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COVER NOTE

From:	Mr Klaus-Heiner LEHNE, President of the European Court of Auditors
date of receipt:	17 November 2016
To:	Mr Peter KAZIMIR, 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 2015 together with the Joint Undertaking's reply

Delegations will find attached the European Court of Auditors' report on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking for the financial year 2015.

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

Encl.: Report on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking for the financial year 2015 together with the Joint Undertaking's reply.¹

¹ In English only. The other languages of this report are available on the European Court of Auditors' website: <http://eca.europa.eu/>.



EUROPEAN
COURT
OF AUDITORS

Report on the annual accounts of the
Fuel Cells and Hydrogen Joint Undertaking
for the financial year 2015

together with the Joint Undertaking's reply

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INTRODUCTION

1. The Joint Undertaking for the implementation of the Joint Technology Initiative on Fuel Cells and Hydrogen (FCH Joint Undertaking), located in Brussels, was set up in May 2008² for the period up to 31 December 2017 and was granted its financial autonomy on 15 November 2010. In May 2014³, the Council repealed the original Regulation and extended the lifetime of the Joint Undertaking, referred to as the “Fuel Cells and Hydrogen 2 Joint Undertaking” (FCH 2 Joint Undertaking)⁴, under the Horizon 2020 Framework programme for Research and Innovation⁵ for the period up to 31 December 2024.
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 Research Framework Programme (FP7)⁶ through coordination with industry and research organisations, with a focus on developing market applications and hence facilitating additional industrial efforts towards the rapid deployment of fuel cells and hydrogen technologies. Under Horizon 2020, the objective of the FCH 2 Joint Undertaking is to contribute to the implementation of the Societal Challenges for Secure, Clean and Efficient Energy and for Smart, Green and Integrated Transport, and to contribute to the objectives of the Joint Technology Initiative on Fuel Cells and Hydrogen, through the

² 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) amended by Council Regulation (EU) No 1183/2011 (OJ L 302, 19.11.2011, p. 3).

³ Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the Fuel Cells and Hydrogen 2 Joint Undertaking (OJ L 169, 7.6.2014, p. 108).

⁴ This report refers to the “Fuel Cells and Hydrogen Joint Undertaking” unless it is necessary to distinguish between the two programmes.

⁵ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

⁶ Decision No 1982/2006/EC of the European Parliament and of the Council (OJ L 412, 30.12.2006, p. 1).

development of a strong, sustainable and globally competitive fuel cells and hydrogen sector in the Union⁷.

3. The members of the Joint Undertaking are the European Union (EU), represented by the European Commission, the Industry Grouping (Hydrogen Europe⁸) and the Research Grouping (New European Research Grouping on Fuel Cells and Hydrogen (N.ERGHY)).

4. The maximum EU contribution from FP7 to the activities of the FCH Joint Undertaking is 470 million euro (with a maximum of 20 million euro for administrative costs), to be matched by the contribution from the Industry and Research Groupings.

5. The maximum EU contribution from Horizon 2020 to the activities of the FCH 2 Joint Undertaking is 665 million euro (of which administrative costs must not exceed 19 million euro⁹). The Industry and Research Groupings are expected to contribute at least as much as the EU through in-kind contributions¹⁰ to the projects funded by the FCH Joint Undertaking and additional activities¹¹, with a minimum amount of 380 million euro, of which at least 285 million euro should be related to additional activities.

⁷ The **Annex** summarises the Joint Undertaking's competences, activities and available resources. It is presented for information purposes.

⁸ Formerly the New Energy World Industry Grouping (NEW-IG).

⁹ The administrative costs of the FCH 2 Joint Undertaking shall not exceed 38 million euro and shall be covered through financial contributions divided equally on an annual basis between the Union and the Members other than the Union.

¹⁰ Article 13(3) of the Annex to Regulation (EU) No 559/2014 stipulates that the "operational costs of the FCH 2 Joint Undertaking shall be covered through (a) a financial contribution by the Union (b) in-kind contributions by the constituent entities of the Members other than the Union or their affiliated entities participating in the indirect actions, consisting of the costs incurred by them in implementing indirect actions less the contribution of the FCH 2 Joint Undertaking and any other Union contribution to those costs".

¹¹ As provided for in Article 4(2)(b) of Regulation (EU) No 559/2014, additional activities are contributions in kind for activities outside the work plan and the budget of the Joint Undertaking but contributing to the objectives of the FCH Joint Technology Initiative. In line with Article 4(4) of the same Regulation, the costs of additional activities must be certified by an independent external auditor and are not subject to audit by the Joint Undertaking or by any EU body.

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, including a quality control review of the ex-post audits carried out by the Joint Undertaking (or by private audit firms on its behalf) at beneficiaries. This is supplemented by evidence provided by relevant work of other auditors and an analysis of management representations.

STATEMENT OF ASSURANCE

7. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

- (a) the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking, which comprise the financial statements¹² and the reports on the implementation of the budget¹³ for the financial year ended 31 December 2015; and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

8. In accordance with Articles 16 and 22 of Commission Delegated Regulation (EU) No 110/2014¹⁴, the management is responsible for the preparation and fair presentation of the annual accounts of the Joint Undertaking and the legality and regularity of the underlying transactions.

- (a) The management's responsibilities in respect of the Joint Undertaking's annual accounts include designing, implementing and maintaining an internal control system relevant to

¹² These include the balance sheet and the statement of financial performance, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

¹³ These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

¹⁴ OJ L 38, 7.2.2014, p. 2.

the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer¹⁵, and making accounting estimates that are reasonable in the circumstances. The Director approves the annual accounts of the Joint Undertaking after its accounting officer has prepared them on the basis of all available information and established a note to accompany the accounts in which he declares, *inter alia*, that he has reasonable assurance that they present a true and fair view of the financial position of the Joint Undertaking in all material respects.

- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

The auditor's responsibility

9. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council¹⁶ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Joint Undertaking are free from material misstatement and the underlying transactions are legal and regular.

¹⁵ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

¹⁶ Article 47 of Regulation (EU) No 110/2014.

10. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the reasonableness of accounting estimates and the overall presentation of the accounts.

11. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

Opinion on the reliability of the accounts

12. In the Court's opinion, the Joint Undertaking's annual accounts present fairly, in all material respects, its financial position as at 31 December 2015 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its financial rules and the accounting rules adopted by the Commission's accounting officer.

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

13. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2015 are, in all material respects, legal and regular.

14. The following comments do not call the Court's opinions into question.

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

Presentation of the accounts

15. By 31 January each year, the members of the Joint Undertaking other than the EU are required to report to the Governing Board on the value of their in-kind contributions made in each of the previous financial years¹⁷. On the basis of this information, and according to the guidance provided by the European Commission to the Joint Undertaking, the members' in-kind contributions should be entered in the Joint Undertaking's accounts.

16. At the time the final accounts were being prepared, the Joint Undertaking had not received the required reports from its members implementing Horizon 2020 projects. Consequently, the amount of 2015 in-kind contributions for the Horizon 2020 programme entered in the accounts is based on estimates made by the Joint Undertaking of the costs incurred by members up to the end of 2015¹⁸.

17. The accounts issued by the FCH Joint Undertaking do not include the Budgetary Outturn Account, nor the reconciliation table with the Economic Outturn Account. However, both items are published in the Joint Undertaking's report on budgetary and financial management for 2015, although the level of information provided differs from that given by most other Joint Undertakings, which demonstrates the need for clear Commission guidelines for the Joint Undertakings' budgetary reporting.

Implementation of the 2015 budget

18. The final 2015 budget available for implementation included commitment appropriations of 132,6 million euro and payment appropriations of 95,1 million euro. The utilisation rates for commitment and payment appropriations were 87 % and 83 %,

¹⁷ Articles 4(3) and 4(4) of Regulation (EU) No 559/2014.

¹⁸ The amount of 2015 in-kind contributions for Horizon 2020 which is based on estimates is 3,9 million euro. While the Joint Undertaking used the most accurate information available to calculate the estimated in-kind contributions, this amount has not been certified by independent external auditors (Article 4(4) of Regulation (EU) No 559/2014), nor validated by the Executive Director of the Joint Undertaking.

respectively¹⁹. The lower-than-expected implementation rate for commitment appropriations is mainly due to the outcome of the 2015 calls. A number of project proposals were rejected as they did not meet the required quality, resulting in unused commitment appropriations of 13,7 million euro.

19. Of the total operational commitments made in 2015 (193,5 million euro), 42,6 % were individual commitments based on completed award procedures for grants and contracts. The remaining 57,3 % were global commitments for which the award procedure was not completed. The high level of global commitments in 2015 is due to the time required for the evaluation and negotiation procedures for the 2015 calls for proposals for Horizon 2020 projects.

FCH Joint Undertaking multiannual budget implementation under FP7

20. Out of a total envelope of 470 million euro for the operational and administrative activities of the FCH Joint Undertaking to be funded by the EU under FP7, the Joint Undertaking made operational commitments of 453,1 million euro and payments of 316 million euro (69,8 % of operational commitments) by the end of 2015. According to the Joint Undertaking's payment plan for ongoing FP7 projects, the outstanding operational payments of 137 million euro (30,2 %) will be used by the end of 2019. The EU cash contribution to the Joint Undertaking's administrative costs amounted to 9 million euro.

21. Out of a total envelope of 470 million euro for the other members' in-kind and cash contributions to cover operational and administrative costs, 342,3 million euro of in-kind contributions to operational activities had been reported to the FCH Joint Undertaking by 31 December 2015, of which 185,6 million euro or 54,2 % have been validated by the Governing Board. The high level of in-kind contributions still to be validated is due to the cost reporting and certification cycle for FP7 projects. The other members' cash contributions to the administrative costs of the Joint Undertaking amounted to 13 million euro.

¹⁹ FCH Joint Undertaking Annual Activity Report, p. 28.

FCH Joint Undertaking multiannual budget implementation under Horizon 2020

22. Out of a total envelope of 665 million euro for the operational and administrative activities to be funded by the EU under Horizon 2020, the Joint Undertaking made operational commitments amounting to 83,6 million euro and payments amounting to 29,4 million euro (35 % of operational commitments). The EU cash contribution to the Joint Undertaking's administrative costs amounted to 781 000 euro.

23. For the other members' in-kind and cash contributions, out of a total envelope of 665 million euro, the Joint Undertaking estimated that 3,9 million euro of in-kind contributions to operational activities had been incurred by 31 December 2015. The other members' cash contributions to the Joint Undertaking's administrative costs amounted to 781 000 euro.

OTHER MATTERS

Key controls and supervisory systems

24. The FCH Joint Undertaking has set up ex-ante control procedures based on financial and operational desk reviews, and performs ex-post audits of grant beneficiaries. These checks are key tools for assessing the legality and regularity of the underlying transactions, including the cash and in-kind contributions to the Joint Undertaking by its members other than the EU. The residual error rate for the ex-post audits reported in the FCH Joint Undertaking Annual Activity Report in 2015 was 0,98 %²⁰.

Anti-Fraud Strategy

25. According to Article 12 of the Financial Rules of the FCH Joint Undertaking, the budget should be implemented in compliance with effective and efficient internal control, including prevention, detection, correction and follow-up of fraud and irregularities.

²⁰ FCH Joint Undertaking Annual Activity Report, p. 41. The ex-post audits performed during 2015 covered projects funded by the Joint Undertaking under FP7. The audit approach for Horizon 2020 projects is set out in the Research common ex post audit strategy for Horizon 2020. The ex-post audits for projects funded by the Joint Undertaking under Horizon 2020 will start in 2016.

26. Following the adoption of an Anti-Fraud Strategy by the European Commission in June 2011, the first common Research Anti-Fraud Strategy was adopted in July 2012, and updated in March 2015 to take account of changes introduced by Horizon 2020²¹. The Research Anti-Fraud Strategy includes an action plan to be implemented by the research Joint Undertakings.

27. Internal control procedures are already in place at the FCH Joint Undertaking to provide reasonable assurance on the prevention and detection of fraud and irregularities (ex-ante checks on payments, conflict of interest policy and ex-post audits of final beneficiaries of grants). The Joint Undertaking is implementing the measures in the action plan, such as making use of Commission databases to identify excluded organisations or potential double funding²², in accordance with the agreed timetable.

The Commission's Internal Audit Service (IAS)

28. The IAS completed an audit on the evaluation and selection process for Horizon 2020 grant proposals at the FCH 2 Joint Undertaking in November 2015. The IAS recommended that the Joint Undertaking improve the clarity and transparency of its selection of topics for proposals. The FCH 2 Joint Undertaking is introducing improved procedures during 2016, for the next call for proposals in 2017.

FOLLOW-UP OF PREVIOUS OBSERVATIONS

Monitoring and reporting of project research results

29. As required by Horizon 2020 rules²³, the FCH 2 Joint Undertaking disclosed specific indicators on research results in its Annual Activity Report (performance indicators and indicators for monitoring cross-cutting issues)²⁴.

²¹ For example, the setting-up of a Common Support Centre, with a centralised audit service and harmonised business processes for EU research bodies.

²² This action also includes assessment of the use of non-EU sources to prevent double funding.

²³ Article 31 of Regulation (EU) No 1291/2013 and Annex II of Council Decision 2013/743/EU (OJ L 347, 20.12.2013, p. 965).

Conflicts of interest

30. In July 2015, the Commission issued guidelines to the Joint Undertakings related to rules on conflicts of interest, including a common template for the declaration of absence of a conflict of interest, which should be incorporated by the Joint Undertaking into its procedures.

This Report was adopted by Chamber IV, headed by Mr Baudilio TOMÉ MUGURUZA, Member of the Court of Auditors, in Luxembourg at its meeting of 18 October 2016.

For the Court of Auditors

Klaus-Heiner LEHNE
President

²⁴ FCH Joint Undertaking Annual Activity Report, Annexes 5, 6 and 7, p. 78 to 83.

Fuel Cells and Hydrogen 2 Joint Undertaking (Brussels)**Competences and activities**

<p>Areas of Union competence deriving from the Treaty</p> <p><i>(Articles 187 and 188 of the Treaty on the functioning of the European Union)</i></p>	<p>Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 providing for 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> and Regulation (EU) No 1291/2013 of the European Parliament and of the Council ('Horizon 2020') which aims to have a greater impact on research and innovation by combining Horizon 2020 and private-sector funds within public-private partnerships in key areas where research and innovation can contribute to the Union's wider competitiveness goals, leverage private investment, and help tackle societal challenges.</p> <p>Council Regulation (EC) No 559/2014 of 6 May 2014 establishing the FCH 2 Joint Undertaking.</p>
<p>Competences of the Joint Undertaking as defined in Council Regulation (EC) No 559/2014</p>	<p>Objectives</p> <p>The Fuel Cells and Hydrogen 2 Joint Undertaking shall have the following objectives:</p> <ul style="list-style-type: none"> (a) to contribute to the implementation of Regulation (EU) No 1291/2013, and in particular the Secure, Clean and Efficient Energy Challenge and the Smart, Green and Integrated Transport Challenge under Annex I, Part III of Decision 2013/743/EU; (b) to contribute to the objectives of the Joint Technology Initiative on Fuel Cells and Hydrogen, through the development of a strong, sustainable and globally competitive fuel cells and hydrogen sector in the Union. <p>2. It shall, in particular, aim to:</p> <ul style="list-style-type: none"> (a) reduce the production cost of fuel cell systems to be used in transport applications, while increasing their lifetime to levels which can compete with conventional technologies; (b) increase the electrical efficiency and the durability of the different fuel cells used for power production to levels which can compete with conventional technologies, while reducing costs; (c) increase the energy efficiency of the production of hydrogen mainly from water electrolysis and renewable sources while reducing operating and capital costs, so that the combined system of hydrogen production and conversion using the fuel cell system can compete with the alternatives for electricity production

	<p>available on the market;</p> <p>(d) demonstrate on a large scale the feasibility of using hydrogen to support the integration of renewable energy sources into energy systems, including through its use as a competitive energy storage medium for electricity produced from renewable energy sources;</p> <p>(e) reduce the use of the EU-defined 'Critical raw materials', for instance through low-platinum or platinum-free resources and through recycling or reducing or avoiding the use of rare earth elements.</p>
<p>Governance as defined in Council Regulation (EC) No 559/2014</p>	<p>The bodies of the FCH 2 Joint Undertaking are:</p> <p>1 – The Governing Board</p> <p>The Governing Board is the main decision-making body of the FCH 2 Joint Undertaking.</p> <p>2 – 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>3 – 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 to be addressed in the annual work plans;</p> <p>(b) advise on the scientific achievements described in the annual activity report.</p> <p>The external advisory bodies to the FCH 2 Joint Undertaking are:</p> <p>4 – The FCH States Representatives Group</p> <p>It consists of one representative of each Member State and country associated to H2020.</p> <p>The States Representatives Group shall be consulted and, in particular, review information and provide opinions on the following matters:</p> <p>(a) the programme progress in the FCH 2 Joint Undertaking and the achievement of its targets;</p> <p>(b) the updating of strategic orientation;</p> <p>(c) the links to Horizon 2020;</p>

	<p>(d) the annual work plans;</p> <p>(e) the involvement of SMEs.</p> <p>The States Representatives Group shall also provide information to and act as an interface with the FCH 2 Joint Undertaking on the following matters:</p> <p>(a) the status of relevant national or regional research and innovation programmes and identification of potential areas of cooperation, including deployment of FCH technologies to allow synergies and avoid overlaps;</p> <p>(b) specific measures taken at national or regional level with regard to dissemination events, dedicated technical workshops and communication activities.</p> <p>5 – The Stakeholder Forum</p> <p>The SF is an important communication channel for FCH 2 JU activities and is open to all public and private stakeholders and international interest groups in the Member States, associated countries and other countries. It is convened once a year. The SF is informed of the activities of the FCH 2 Joint Undertaking and is invited to provide comments.</p> <p>The internal and external auditors and the discharge authority of the FCH 2 Joint Undertaking are:</p> <p>6 – Internal audit</p> <p>Commission's Internal Audit Service (IAS).</p> <p>7 – External audit</p> <p>European Court of Auditors.</p> <p>8 – Discharge authority</p> <p>Parliament on a recommendation of the Council.</p>
<p>Resources available to the Joint Undertaking in 2015 <i>FCH 2 Joint Undertaking 2015 final accounts</i></p>	<p>Budget (commitment appropriations)</p> <p>132,6 million euro</p> <p>Budget (payment appropriations)</p> <p>95,1 million euro</p> <p>Staff at 31 December 2015</p> <p>2015 establishment plan of 26 staff posts (24 temporary members of staff and 2 contract staff), entirely filled at year-end 2015; these were assigned to support operational activities (18 FTE) and to administrative</p>

	tasks (8 FTE).
Activities and services provided in 2015	See the FCH 2 JU Annual Activity Report for 2015 at http://www.fch.europa.eu/page/annual-activity-reports
<i>Source:</i> Information supplied by the FCH 2 Joint Undertaking.	

THE JU'S REPLY

15-16

In accordance with the H2020 IKOP methodology endorsed by the FCH 2 JU Governing Board in November 2015 and in line with the EC position of July 2016, the following was agreed:

- (1) IKOP consists in eligible cost less FCH contribution*
- (2) certification is done with CFS at the end of the project*
- (3) annual reporting will also include certified IKOP based on the costs certified and validated by the JU by 31/12*

In line with the methodology, the accounts as at 31.12.2015 include the estimated IKOP under liabilities

As the first reporting under projects is due in September 2016, no costs have been validated by the JU in 2015.

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The EC will issue a guidance note on what should be included in the implementation reports and FCH will present the annual accounts accordingly in 2016

28

The procedure for selection and drafting of topics was endorsed by the FCH 2 JU Governing Board on 29 June 2016 and is already implemented in 2016 for call for proposals 2017

30

Approval of common rules for staff based on the EC template is in process. Similarly rules for other bodies of the JU will be submitted to the Governing Board for adoption by year end 2016.

FCH reply