



Council of the
European Union

Brussels, 5 December 2014
(OR. en)

16486/14

FIN 958

COVER NOTE

From:	Mr Vítor CALDEIRA, President of the European Court of Auditors
date of receipt:	18 November 2014
To:	Mr Linas LINKEVICIUS, President of the Council of the European Union
Subject:	Report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013 together with the Joint Undertaking's replies

Delegations will find attached the European Court of Auditors' report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy 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*.

Encl.: Report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2013 together with the Joint Undertaking's replies.¹

¹ 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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Report on the annual accounts of the
European Joint Undertaking for ITER and the Development of Fusion Energy
for the financial year 2013

together with the Joint Undertaking's replies

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INTRODUCTION

1. The European Joint Undertaking for ITER¹ and the Development of Fusion Energy (F4E) was set up in March 2007² for a period of 35 years. While the main fusion facilities are to be developed at Cadarache in France, the Joint Undertaking is located in Barcelona.
2. The tasks of the Joint Undertaking are³:
 - (a) to provide the contribution of Euratom to the ITER International Fusion Energy Organisation⁴;
 - (b) to provide the contribution of Euratom to 'Broader Approach' (complementary joint fusion research) activities with Japan for the rapid development of fusion energy;
 - (c) to prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities, including the International Fusion Materials Irradiation Facility.
3. The members of the Joint Undertaking are Euratom, represented by the European Commission, the Member States of Euratom and other countries which have concluded cooperation agreements with Euratom in the field of

¹ ITER: International Thermonuclear Experimental Reactor.

² Council Decision 2007/198/Euratom of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (OJ L 90, 30.3.2007, p. 58).

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

⁴ The ITER International Fusion Energy Organisation was set up in October 2007 for an initial period of 35 years to implement the ITER project, which aims to demonstrate the scientific and technological feasibility of fusion energy. The Members are Euratom, the People's Republic of China, the Republic of India, Japan, the Republic of Korea, the Russian Federation and the United States of America.

controlled nuclear fusion and have expressed their wish to become members (as at 31 December 2013: Switzerland).

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

4. 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

5. 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 Joint Undertaking for ITER and the Development of Fusion Energy, which comprise the financial statements⁵ and the reports on the implementation of the budget⁶ for the financial year ended 31 December 2013, and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

6. In accordance with Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013⁷, 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.

⁵ 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.

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

⁷ OJ L 328, 7.12.2013, p. 42.

- (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 officer⁸, 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

7. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council⁹ with a statement of assurance as to the

⁸ 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.

⁹ Article 107 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42).

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.

8. 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.

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

Opinion on the reliability of the accounts

10. 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

11. In the Court's opinion, the transactions underlying the annual accounts of the Joint Undertaking for the year ended 31 December 2013 are, in all material respects, legal and regular.

Emphasis of Matter

12. Without calling into question the opinions expressed in paragraphs 10 and 11, the Court draws attention to the following. The Council conclusions adopted on 7 July 2010¹⁰ approved 6,6 billion euro (in 2008 values) for the Joint Undertaking contribution to the ITER construction phase of the project. This figure, which doubled the initial budgeted costs for this phase of the project, did not include an amount of 663 million euro proposed by the European Commission in 2010 to cover potential contingencies¹¹.

13. The amount of the Joint Undertaking contribution to the construction phase of the ITER project is exposed to significant risks of increase, mainly resulting from changes in the scope of the project deliverables and due to the current schedule which is considered unrealistic¹². In November 2013, the Joint

¹⁰ Council conclusions on ITER status of 7 July 2010 (Ref.11902/10).

¹¹ Communication from the Commission to the European Parliament and the Council of 4 May 2010 on ITER status and possible way forward (COM(2010) 226 final).

¹² Conclusions of the European Commission Internal Audit Service as regards the competitive dialogue procedure for the procurement of Tender Batch 03 (Tokamak Buildings). See also the observations included in the report 'Potential for Reorganization within the ITER project' of 2013, carried out by Ernst & Young upon request of the European Parliament, as regards the significant risk for the Joint Undertaking contribution to the project with the current levels of contingencies

Undertaking estimated the shortfall (“negative contingency”) until the finalisation of the construction phase of the project to be 290 million euro¹³. The slippage for the construction phase of the project was estimated by the Joint Undertaking at the time of the audit (April 2014) to be at least 30 months.

14. In relation to these risks, the Joint Undertaking has not yet implemented a system at contract level to regularly monitor the cost deviations, and has not updated the valuation of the Joint Undertaking contribution to the ITER project beyond the finalisation of the construction phase¹⁴.

15. The comments which follow do not call the Court’s opinions into question.

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

Presentation of the accounts

16. In the notes to the financial statements, the table and the information included under Heading 4.3.1.1. 'ITER Procurement Arrangement (ITER IO)', reflect the Procurement Arrangements signed (Column 3) and the Procurement Arrangements credited so far (Column 4). However, the table does not show the degree of advancement of the works in-progress and it only contains a limited estimate of the advancement of the work in progress. This information is

(http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/study_geier/study_geieren.pdf); and the Commission Communication to the Council of the European Union of 14 February 2013 (5852/13 RECH 21 ATO 19) stressing the existing concerns on the progress of the project, in particular on cost containment and schedule slippage.

¹³ This represents a deviation of 4,39 % over the figure approved by the Council in 2010 (Fusion for Energy Progress Report to the European Competitiveness Council of November 2013).

¹⁴ The indicative total resources deemed necessary for the Joint Undertaking for the 35 years of its duration were determined, in accordance with Article 4(1) of F4E Council Decision of 27 March 2007, and set at 9 653 million euro. Only the Joint Undertaking contribution to the construction phase of the project, initially estimated at 2,7 billion euro, was subject to a revision in 2008 which resulted in the doubling of the initial estimate.

essential to reflect the status of the activities carried out so far by the Joint Undertaking as regards the procurement arrangements signed with the ITER International Organisation.

Implementation of the budget

17. The final 2013 budget available for implementation included commitment appropriations of 1 297 million euro and payment appropriations of 432,4 million euro. The utilisation rates for commitment and payment appropriations were 100 % and 89,8 % respectively. However, the implementation rate for the payment appropriations with respect to the 2013 initial budget was only 57,8 %¹⁵. Regarding commitment appropriations, of the 1 254 million euro available for operational activities, 61,7 % were implemented through direct individual commitments while the remaining 38,3 % were implemented through global commitments.

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

18. The Court of Auditors has previously reported that the Joint Undertaking's internal control systems had not been fully established. Although significant progress was achieved during 2013, a number of actions still need to be implemented:

- as a result of the exercise carried out in 2013 to update the cost estimate of the EU contribution for the construction phase of the project, the process for managing the cost estimate at system level is

¹⁵ The initial budget available for payment appropriations adopted on 11 December 2012 was 677,2 million euro. It was then reduced to 432,4 million euro in the amending budgets of 27 June and 10 December 2013, mainly because of delays in the implementation of the activities related to the ITER construction budget chapter.

now in place. However, the process for managing the cost estimate at contract level requires further development work¹⁶;

- the audit results arising from the implementation of the F4E overall control and monitoring strategy for grants and operational contracts¹⁷ were not available at the time of the audit;
- except for the action plan in response to the internal audit on management of experts' contracts, the other action plans adopted by the Joint Undertaking in response to internal audits¹⁸ had not been fully implemented at the time of the audit. The European Commission Internal Audit Service review of the competitive dialogue procedure for the procurement of tender batch 03 (Tokamak Buildings) concluded that progress had been made towards the application of the basic principles of public procurement but pointed out that the contract tender batch audited included considerable cost uncertainties, mainly associated with the possible evolution of ITER project design and planning. It also mentioned that a substantial part of the requested input data from the ITER Organisation, to be used by the Joint

¹⁶ Until this process is in place, the local integrated reporting portal (DWH) cannot provide an effective reconciliation between the accounting system and the project management system. It thus does not provide the information necessary to the regular monitoring of cost deviations (see also footnote 12 of the Court's 2012 report).

¹⁷ Paragraphs 15 and 23 of the Court's 2012 report.

¹⁸ Action plans in response to the internal audits on financial circuits, grant management, expert contracts, operational pre-procurement activities, procurement in the area of ITER buildings, selection and recruitment and review of the competitive dialogue procedure for the procurement of Tender Batch 03 (Tokamak Buildings). The internal audit reports on the budgetary process of the Joint Undertaking (Annual audit plan of the Internal Audit Capability for 2012) and on the monitoring of contract implementation in the area of ITER buildings (Annual audit plan of the Internal Audit Capability for 2013) were not yet available at the time of the Court's audit.

Undertaking for drafting the technical tender specifications, was not available in due time;

- the corporate risk management system did not identify new risks in 2013. As regards the actions adopted in response to the main risks identified previously¹⁹, 12 were implemented, 19 were in progress and 6 had not started by November 2013²⁰.

Operational procurement and grants

19. Negotiated procedures constituted 44 % of the 41 operational tendering procedures launched in 2013 (40 % in 2012). The Joint Undertaking needs to increase the competitiveness of procurement procedures and reduce the use of negotiated procedures. Regarding grants, the average number of proposals received was only one per call.

20. Five operational procurement procedures were audited. The following weaknesses were identified:

- in one procurement procedure the Joint Undertaking did not advertise the contract by means of a pre-information notice in order to increase visibility and competition;
- in one procurement procedure there was an increase of 32 % with respect to the initial cost estimate. In two other procurement

¹⁹ The corporate risk management system was presented to the Governing Board in July 2012.

²⁰ Some of the main risks classified as very high by the Joint Undertaking had particular impact in the 2013 budget implementation exercise, namely: the low budget implementation for payments appropriations as compared with the initial planning; the lack of competition or very low competition for some operational procedures and for grants; uncertainties about the final scope of the procurement arrangements during the definition of the technical specifications for procurement procedures or during the implementation of the contract; delays in the reception of technical data from the ITER Organisation during the implementation of the procurement arrangements.

procedures the reconciliation of the difference between the final contract value with the initial estimated value was complicated given the nature of the information available in the files²¹;

- in one procurement procedure the Joint Undertaking did not have specific guidelines and procedures to ensure that the deliverables from the third parties used as input documents for the tendering procedures were uniformly and systematically reviewed and formally accepted by the Joint Undertaking²²;
- in one procurement procedure the amendments to the original contracts increased the value of the contract by 15 % compared with the initial amount. The information available in the file was not sufficient to conclude that the assessment of the materiality of the amendments was performed as required by the Joint Undertaking's internal procedures²³;
- the Joint Undertaking has not developed a procedure for the members of staff involved in the tendering procedures; in two procurement procedures the Joint Undertaking staff members providing technical advice during the evaluation of the offers upon request of the evaluation committee had not therefore been formally nominated by the Appointing Authority, either as members of the evaluation committee or

²¹ This was particularly relevant in the Tender Batch 04 for Supply and Installation for Tokamak Complex and Surrounding buildings. The initial cost estimate at 2008 values amounted 186,6 million euro. The contract signed amounted to 537,3 million euro. The difference was partly due to significant design change requests from the ITER Organisation, additional items and contingencies, evolution in the scope of the works, and the transfer of activities from other batches.

²² This observation was also raised by the European Commission Internal Audit Service in its report on Tender Batch 03 (Competitive dialogue procedure for Tokamak buildings).

²³ The information available did not include the formal decisions on whether the amendments were classified as non-significant and the justifications thereof.

as experts providing technical advice to the committee²⁴. In one tendering procedure, the Authorising Officer appointed a team to conduct a dialogue with the candidates selected following the call for expressions of interest. However, there was no formal mandate for this team setting out the dialogue strategy, the objectives to be achieved and the technical, financial and contractual parameters for the negotiations²⁵;

- in another procedure, the dialogue phase finished four months later than planned and the final conditions of the contract and the updated technical version of the tender specifications were only sent in February 2013. The deadline to send the final tenders was April 2013 (whereas October 2012 was initially planned). The contract was signed four months after the target date.

Overall control and monitoring of operational procurement contracts and grants

21. The Joint Undertaking has a system for performing audits²⁶ at the level of contractors with the aim of checking compliance with the quality assurance requirements²⁷.

²⁴ However, all staff members involved had signed, however, declarations of confidentiality and of absence of conflict of interest.

²⁵ This observation was also raised by the European Commission Internal Audit Service in its report on Tender Batch 03 (Competitive dialogue procedure for Tokamak buildings).

²⁶ Of the 26 quality audits carried out during 2013, 22 were closed by April 2014. The audits identified 35 situations of non-conformity with the procedures and 201 areas for improvement.

²⁷ The audits covered the quality plan, situations of non-conformity, purchase control and subcontracting management, documentation and data management, changes and deviations management, the civil works quality control plan, the detailed project schedule, contract risk management and the technical works quality control plan.

22. The results of ex post audits on grants and of financial and compliance verifications on contract implementation arising from the implementation of the overall monitoring and control strategy were not available at the time of the Court's audit (April 2014).

OTHER MATTERS

Late payment of membership contributions

23. The payment of the 2013 annual membership contributions²⁸ by seven members, totalling 2,2 million euro, was subject to delays ranging from three to forty-eight days.

Legal framework

24. The new Financial Regulation applicable to the general budget of the Union²⁹ was adopted on 25 October 2012 and took effect on 1 January 2013³⁰. However, the framework financial regulation for the bodies³¹ referred to in Article 208 of the new Financial Regulation entered into force on 8 December 2013. The financial rules of the Joint Undertaking have not yet been amended to reflect these changes.

Intellectual property rights and industrial policy

25. The Decision on the implementation of the Fusion for Energy Industrial Policy and the Policy on Intellectual Property Rights and dissemination of

²⁸ Members' contributions other than the European Commission and France as host Member State.

²⁹ 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)..

³⁰ Article 214 of Regulation No 966/2012 with the exemptions referred to.

³¹ OJ L 38, 7.2.2014, p. 2.

information was adopted by the Joint Undertaking's Governing Board on 27 June 2013. However, the Joint Undertaking still has to adopt and implement specific measures to mitigate certain risks related to the protection of the Intellectual Property Rights and the dissemination of research results.

26. The Joint Undertaking is offering the contractors exclusive rights to the exploitation of the Intellectual Property they produce in fields outside fusion, and non-exclusive rights in the field of fusion. This may expose the Joint Undertaking to a risk as regards the obligation for the Joint Undertaking to retain the right to access the full Intellectual Property Rights (background and foreground) involved in the European in-kind contributions and to be able to transfer this access right to the ITER Organisation, if needed.

27. The Joint Undertaking should monitor the application of the clause of the contracts obliging the contractors to refrain from carrying out any dissemination of research results until a decision about their possible protection is made. .

Conflicts of interest

28. The Joint Undertaking has adopted specific rules preventing potential conflicts of interest of the members of its Governing Board, Executive Committee, Audit Committee and experts. However, it still has to adopt rules regarding staff members and to set up a database for the general declarations of interest.

Annual activity report

29. The Chair of the Governing Board of the Joint Undertaking refers in the 2013 annual activity report to the project delays and to the need to seek cost savings; in this report, the Executive Director refers to the risks associated with a potential budget shortfall by 2020, mainly related to the increased scope in relation to the ITER buildings, and to the current schedule, which is under revision (see emphasis of matter in paragraphs 12-14).

30. The Executive Director's declaration of assurance makes reference to the progress achieved in 2013 at the level of the overall control environment of the Joint Undertaking, although it acknowledges that some parts still have to reach full maturity (see paragraph 18).

Follow-up of previous observations

Host State agreement

31. According to the Host State Agreement signed with the Kingdom of Spain on 28 June 2007, permanent premises should have been made available to the Joint Undertaking by June 2010. At the time of the audit (April 2014), this was still not the case.

Rules implementing the Staff Regulations

32. The Joint Undertaking has not yet adopted all the rules implementing³² the Staff Regulations.

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

³² *Inter alia* on recruitment of temporary agents, classification in grade and step upon engagement, part-time work, appraisal of the Director and modified provisions on family leave, parental leave and pension rights.

European Joint Undertaking for ITER and the Development of Fusion Energy (Barcelona)

Competences and activities

<p>Areas of Union competence deriving from the Treaty</p> <p><i>(Articles 45 and 49 of the Treaty establishing the European Atomic Energy Community)</i></p>	<p>Chapter 5, on 'Joint Undertakings', of the Treaty establishing the European Atomic Energy Community, and in particular:</p> <p style="text-align: center;">Article 45</p> <p><i>"Undertakings which are of fundamental importance to the development of the nuclear industry in the Community may be established as Joint Undertakings within the meaning of this Treaty, in accordance with the following Articles ..."</i></p> <p style="text-align: center;">Article 49</p> <p><i>"Joint Undertakings shall be established by Council decision. Each Joint Undertaking shall have legal personality."</i></p>
<p>Competences of the Joint Undertaking</p> <p><i>(Council Decision 2007/198/Euratom)</i></p>	<p>Objectives</p> <ul style="list-style-type: none"> - To provide the contribution of the European Atomic Energy Community (Euratom) to the ITER International Fusion Energy Organisation; - to provide the contribution of Euratom to Broader Approach activities with Japan for the rapid realisation of fusion energy; - to prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities, including the International Fusion Materials Irradiation Facility (IFMIF). <p>Tasks</p> <ul style="list-style-type: none"> - Oversee preparation of the ITER project site; - provide components, equipment, materials and other resources to the ITER Organisation; <li style="padding-left: 20px;">manage procurement arrangements vis-à-vis the ITER Organisation and, in particular associated quality assurance procedures; - prepare and coordinate Euratom's participation in the scientific and technical exploitation of the ITER project; - coordinate scientific and technological research and development activities in support of Euratom's contribution to the ITER Organisation; - provide Euratom's financial contribution to the ITER Organisation; - arrange to make human resources available for the ITER Organisation; - interface with the ITER Organisation and carry out any other activities in furtherance of the ITER Agreement.
<p>Governance</p>	<p>Governing Board, Director and other bodies</p> <p>The Governing Board is responsible for the supervision of the Joint Undertaking in the pursuit of its objectives and ensures close collaboration between the Joint Undertaking and its members in the implementation of its activities. Together with the Governing Board and the Director, who is the chief executive officer responsible for the day-to-day management of the Joint Undertaking and its legal representative, the Joint Undertaking has several bodies:</p> <p>Bureau, Technical Advisory Panel, Executive Committee, Administration & Finance</p>

	<p>Committee, Audit Committee.</p> <p>Internal auditor: internal audit capability and the European Commission's Internal Audit Service (IAS) since 01/01/2012.</p> <p>External auditor: European Court of Auditors.</p> <p>Discharge authority: the European Parliament, on a recommendation from the Council.</p>
Resources available to the Joint Undertaking in 2013	<p>Budget</p> <p>431,6 million euro final revenue (payment appropriations) of which 69 % funded by Community contribution.</p> <p>Staff at 31 December 2013</p> <p>262 EU official and temporary agent posts provided for in the establishment plan, of which 234 posts were occupied;</p> <p>142 contract agent posts occupied.</p>
Activities and services provided in 2013	<p>For detailed information concerning the activities and services provided in 2013, please consult the F4E website at http://www.fusionforenergy.europa.eu/</p>

Source: European Joint Undertaking for ITER and the Development of Fusion Energy.