c) the Scientific Committee</p> <p>The Governing Board</p> <p>The Governing Board is the main decision-making body of the FCH Joint Undertaking.</p> <p>The Executive Director</p> <p>The Executive Director is responsible for the day-to-day management of the Joint Undertaking and is its legal representative. He is accountable to the Governing Board.</p> <p>The Scientific Committee</p> <p>Composed of up to 9 members reflecting a balanced representation of world class expertise from academia, industry and regulatory bodies. Its tasks are to:</p> <p>(a) advise on the scientific priorities for the annual and Multiannual Implementation Plans proposal;</p> <p>(b) advise on the scientific achievements described in the annual activity report;</p> <p>(c) advise on the composition of the peer review committees</p> <p>The external advisory bodies to the FCH Joint Undertaking are:</p> <ul style="list-style-type: none"> - The FCH States Representatives Group and the Stakeholders General Assembly <p>The FCH States Representatives Group</p> <p>It consists of one representative of each Member State and of each Associated country. Its most important tasks are to provide opinions on progress made with the FCH JU's programme, monitoring compliance with targets and coordination with national programmes to avoid overlapping.</p> <p>The Stakeholders General Assembly</p> <p>The SGA is an important communication channel on FCH JU activities and as such is open to all public and private stakeholders, international interest groups from Member States, associated countries and from third countries. It is convened once a year. The SGA must be informed of the activities of the FCH Joint Undertaking and is invited to provide comments.</p> <p>The internal and external auditors and the discharge authority of the FCH Joint Undertaking are:</p> <p>Internal Audit</p> <ul style="list-style-type: none"> - FCH JU Internal Audit Manager (i.e. the Internal Audit Capability - IAC); - the Commission's Internal Audit Service (i.e. IAS). <p>External Audit</p> <p>Court of Auditors.</p>

	Discharge Authority Parliament on a recommendation from the Council.
Resources available to the Joint Undertaking in 2011	Budget 117,2 million euro in Commitment Appropriations, of which 113,1 million euro are funded by the EU budget contribution (an equivalent in-kind contribution from private industry members is planned), for operations and 4 million euro for running costs. Staff at 31 December 2011 18 temporary staff posts in the establishment plan (all filled) 2 contract staff posts (all filled) Allocated to: Operational activities: 6 Administrative activities: 7 - Mixed tasks: 7
Main achievements for 2011	<ul style="list-style-type: none"> - Revision of the Multi Annual Implementation Plan (MAIP), adopted by the Governing Board on 22 November 2011 - Drafting of the RTD priorities and 2011 call topics (36) with an indicative FCH JU funding of 109 million euro - Drafting of the RTD priorities and 2012 call topics (31) with an indicative FCH JU funding of 77.5 million euro - Publication of the 2011 call for proposals in May with a deadline for submission in August 2011 - Evaluation of the 2011 call for proposals in September 2011 with preparation of a list of projects for which negotiations are to be entered into; list submitted to the Board for approval in November 2011 (30); Negotiations started on 28 November 2011 - Negotiation of the 2010 call for selected proposals after approval of the correction factor by the Governing Board and conclusion of the related grant agreements (26) - Development of the international cooperation with key partners (USA, Japan and Korea). One topic in the 2012 call with an additional eligibility criterion of connection with a project funded by DoE (USA) - Exchange of information with the Member States and the associated countries (information sessions) - Cooperation with the European Regions (via HyER) - Cooperation with the Joint Research Centre (JRC) at project and programme level. <p>Alignment of the activities by a Joint Work Plan focused on measuring, technology mapping and strategic advice. Stakeholders General Assembly held on 22-23 November 2011 together with the first Programme Review day with close to 400 participants and other communication activities with focus on commercialisation of FCH technologies in particular in the transport sector.</p> <p><u>Other main achievements:</u></p> <ul style="list-style-type: none"> - Move to new premises (together with the 4 other JUs mid- January 2011) - First interim evaluation of the FCH JU - Validation of the accounting system by the Accounting Officer on 21 November 2011 - Adoption of Council Regulation 1183/2011 amending the FCH JU founding regulation - First cost claims received and treated - First ex posts audits launched

Source: Information supplied by the Joint Undertaking.

FCH JU Replies

FCH JU replies to paragraphs 15 and 16:

The FCH JU has established a control strategy of a multiannual nature which combines ex-ante and ex-post controls and takes into consideration cost-efficiency aspects. Ex-post audits are a key component of the overall internal control system and represent one of the main elements underpinning the Executive Director's statement of assurance. To address properly its control and assurance needs, the FCH JU launched the first ex-post audits immediately after the first cost claims were received and validated by the JU in 2011.

The FCH JU welcomes the positive conclusion of the Court on the legality and regularity of all transactions underlying the accounts with the only exception of transactions relating to the validation of cost claims. In the opinion of the FCH JU, the following aspects should be considered when drawing a conclusion on the legality and regularity of the underlying transactions as a whole and on the cost claims validated in 2011 in particular:

- Timing, type of payments and their weight – The first cost claims were received and validated by the JU only in 2011. 4,6 million euro of interim payments were paid in respect of validated cost claims. This represents 8 %³⁰ of total 2011 payments of 56,7 million euro.
- Effectiveness of the FCH JU's internal control system - The control system of the JU proved its effectiveness in 2011. The Court did not report to the JU any error on legality and regularity aspects as a result of its own testing of transactions. The errors stated by the Court were detected by the JU's own internal control system (i.e. ex-post audits).
- Nature and financial impact of errors detected: 97 % (in value) of the errors detected by the JU are the result of only one audit of a new beneficiary, unfamiliar with FCH JU rules, and are due to misinterpretation of eligibility rules. Whereas the total cost over-declared by the beneficiary amount to 764 000 euro, the financial impact of the error detected, considering the JU in-cash contribution (i.e. overpayment), is much lower (177 971 euro).
- Corrective actions - All errors detected by the JU have been accepted by the beneficiaries and 98% (in value) of them corrected by the JU, as acknowledged by the Court.

³⁰ 11 % considering interim payments (4,6 million euro) and pre-financing cleared in 2011 (1,6 million euro).

- Audit coverage – Ex-post audits launched by the JU in 2011 covered 43 % (in value) of the cost claims validated in the year. As of September 2012, audits completed represented 27 % of validated cost claims as stated by the Court.
- Preventive and detective measures - the FCH JU has implemented measures to prevent financial errors in cost reporting by improving awareness within the beneficiaries of the regulatory framework. Three communication campaigns addressed to FCH JU beneficiaries have been organised so far and FCH JU guides on financial and control/audit matters have been published. FCH JU ex-ante controls have also been reinforced in order to allow for a higher detection and correction of errors before validation of cost claims.

Without questioning the Court's statements, FCH JU notes that considering the effectiveness of the JU's internal controls to detect errors, the high ex-post audit coverage, the corrections implemented by the JU on 98 % of the errors detected and the low weight of interim payments in respect of total payments, the **amount at risk** (i.e. potential error undetected in the validated cost claims) is relatively limited in respect of total payments made and total operational expenditure incurred in 2011.

FCH JU Reply to paragraph 19:

The FCH JU has established a procedure for the implementation of Article 10.1, paragraph 1 and Article 11 of its Financial Rules which allows the FCH JU to enter cancelled appropriations in its budget up to the following three financial years. The FCH JU has up to now not used the possibility provided for in Article 10.1, paragraph 2 to carry over to the next financial year (with the exception of C4 and C5) and consequently Article 10.1, paragraph 2 and 10.2 to 10.7 do not apply in the specific case.

The FCH JU has applied consistently its procedure for the implementation of its financial rules, in particular the derogation granted by the Commission to the effect of taking into account the needs of the FCH JU.

FCH JU Reply to paragraph 20:

The FCH JU acknowledges that the de-commitments should have been done by 31/12/2011 and that the omission was corrected in January 2012. A tighter budget monitoring and application of year end procedure should avoid recurrence of a similar omission

FCH JU Reply to paragraph 22:

The FCH JU management has defined an action plan to address the weaknesses and as of October 2012 most actions are fully or partly implemented

FCH JU Reply to paragraph 23:

The correction was made.

FCH JU Reply to paragraph 24

FCH JU cash balance ranged from 4 million euro on 1 August 2011 to 60 million euro on 11 October 2011 with a closing balance of 9 million on 31 December 2011. FCH JU is implementing all measures to optimise its cash flows within the limits of the financing agreements.

FCH JU Reply to paragraph 26:

The FCH JU Financial rules will be duly amended to reflect all the necessary amendments required by the 'Model Financial Regulation for public-private partnership bodies' once adopted. In the meantime, as acknowledged by the Court in its report on 2010 accounts, the respective roles of the Commission's Internal Auditor (IAS) and of the FCH JU Internal Audit Capability (IAC) were defined and approved by the Governing Board in March 2011. A 'Coordinated IAS-IAC Strategic audit plan for 2011-2013' was approved by the Board in May 2011 and is being implemented