



Council of the  
European Union

Brussels, 5 December 2014  
(OR. en)

16491/14

FIN 963

## COVER NOTE

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From:	Mr Vítor CALDEIRA, President of the European Court of Auditors
date of receipt:	19 November 2014
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 2013 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 2013.

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 2013 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  
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EUROPEISKA REVISIONSRÄTTEN

Report on the annual accounts of the  
Fuel Cells and Hydrogen Joint Undertaking  
for the financial year 2013

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 and Research Groupings are expected to contribute 50 % of the running costs and should

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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 (EU) No 1183/2011 of 14 November 2011 (OJ L 302, 19.11.2011, p. 3).

<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.

contribute to the funding of operational activities through in-kind<sup>4</sup> contributions of the legal entities participating in the activities 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 2013, 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 2013 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 2013 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 2013 budget adopted by the Governing Board included commitment appropriations of 74,5 million euro and payment appropriations of 59,7 million euro. The utilisation rates for commitment and payment appropriations were 98,9 % and 56,7 % respectively. The latter results from the postponement of the funding of three projects.

***Calls for proposals***

16. At 31 December 2013, the FCH Joint Undertaking programme consisted of 130 grant agreements resulting from five annual calls (2008-2012), with a further 21 grant agreements anticipated from the 2013-1 call currently under negotiation and an estimated 5 to 10 from the launching of the final 2013-2 call.



17. The calls for proposals organised in 2008, 2009, 2010, 2011 and 2012 resulted in grant agreements totalling 365 million euro, amounting to 81 % of the maximum EU contribution to the Joint Undertaking for research activities of 452,5 million euro. The remaining 19 % were allocated to the 2013-1 and 2013-2 calls (respectively 64,5 million euro and 23 million euro), thus ensuring full consumption of the maximum EU contribution.

## **OTHER MATTERS**

### ***Legal framework***

18. The new Financial Regulation applicable to the general budget of the Union was adopted on 25 October 2012 and took effect on 1 January 2013<sup>10</sup>. However, the model financial regulation for public-private partnership bodies referred to in Article 209 of the new Financial Regulation did not enter into force until 8 February 2014. The financial rules of the Joint Undertaking were amended on 30 June 2014 to reflect these changes.

### ***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 Joint Undertaking Internal Audit Capability (IAC) carried out one audit on 'Grant Management-negotiation, contracting and prefinancing' during 2013 and performed other assurance and consultancy services<sup>11</sup>. The Final Report on 'Grant Management' noted the need to reduce the 'Time to Grant' and 'Time to Close Negotiations' and the

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<sup>10</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

<sup>11</sup> E.g: annual assessment of the level of in-kind contributions, advice on the Annual Activity Report process and participation in the communication campaigns of the Joint Undertaking on financial control and audit matters.

need to clarify some aspects of the Joint Undertaking's procedure for 'Financial Viability Checks'.

20. The FCH Joint Undertaking, along with the ARTEMIS, Clean Sky, Eniac and IMI Joint Undertakings, was the subject of an IT Risk Assessment on the common IT infrastructures they share by the Commission Internal Audit Service (IAS)<sup>12</sup>.

### ***Monitoring and reporting of project research results***

21. The Seventh Framework Programme (FP7) Decision<sup>13</sup> establishes a monitoring and reporting system related to the protection, dissemination and transfer of research results.

22. In 2013 the FCH Joint Undertaking increased its own capacity to monitor and report on the research results of its projects and to assess the achievement of its programme through the hiring of a Knowledge Management and Policy officer. It also introduced a newly-developed IT tool, TEMONAS (TEchnology MONitoring and ASsessment), to analyse and synthesise the results of the finished projects and reported on its website the first public foreground deliverables arising from completed projects.

23. The FCH Joint Undertaking is also exploring the possibility of using the Commission's IT system for the monitoring purposes mentioned above and of developing its reporting on results, in line with the comments included in the

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<sup>12</sup> The Final Report dated 22 November 2013 noted the need to formalise IT security policy and include detailed procedures/controls in future contracts with IT service providers.

<sup>13</sup> Article 7 of Decision No 1982/2006 of the European Parliament and the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) states that the Commission 'shall continually and systematically monitor the implementation of the Seventh Framework Programme and its specific programmes and regularly report and disseminate the results of this monitoring.'

2012 Commission Annual Progress Report on the activities of the Joint Undertakings<sup>14</sup>.

### ***Conflicts of interest***

24. The FCH Joint Undertaking has put specific measures in place to prevent conflicts of interest in respect of its three key stakeholders: Governing Board members, experts and employees.

25. These are being documented in a comprehensive written procedure expected to be adopted in the second half of 2014. It will include a clear definition of what should be considered as a conflict of interest, a database regularly updated to include all information related to conflicts of interest and a process for managing them.

### ***The Commission's Second Interim Evaluation***<sup>15</sup>

26. The Commission's Second Interim Evaluation of the FCH Joint Undertaking was carried out from November 2012 to May 2013. The report contained several recommendations to the FCH Joint Undertaking. These included the assignment of more resources to operations through the sharing of administrative functions with other Joint Undertakings and/or returning them to the Commission's services, a sharper focus for the research strategy for the continuation of the FCH Joint Undertaking in Horizon 2020 in accordance with three main principles (alignment with EU policies; areas where Europe has or can achieve leadership; adaptation to the changing needs of the sector) and the strengthening of the capacity for change.

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<sup>14</sup> Report from the Commission to the European Parliament and the Council. Annual Progress Report on the activities of the Joint Technology Initiative Joint Undertakings in 2012 (SWD(2013) 539 final).

<sup>15</sup> Second Interim Evaluation of the FCH Joint Undertaking of July 2013.

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 21 October 2014.

*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 Article 187 of the TFEU.</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> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(c) support implementation of the RTD priorities of the JTI on Fuel Cells and Hydrogen, notably by awarding grants following competitive calls for proposals;</li> <li>(d) (d) aim to encourage increased public and private research investment in fuel cells and hydrogen technologies in the Member States and associated countries.</li> </ul>
<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> <ul style="list-style-type: none"> <li>(a) advise on the scientific priorities for the annual and multiannual implementation plans proposal;</li> <li>(b) advise on the scientific achievements described in the annual activity report;</li> <li>(c) advise on the composition of the peer review committees.</li> </ul> <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 2013</b> <i>FCH Joint Undertaking 2013 final accounts</i></p>	<p><b>Budget (commitment appropriations)</b></p> <p>82,5 million euro</p> <p><b>Staff at 31 December 2013</b></p> <p>2013 establishment plan of 20 staff posts (18 Temporary members of staff and 2 Contract staff), of which 17 were filled at year-end 2013; these were assigned to support operational activities (12 FTE) and to administrative tasks (5 FTE).</p>
<p><b>Activities and services provided in 2013</b></p>	<p>See the FCH JU annual activity report for 2013 at <a href="http://www.fch-ju.eu/page/documents">http://www.fch-ju.eu/page/documents</a></p>