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From:	Mr Vítor CALDEIRA, President of the European Court of Auditors
date of receipt:	25 November 2013
To:	Mr Linas LINKEVICIUS, 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 2012 together with the Joint Undertaking's replies

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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 2012.

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

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Encl.: Report on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking for the financial year 2012 together with the Joint Undertaking's replies.<sup>1</sup>

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

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ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ  
EUROPEAN COURT OF AUDITORS  
COUR DES COMPTES EUROPÉENNE  
CÚIRT INIÚCHÓIRÍ NA HEORPA



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EUROPEISKA REVISIONSRÄTTEN

Report on the annual accounts of the  
Fuel Cells and Hydrogen Joint Undertaking  
for the financial year 2012

together with the Joint Undertaking's replies

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## **INTRODUCTION**

1. The Fuel Cells and Hydrogen Joint Undertaking (FCH Joint Undertaking), located in Brussels, was set up in May 2008<sup>1</sup> 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 Programme<sup>2</sup> 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.<sup>3</sup>
3. The founding members of the Joint Undertaking are the European Union, represented by the Commission, and the European Fuel Cell and Hydrogen Joint Technology Initiative Industry Grouping. The Research Grouping N.ERGHY became a member in July 2008.
4. The maximum EU contribution to the FCH Joint Undertaking, to cover running costs and research activities, is 470 million euro from the budget of the Seventh Framework Programme, of which the proportion earmarked for running costs must not exceed 20 million euro. The Industry Grouping is expected to contribute 50 % of the running costs and should contribute to the

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<sup>1</sup> Council Regulation (EC) 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 1183/2011 of 14 November 2011.

<sup>2</sup> 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.

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

funding of operational activities through in-kind<sup>4</sup> contributions at least equal to the EU financial contribution.

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 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 statements<sup>5</sup> and the reports on the implementation of the budget<sup>6</sup> for the financial year ended 31 December 2012, and
- (b) the legality and regularity of the transactions underlying those accounts.

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

<sup>5</sup> These include the balance sheet and the economic outturn account, the cash-flow table, the statement of changes in net assets, a summary of the significant accounting policies and other explanatory notes.

<sup>6</sup> These comprise the reports on implementation of the budget, a summary of budgetary principles and other explanatory notes.

*The management's responsibility*

8. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002<sup>7</sup>, 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 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 officer<sup>8</sup>, 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

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<sup>7</sup> OJ L 357, 31.12.2002, p. 72

<sup>8</sup> 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.

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 Council<sup>9</sup> 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.

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.

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<sup>9</sup> Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

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 2012 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 2012 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**

***Implementation of the budget***

15. The final 2012 budget adopted by the Governing Board reported commitment appropriations of 83,3 million euro and payment appropriations of 56,9 million euro. The utilisation rates for commitment and payment appropriations were 99,4 % and 83,1 % respectively.

16. The provisional 2012 budget outturn account reported a total budget outturn of 8,2 million euro, with receipts comprising member contributions and other sources of revenue of 56,3 and 2,0 million euro respectively, plus the previous year's budget outturn of 7,5 million euro, netted against payments of 55,2



million euro and carryovers of 2,4 million euro. Year-end cash and cash equivalents amount to 12,3 million euro.

### ***Calls for proposals***

17. At 31 December 2012, the FCH Joint Undertaking programme consisted of 103 grant agreements resulting from four annual calls (2008-2011), with a further 28 grant agreements anticipated from the recently completed 2012 call.

18. The calls for proposals organised in 2008, 2009, 2010 and 2011 resulted in grant agreements totalling 295 million euro, and in 2012 a fifth call for proposals was launched for 78 million euro. These amounts represent 67 % and 18 % respectively of the maximum EU contribution to the Joint Undertaking for research activities. In January 2013, a sixth call was launched for the remaining amount (68,5 million euro).

### **OTHER MATTERS**

#### ***Internal audit function and the Commission's Internal Audit Service***

19. In accordance with the IAS/IAC coordinated strategic audit plan for the FCH Joint Undertaking for 2011-2013, the FCH JU internal audit capability carried out an audit on *ex-ante* controls for eligibility of declared costs and related payments<sup>10</sup> and performed various consultancy services, including preparation and participation in the communication campaigns of FCH JU on financial control and audit matters.

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<sup>10</sup> The final report issued 28 June 2012 noted, amongst other, opportunities for improvement, in particular regarding the clarification of certain aspects of *ex-ante* control strategy objectives and scope, the quality of some design aspects of the Certificates on Financial Statements and the streamlining of control checklists.

***Monitoring and reporting of research results***

20. The Seventh Framework Programme (FP7) establishes a monitoring and reporting system covering the protection, dissemination and transfer of research results.

21. In the grant agreements signed with members and other beneficiaries, the Joint Undertaking has included specific provisions governing intellectual property rights and the dissemination of research activities. Implementation of these provisions is monitored by the Joint Undertaking at different stages of the funded projects.

22. Now that the first projects have been completed, the FCH Joint Undertaking's monitoring of the implementation of the plan for the use and dissemination of foreground could be improved, either through the information system set up by the Commission in accordance with Article 27 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council<sup>11</sup> to allow for the entire FP7 to be monitored in an efficient and coherent manner, or through an equivalent tool.

***Follow-up of previous observations***

23. In 2012 the business continuity plan and disaster recovery plan were finalised.

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<sup>11</sup> Article 27 of Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (OJ L 391, 30.12.2006, p. 1) requires the Commission to monitor the implementation of indirect actions on the basis of the periodic progress reports submitted. In particular, the Commission must monitor implementation of the plan for the use and dissemination of foreground. It must also set up and maintain an information system allowing for this monitoring to take place in an efficient and coherent manner across the Seventh Framework Programme.

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 22 October 2013.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA  
*President*

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

<p><b>Areas of Union competence deriving from the Treaty</b>  <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 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> <p>Council Regulation (EC) No 521/2008 of 30 May 2008 setting up the FCH Joint Undertaking, as amended by Regulation (EU) No 1183/2011 (OJ L 302, 19.11.2011, p. 3).</p>
<p><b>Competences of the Joint Undertaking as defined in Council Regulation (EC) No 521/2008, amended by Regulation (EU) No 1183/2011</b></p>	<p><b>Objectives</b></p> <p>The Fuel Cells and Hydrogen Joint Undertaking shall contribute to implementation of the Seventh Framework Programme and, in particular, the specific 'Cooperation' programme themes of 'Energy', 'Nanosciences, nanotechnologies, materials and new production technologies', 'Environment (including climate change)', and 'Transport (including aeronautics)'.</p> <p>It shall in particular:</p> <p>(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;</p> <p>(b) support research, technological development and demonstration (RTD) in the Member States and countries associated with the Seventh Framework Programme (the associated countries) in a coordinated manner, so as to overcome market failure and focus on developing market applications and thereby facilitating additional industrial efforts towards the rapid deployment of fuel cells and hydrogen technologies;</p> <p>(c) support implementation of the RTD priorities of the JTI on Fuel Cells and Hydrogen, notably by awarding grants following competitive calls for proposals;</p> <p>(d) aim to encourage increased public and private research investment in fuel cells and hydrogen technologies in the Member States and associated countries.</p>
<p><b>Governance as defined in Council Regulation (EC) No 521/2008, amended by Regulation (EU) No 1183/2011</b></p>	<p>The <b>bodies of the FCH Joint Undertaking</b> are:</p> <p><b>1 – The Governing Board</b></p> <p>The Governing Board is the main decision-making body of the FCH Joint Undertaking.</p> <p><b>2 – The Executive Director</b></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><b>3 – The Scientific Committee</b></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 <b>external advisory bodies</b> to the FCH Joint Undertaking are:</p> <p><b>4 – The FCH States Representatives Group</b></p> <p>It consists of one representative of each Member State and associated country. Its most important tasks are to provide an opinion on programme progress at the FCH JU, monitor compliance and respect of targets and coordinate with national programmes to avoid overlapping.</p> <p><b>5 – The Stakeholders’ General Assembly</b></p> <p>The SGA is an important communication channel for FCH JU activities and is open to all public and private stakeholders and international interest groups in the Member States, associated countries and third countries. It is convened once a year. The SGA is informed of the activities of the FCH Joint Undertaking and is invited to provide comments.</p> <p>The <b>internal and external auditors</b> and the <b>discharge authority</b> of the FCH Joint Undertaking are:</p> <p><b>6 – Internal audit</b></p> <ul style="list-style-type: none"> <li>- FCH JU Internal Audit Manager (i.e. internal audit capability – IAC);</li> <li>- Commission's Internal Audit Service (IAS).</li> </ul> <p><b>7 – External audit</b></p> <p>European Court of Auditors.</p> <p><b>8 – Discharge authority</b></p> <p>Parliament on a recommendation of the Council.</p>
<p><b>Resources available to the Joint Undertaking in 2012</b>  <i>FCH Joint Undertaking 2012 and 2011 final accounts</i></p>	<p><b>Budget (commitment appropriations)</b></p> <p>94,9 million euro</p> <p><b>Staff at 31 December 2012</b></p> <p>The 2012 operating budget provides for an establishment plan of 20 staff posts, all of which were filled at year end 2012.</p> <p>These comprised 18 temporary staff recruited externally and 2 contractual staff, of whom 6 were assigned to operational tasks, 7 to administrative and support tasks and 7 to mixed tasks.</p>
<p><b>Activities and services provided in 2012</b></p>	<p>See the FCH JU annual activity report for 2012 at <a href="http://www.fch-ju.eu/page/documents">http://www.fch-ju.eu/page/documents</a></p>

*Source:* Information supplied by the FCH Joint Undertaking.