



**COUNCIL OF
THE EUROPEAN UNION**

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ADDENDUM TO "I/A" ITEM NOTE

from: Budget Committee
to: Permanent Representatives Committee/Council

Subject: Discharge to be given to the joint undertakings in respect of the implementation of
the budget for the financial year 2011
- Draft Council recommendations

ANNEX 1:	European Joint Undertaking for ITER and the Development of Fusion Energy	2
ANNEX 2:	SESAR Joint Undertaking	6
ANNEX 3:	ARTEMIS Joint Undertaking	9
ANNEX 4:	Clean Sky Joint Undertaking	13
ANNEX 5:	Innovative Medicines Initiative Joint Undertaking	17
ANNEX 6:	Fuel Cells and Hydrogen Joint Undertaking	21
ANNEX 7:	ENIAC Joint Undertaking	24

Draft COUNCIL RECOMMENDATION
of
on the discharge to be given to the Director
of the European Joint Undertaking for ITER and the Development of Fusion Energy
in respect of the implementation of the budget
of the European Joint Undertaking for ITER and the Development of Fusion Energy
for the financial year 2011

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision 2007/198/Euratom of 27 March 2007 establishing the European Joint Undertaking for ITER¹ and the Development of Fusion Energy and conferring advantages upon it², and in particular Article 5(3) thereof,

Having regard to 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 1605/2002³, and in particular Article 208(2) thereof,

¹ International Thermonuclear Experimental Reactor.

² OJ L 90, 30.3.2007, p. 58.

³ OJ L 298, 26.10.2012, p. 1.

Having regard to the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy adopted by its Governing Board on 22 October 2007,

Having examined the revenue and expenditure accounts for the financial year 2011 and the balance sheet at 31 December 2011 of the European Joint Undertaking for ITER and the Development of Fusion Energy, hereinafter referred to as the "Joint Undertaking", and the report by the Court of Auditors on the annual accounts of the Joint Undertaking for the financial year 2011, accompanied by the Joint Undertaking's replies to the Court's observations¹,

Whereas the observations in the Court of Auditors' report in relation to the financial year 2011 call for certain comments by the Council, which are annexed to this recommendation; whereas the Council stresses the importance it attaches to those comments being followed up,

Whereas, following the above examination, the implementation of the budget of the Joint Undertaking is such as to allow a discharge to be given in respect of that implementation,

HEREBY RECOMMENDS the European Parliament to give a discharge to the Director of the Joint Undertaking in respect of the implementation of the budget for the financial year 2011.

Done at Brussels,

For the Council
The President

¹ OJ C 6, 10.1.2013, p. 36.

**COMMENTS ACCOMPANYING THE COUNCIL RECOMMENDATION
ON THE DISCHARGE TO BE GIVEN TO THE JOINT UNDERTAKING**

The Council welcomes the Court's opinion that, in all material respects, the Joint Undertaking's annual accounts present fairly its financial position as at 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of the Joint Undertaking's Financial Regulation, and that the underlying transactions for that financial year are legal and regular. Nevertheless, some observations need to be made.

The Council regrets the Court's observation that weaknesses persisted in the Joint Undertaking's procurement and grant award procedures, in particular as regards the number of offers and grant proposals received per call. It calls on the Joint Undertaking to make all possible effort to maximise competition in the areas of procurement and grant contract management, *inter alia* by making systematic use of pre-information notices as an instrument for increasing *ex-ante* publicity for forthcoming tenders.

The Council also urges the Joint Undertaking to address the weaknesses identified in its procurement procedures, notably to reduce their duration, to limit the recourse to a negotiated procedure to duly justified cases only, to improve the process of preparing tender documents, to systematically track and manage changes in contract requirements, and to properly document cost estimates, as well as control procedures before payments are made.

Moreover, the Council asks the Joint Undertaking to pursue its efforts to reinforce its organisational and financial management structure by implementing an integrated system to manage budgetary, financial and operational information, including the evaluation and management of risks at corporate level. In this context, it recalls the importance of having effective tools on hand to allow for the regular monitoring of the validity of cost estimates and the timely reporting on potential deviations, thus avoiding in the future to the highest possible extent any further unforeseen major revision of estimated project costs.

In addition, the Council invites the Joint Undertaking to further improve its audit and *ex-post* control strategies by including checks on the financial aspects of the implementation of contracts in its quality assurance audits at the level of contractors, and by adopting a comprehensive *ex-post* audit strategy for grants and operational contracts, foreseeing more systematic *ex-post* assessments of the implementation of procurement and grant agreements.

Furthermore, the Council calls on the Joint Undertaking to align its implementing rules with the implementing rules of the EU's general Financial Regulation, whenever appropriate, and to draw up rules for the implementation of its policy on intellectual property rights and its industrial policy, as foreseen in its statutes.

Finally, the Council encourages the Joint Undertaking to pursue its efforts to avoid the late payment of membership contributions.

Draft COUNCIL RECOMMENDATION
of
on the discharge to be given to the Executive Director
of the SESAR Joint Undertaking
in respect of the implementation of the budget
of the SESAR Joint Undertaking
for the financial year 2011

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)¹, as amended by Council Regulation (EC) No 1361/2008 of 16 December 2008², and in particular Article 4b thereof,

Having regard to 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 1605/2002³, and in particular Article 208(2) thereof,

¹ OJ L 64, 2.3.2007, p. 1.

² OJ L 352, 31.12.2008, p. 12.

³ OJ L 298, 26.10.2012, p. 1.

Having regard to the Financial Rules of the SESAR Joint Undertaking adopted by its Administrative Board on 28 July 2009,

Having examined the revenue and expenditure accounts for the financial year 2011 and the balance sheet at 31 December 2011 of the SESAR Joint Undertaking, hereinafter referred to as the "Joint Undertaking", and the report by the Court of Auditors on the annual accounts of the Joint Undertaking for the financial year 2011, accompanied by the Joint Undertaking's replies to the Court's observations¹,

Whereas the observations in the Court of Auditors' report in relation to the financial year 2011 call for certain comments by the Council, which are annexed to this recommendation; whereas the Council stresses the importance it attaches to those comments being followed up,

Whereas, following the above examination, the implementation of the budget of the Joint Undertaking is such as to allow a discharge to be given in respect of that implementation,

HEREBY RECOMMENDS the European Parliament to give a discharge to the Executive Director of the Joint Undertaking in respect of the implementation of the budget for the financial year 2011.

Done at Brussels,

For the Council
The President

¹ OJ C 6, 10.1.2013, p. 46.

**COMMENTS ACCOMPANYING THE COUNCIL RECOMMENDATION
ON THE DISCHARGE TO BE GIVEN TO THE JOINT UNDERTAKING**

The Council welcomes the Court's opinion that, in all material respects, the Joint Undertaking's annual accounts present fairly its financial position as at 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of the Joint Undertaking's Financial Rules, and that the underlying transactions for that financial year are legal and regular. Nevertheless, some observations need to be made.

As in previous years, the Council calls on the Joint Undertaking to improve its financial programming and to avoid over-budgeting, in line with the budgetary principle of equilibrium.

The Council encourages the Joint Undertaking to pursue its efforts to avoid the late payment of membership contributions.

Draft
COUNCIL RECOMMENDATION
of
on the discharge to be given to the Executive Director
of the ARTEMIS Joint Undertaking
in respect of the implementation of the budget
of the ARTEMIS Joint Undertaking
for the financial year 2011

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 74/2008 of 20 December 2007 on the establishment of the "ARTEMIS Joint Undertaking" to implement a Joint Technology Initiative in Embedded Computing Systems¹, and in particular Article 11(4) thereof,

Having regard to 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 1605/2002², and in particular Article 208(2) thereof,

¹ OJ L 30, 4.2.2008, p. 52, with Corrigendum in OJ L 219, 14.8.2008, p. 73.

² OJ L 298, 26.10.2012, p. 1.

Having regard to the Financial Rules of the ARTEMIS Joint Undertaking adopted by its Governing Board on 18 December 2008,

Having examined the revenue and expenditure accounts for the financial year 2011 and the balance sheet at 31 December 2011 of the ARTEMIS Joint Undertaking, hereinafter referred to as the "Joint Undertaking", and the report by the Court of Auditors on the annual accounts of the Joint Undertaking for the financial year 2011, accompanied by the Joint Undertaking's replies to the Court's observations¹,

Whereas the observations in the Court of Auditors' report in relation to the financial year 2011 call for certain comments by the Council, which are annexed to this recommendation; whereas the Council stresses the importance it attaches to those comments being followed up,

Whereas, following the above examination, the implementation of the budget of the Joint Undertaking is such as to allow a discharge to be given in respect of that implementation,

HEREBY RECOMMENDS the European Parliament to give a discharge to the Executive Director of the Joint Undertaking in respect of the implementation of the budget for the financial year 2011.

Done at Brussels,

For the Council
The President

¹ OJ C 6, 10.1.2013, p. 1.

**COMMENTS ACCOMPANYING THE COUNCIL RECOMMENDATION
ON THE DISCHARGE TO BE GIVEN TO THE JOINT UNDERTAKING**

The Council welcomes the Court's opinion that, in all material respects, the Joint Undertaking's annual accounts present fairly its financial position as at 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of the Joint Undertaking's Financial Rules, and that the underlying transactions for that financial year are legal and regular, with the exception of the matter described below. Nevertheless, some observations need to be made.

The Council regrets the Court's qualified opinion on the legality and regularity of the transactions underlying the accounts, based on the Court's assessment that the Joint Undertaking's *ex-post* audit strategy might not provide sufficient assurance with respect to the legality and regularity of the underlying transactions and that this key control might therefore not function effectively. The Council urges the Joint Undertaking to revise the administrative agreements signed with National Funding Authorities (NFAs) in order to include the obligation for the NFAs to carry out *ex-post* audits on grants paid, as well as to include in these agreements the practical arrangements for the *ex-post* audits.

The Council calls on the Joint Undertaking to pay due attention to the proper implementation of commitment and payment appropriations in the course of the budgetary year, in line with the budgetary principle of annuality, thus avoiding excessive carry-overs. The Council invites the Joint Undertaking, in cooperation with the Commission, to adapt, if necessary, its financial programming to real needs with the intention of limiting the risk of over-budgeting. It urges the Joint Undertaking to consult its Governing Board for prior approval of any possible carry-over of appropriations to the next financial year, as foreseen in its Financial Rules.

Moreover, the Council asks the Joint Undertaking to improve its internal control standards and the financial verification of cost claims, in order to ensure effective and efficient controls. The Council also recalls its invitation to the Joint Undertaking's Accounting Officer to validate without delay the business processes providing financial information, in particular those providing information on the validation and payment of cost claims received from the NFAs.

In addition, the Joint Undertaking is requested to bring its internal audit arrangements in line with the Regulation setting up the Joint Undertaking, stipulating an internal audit capability, and to include in its own Financial Rules the provision of the framework Financial Regulation for bodies set up under the TFEU having a legal personality and receiving contributions charged to the EU budget, referring to the powers of the Commission's internal auditor.

The Council furthermore encourages the Joint Undertaking to improve the quality of its Annual Activity Reports by including an assessment of the efficiency and effectiveness of its internal control procedures, as well as information on the implementation of its *ex-post* audit strategy, and by aligning the figures in the reports to the data provided in the Joint Undertaking's final accounts.

Finally, the Council calls on the Joint Undertaking to ensure the declaration by the NFAs of bank interest generated on pre-financing payments, as foreseen in the Joint Undertaking's Financial Rules.

Draft COUNCIL RECOMMENDATION
of
on the discharge to be given to the Executive Director
of the Clean Sky Joint Undertaking
in respect of the implementation of the budget
of the Clean Sky Joint Undertaking
for the financial year 2011

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 71/2008 of 20 December 2007 setting up the Clean Sky Joint Undertaking¹, as amended by Commission Decision 2009/520/EC of 3 July 2009², and in particular Article 11(4) thereof,

Having regard to 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 1605/2002³, and in particular Article 208(2) thereof,

¹ OJ L 30, 4.2.2008, p. 1, with Corrigenda in OJ L 33, 7.2.2008, p. 12 and OJ L 220, 15.8.2008, p. 35.

² OJ L 175, 4.7.2009, p. 14.

³ OJ L 298, 26.10.2012, p. 1.

Having regard to the Financial Rules of the Clean Sky Joint Undertaking adopted by its Governing Board on 7 November 2008,

Having examined the revenue and expenditure accounts for the financial year 2011 and the balance sheet at 31 December 2011 of the Clean Sky Joint Undertaking, hereinafter referred to as the "Joint Undertaking", and the report by the Court of Auditors on the annual accounts of the Joint Undertaking for the financial year 2011, accompanied by the Joint Undertaking's replies to the Court's observations¹,

Whereas the observations in the Court of Auditors' report in relation to the financial year 2011 call for certain comments by the Council, which are annexed to this recommendation; whereas the Council stresses the importance it attaches to those comments being followed up,

Whereas, following the above examination, the implementation of the budget of the Joint Undertaking is such as to allow a discharge to be given in respect of that implementation,

HEREBY RECOMMENDS the European Parliament to give a discharge to the Executive Director of the Joint Undertaking in respect of the implementation of the budget for the financial year 2011.

Done at Brussels,

For the Council
The President

¹ OJ C 6, 10.1.2013, p. 9.

**COMMENTS ACCOMPANYING THE COUNCIL RECOMMENDATION
ON THE DISCHARGE TO BE GIVEN TO THE JOINT UNDERTAKING**

The Council welcomes the Court's opinion that, in all material respects, the Joint Undertaking's annual accounts present fairly its financial position as at 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of the Joint Undertaking's Financial Rules, and that the underlying transactions for that financial year are legal and regular, with the exception of the matter described below. Nevertheless, some observations need to be made.

The Council regrets the Court's qualified opinion on the legality and regularity of the transactions underlying the accounts, due to the high error rate resulting from the *ex-post* audits carried out for the first time, on the basis of a risk-based and not representative sample selected by external auditors. The Council urges the Joint Undertaking to take the necessary corrective action to recover the amounts unduly paid.

The Council calls on the Joint Undertaking to pay due attention to the proper implementation of commitment and payment appropriations in the course of the budgetary year, in line with the budgetary principle of annuality, thus avoiding excessive carry-overs. The Council invites the Joint Undertaking, in cooperation with the Commission, to adapt, if necessary, its financial programming to real needs with the intention of limiting the risk of over-budgeting. It urges the Joint Undertaking to consult its Governing Board for prior approval of any possible carry-over of appropriations to the next financial year, as foreseen in its Financial Rules, and to properly issue recovery orders relating to the payment of membership contributions.

Moreover, the Council asks the Joint Undertaking to improve its internal control and financial information systems, in particular the *ex-ante* control and validation procedures and checklists, as well as the tool to manage the data relating to cost claims submitted by members and beneficiaries, and also the management reporting systems on budgetary and accounting matters. The Council insists that the principle of segregation of duties of the verifying and authorising officers should be respected.

In addition, the Joint Undertaking is requested to amend its Financial Rules in order to reflect the matters raised by the Court in its opinion issued in 2011, and to include the provision of the framework Financial Regulation for bodies set up under the TFEU having a legal personality and receiving contributions charged to the EU budget, referring to the powers of the Commission's internal auditor.

Finally, the Council recalls its recommendation to the Joint Undertaking to set up internal procedures ensuring the respect of the provisions on the protection, use and dissemination of research results, as foreseen in the consortium and grant agreements.

Draft COUNCIL RECOMMENDATION
of
on the discharge to be given to the Executive Director
of the Innovative Medicines Initiative Joint Undertaking
in respect of the implementation of the budget
of the Innovative Medicines Initiative Joint Undertaking
for the financial year 2011

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 73/2008 of 20 December 2007 setting up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines¹, and in particular Article 11(4) thereof,

Having regard to 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 1605/2002², and in particular Article 208(2) thereof,

¹ OJ L 30, 4.2.2008, p. 38.

² OJ L 298, 26.10.2012, p. 1.

Having regard to the Financial Rules of the Innovative Medicines Initiative Joint Undertaking adopted by its Governing Board on 2 February 2009,

Having examined the revenue and expenditure accounts for the financial year 2011 and the balance sheet at 31 December 2011 of the Innovative Medicines Initiative Joint Undertaking, hereinafter referred to as the "Joint Undertaking", and the report by the Court of Auditors on the annual accounts of the Joint Undertaking for the financial year 2011, accompanied by the Joint Undertaking's replies to the Court's observations¹,

Whereas the observations in the Court of Auditors' report in relation to the financial year 2011 call for certain comments by the Council, which are annexed to this recommendation; whereas the Council stresses the importance it attaches to those comments being followed up,

Whereas, following the above examination, the implementation of the budget of the Joint Undertaking is such as to allow a discharge to be given in respect of that implementation,

HEREBY RECOMMENDS the European Parliament to give a discharge to the Executive Director of the Joint Undertaking in respect of the implementation of the budget for the financial year 2011.

Done at Brussels,

For the Council
The President

¹ OJ C 6, 10.1.2013, p. 27.

**COMMENTS ACCOMPANYING THE COUNCIL RECOMMENDATION
ON THE DISCHARGE TO BE GIVEN TO THE JOINT UNDERTAKING**

The Council welcomes the Court's opinion that, in all material respects, the Joint Undertaking's annual accounts present fairly its financial position as at 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of the Joint Undertaking's Financial Rules, and that the underlying transactions for that financial year are legal and regular, with the exception of the matter described below. Nevertheless, some observations need to be made.

The Council regrets the Court's qualified opinion on the legality and regularity of the transactions underlying the accounts, due to the high error rate resulting from the *ex-post* audits carried out for the first time, on the basis of a risk-based and not representative sample selected by external auditors. The Council urges the Joint Undertaking to take the necessary corrective action to recover the amounts unduly paid.

The Council calls on the Joint Undertaking to pay due attention to the proper implementation of commitment and payment appropriations in the course of the budgetary year, in line with the budgetary principle of annuality, thus avoiding excessive carry-overs. The Council invites the Joint Undertaking, in cooperation with the Commission, to adapt, if necessary, its financial programming to real needs with the intention of limiting the risk of over-budgeting.

Moreover, the Council asks the Joint Undertaking to remedy the inconsistencies identified by the Court between decisions of its Governing Board and the Joint Undertaking's report on budgetary and financial management. It invites the Joint Undertaking's Executive Director to enter reservations in the Annual Activity Reports whenever appropriate.

In addition, the Joint Undertaking is requested to establish functioning and validated budgeting, accounting and internal control systems, and to include the provision of the framework Financial Regulation for bodies set up under the TFEU having a legal personality and receiving contributions charged to the EU budget, referring to the powers of the Commission's internal auditor.

Draft COUNCIL RECOMMENDATION
of
on the discharge to be given to the Executive Director
of the Fuel Cells and Hydrogen Joint Undertaking
in respect of the implementation of the budget
of the Fuel Cells and Hydrogen Joint Undertaking
for the financial year 2011

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 521/2008 of 30 May 2008 setting up the Fuel Cells and Hydrogen Joint Undertaking¹, as amended by Council Regulation (EU) No 1183/2011 of 14 November 2011², and in particular Article 11(4) thereof,

Having regard to 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 1605/2002³, and in particular Article 208(2) thereof,

¹ OJ L 153, 12.6.2008, p. 1.
² OJ L 302, 19.11.2011, p. 3.
³ OJ L 298, 26.10.2012, p. 1.

Having regard to the Financial Rules of the Fuel Cells and Hydrogen Joint Undertaking adopted by its Governing Board on 26 September 2008,

Having examined the revenue and expenditure accounts for the financial year 2011 and the balance sheet at 31 December 2011 of the Fuel Cells and Hydrogen Joint Undertaking, hereinafter referred to as the "Joint Undertaking", and the report by the Court of Auditors on the annual accounts of the Joint Undertaking for the financial year 2011, accompanied by the Joint Undertaking's replies to the Court's observations¹,

Whereas the observations in the Court of Auditors' report in relation to the financial year 2011 call for certain comments by the Council, which are annexed to this recommendation; whereas the Council stresses the importance it attaches to those comments being followed up,

Whereas, following the above examination, the implementation of the budget of the Joint Undertaking is such as to allow a discharge to be given in respect of that implementation,

HEREBY RECOMMENDS the European Parliament to give a discharge to the Executive Director of the Joint Undertaking in respect of the implementation of the budget for the financial year 2011.

Done at Brussels,

For the Council
The President

¹ OJ C 6, 10.1.2013, p. 56.

**COMMENTS ACCOMPANYING THE COUNCIL RECOMMENDATION
ON THE DISCHARGE TO BE GIVEN TO THE JOINT UNDERTAKING**

The Council welcomes the Court's opinion that, in all material respects, the Joint Undertaking's annual accounts present fairly its financial position as at 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of the Joint Undertaking's Financial Rules, and that the underlying transactions for that financial year are legal and regular, with the exception of the matter described below. Nevertheless, some observations need to be made.

The Council regrets the Court's qualified opinion on the legality and regularity of the transactions underlying the accounts, due to the significant errors detected in the *ex-post* audits carried out for the first time, on the basis of a risk-based and not representative sample selected by external auditors. The Council urges the Joint Undertaking to take the necessary corrective action to recover the amounts unduly paid.

Furthermore, the Council calls on the Joint Undertaking to pay due attention to the proper implementation of commitment and payment appropriations in the course of the budgetary year, in line with the budgetary principle of annuality, to correctly reflect appropriations carried over in the budgetary outturn, to timely decommit unused appropriations, and to limit the cash balances held on account to the levels that are required.

Finally, the Council recalls its recommendation to the Joint Undertaking to complete its Financial Rules in order to ensure that the operational roles of the Commission's internal auditor and the Joint Undertaking's internal audit function are clearly defined.

Draft COUNCIL RECOMMENDATION
of
on the discharge to be given to the Executive Director
of the ENIAC Joint Undertaking
in respect of the implementation of the budget
of the ENIAC Joint Undertaking
for the financial year 2011

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 72/2008 of 20 December 2007 setting up the ENIAC Joint Undertaking¹, and in particular Article 11(4) thereof,

Having regard to 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 1605/2002², and in particular Article 208(2) thereof,

Having regard to the Financial Rules of the ENIAC Joint Undertaking adopted by its Governing Board on 30 May 2008,

¹ OJ L 30, 4.2.2008, p. 21, with Corrigendum in OJ L 219, 14.8.2008, p. 72.

² OJ L 298, 26.10.2012, p. 1.

Having examined the revenue and expenditure accounts for the financial year 2011 and the balance sheet at 31 December 2011 of the ENIAC Joint Undertaking, hereinafter referred to as the "Joint Undertaking", and the report by the Court of Auditors on the annual accounts of the Joint Undertaking for the financial year 2011, accompanied by the Joint Undertaking's replies to the Court's observations¹,

Whereas the observations in the Court of Auditors' report in relation to the financial year 2011 call for certain comments by the Council, which are annexed to this recommendation; whereas the Council stresses the importance it attaches to those comments being followed up,

Whereas, following the above examination, the implementation of the budget of the Joint Undertaking is such as to allow a discharge to be given in respect of that implementation,

HEREBY RECOMMENDS the European Parliament to give a discharge to the Executive Director of the Joint Undertaking in respect of the implementation of the budget for the financial year 2011.

Done at Brussels,

For the Council
The President

¹ OJ C 6, 10.1.2013, p. 18.

**COMMENTS ACCOMPANYING THE COUNCIL RECOMMENDATION
ON THE DISCHARGE TO BE GIVEN TO THE JOINT UNDERTAKING**

The Council welcomes the Court's opinion that, in all material respects, the Joint Undertaking's annual accounts present fairly its financial position as at 31 December 2011 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of the Joint Undertaking's Financial Rules, and that the underlying transactions for that financial year are legal and regular, with the exception of the matter described below. Nevertheless, some observations need to be made.

The Council regrets the Court's qualified opinion on the legality and regularity of the transactions underlying the accounts, based on the Court's assessment that the Joint Undertaking's *ex-post* audit strategy might not provide sufficient assurance with respect to the legality and regularity of the underlying transactions and that this key control might therefore not function effectively. The Council urges the Joint Undertaking to revise the administrative agreements signed with National Funding Authorities (NFAs) in order to include the obligation for the NFAs to carry out *ex-post* audits on grants paid, as well as to include in these agreements the practical arrangements for the *ex-post* audits.

The Council calls on the Joint Undertaking to pay due attention to the proper implementation of commitment and payment appropriations in the course of the budgetary year, in line with the budgetary principle of annuality, thus avoiding excessive carry-overs. It invites the Joint Undertaking, in cooperation with the Commission, to adapt, if necessary, its financial programming to real needs with the intention of limiting the risk of over-budgeting.

Moreover, the Council asks the Joint Undertaking to improve its internal control and financial information systems, in order to ensure effective and efficient controls, the decommitment of unused appropriations within the existing deadlines, and the provision of timely and reliable financial reports. The Council also recalls its invitation to the Joint Undertaking's Accounting Officer to validate without delay the business processes providing financial information, in particular those providing information on the validation and payment of cost claims received from the NFAs.

In addition, the Joint Undertaking is requested to bring its internal audit arrangements in line with the Regulation setting up the Joint Undertaking, stipulating an internal audit capability, and to include in its own Financial Rules the provision of the framework Financial Regulation for bodies set up under the TFEU having a legal personality and receiving contributions charged to the EU budget, referring to the powers of the Commission's internal auditor.

The Council furthermore encourages the Joint Undertaking to improve the quality of its Annual Activity Reports by including an assessment of the efficiency and effectiveness of its internal control procedures, as well as information on the implementation of its *ex-post* audit strategy. It invites the Joint Undertaking's Executive Director to enter reservations whenever appropriate.

Finally, the Council takes note of the difficulty for the Joint Undertaking to respect the provision in its statutes stating as a condition that the financial contributions from the Joint Undertaking's Member States should amount to at least 1.8 times the EU's financial contribution.