



Brussels, 1 December 2017
(OR. en)

15042/17

FIN 800

COVER NOTE

From:	Mr Klaus-Heiner LEHNE, President of the European Court of Auditors
date of receipt:	28 November 2017
To:	Mr Märt KIVINE, 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 2016 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 2016.

This report is accompanied by the Joint Undertaking'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 2016 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 2016

together with the Joint Undertaking's reply

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INTRODUCTION

Establishment of the FCH Joint Undertaking

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 2008 for the period up to 31 December 2017 and started working autonomously on 15 November 2010
2. ¹. In May 2014, the Council extended the lifetime of the Joint Undertaking for the period up to 31 December 2024².
3. The FCH Joint Undertaking is a public-private partnership in the field of hydrogen and fuel cells technology research and innovation. The founding members of the Joint Undertaking are the European Union (EU), represented by the Commission, the Industry Grouping (Hydrogen Europe) and the Research Grouping (New European Research Grouping on Fuel Cells and Hydrogen - N.ERGHY).

Governance

4. The governance structure of the FCH Joint Undertaking includes the following bodies: the Governing Board, the Executive Director, the Scientific Committee, the FCH States Representatives Group and the Stakeholder Forum.
5. The Governing Board is composed of ten members, with six representatives from the Industry Grouping, three from the Commission and one from the Research Grouping. It is responsible for the strategic orientation and operations of the Joint Undertaking and supervises the implementation of its activities. The Executive Director is responsible for the day-to-day management of the Joint Undertaking.

¹ 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).

² 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).

6. The Scientific Committee is composed of up to nine members reflecting a balanced representation of expertise from academia, industry and regulatory bodies. It provides advice on the scientific priorities to be addressed by the annual work plans and on the scientific achievements described in the annual activity report.

7. The FCH States Representatives Group consists of one representative of each Member State and country associated with Horizon 2020 and gives its opinion on the Joint Undertaking's strategic orientation and achievement of Horizon 2020 targets. The Stakeholder Forum is an annual event, where FCH stakeholders discuss FCH's activities and may provide comments.

Objectives

8. The objective of the FCH Joint Undertaking is to demonstrate by 2020 fuel cell and hydrogen technologies as one of the pillars of future European energy and transport systems. The Joint Undertaking seeks to foster the development of a strong, sustainable and globally competitive fuel cell and hydrogen sector in the EU.

Resources

9. The maximum EU contribution to the FCH Joint Undertaking's first phase of activities is 470 million euro from FP7³. Contributions from the other members must be at least equal to the EU contribution.

10. The maximum EU contribution to the second phase of activities of the FCH Joint Undertaking is 665 million euro from Horizon 2020. Of this amount, a maximum of 570 million euro can be used to match the minimum contribution of the members from the Industry and Research Groupings (set at 380 million euro), and up to 95 million euro can be used to match any additional contribution from the members exceeding the minimum contribution⁴.

³ Article 5(1) of Regulation (EC) No 521/2008.

⁴ Article 3(1) of Regulation (EU) No 559/2014.

11. The members from the Industry and Research Groupings are expected to contribute resources of at least 380 million euro to the Horizon 2020 projects funded by the FCH Joint Undertaking⁵, including at least 285 million euro of in-kind contributions to additional activities⁶.

12. The administrative costs of the FCH Joint Undertaking are limited to 38 million euro, to be covered through financial contributions divided equally on an annual basis between the EU and the members from the Industry and Research Groupings⁷.

13. In 2016, the payment budget for the FCH Joint Undertaking was 98,3 million euro (2015: 95,1 million euro). At 31 December 2016, the Joint Undertaking had 26 staff (2015: 26)⁸.

OPINION

14. We have audited:

- (a) the accounts of the Joint Undertaking which comprise the financial statements⁹ and the reports on the implementation of the budget¹⁰ for the financial year ended 31 December 2016, and

⁵ Article 4(1) of Regulation (EU) No 559/2014.

⁶ As provided for in Article 4(4) 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, the ECA or by any EU body.

⁷ Article 13(2) of the Statutes of the FCH 2 Joint Undertaking (Annex I of Regulation (EU) No 559/2014.

⁸ Further information about the FCH Joint Undertaking and its activities are available at its website [http:// www.fch.europa.eu](http://www.fch.europa.eu).

⁹ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

¹⁰ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

(b) the legality and regularity of the transactions underlying those accounts, as required by Article 287 of the Treaty on the Functioning of the European Union (TFEU).

Opinion on the reliability of the accounts

15. In our opinion, the accounts of the Joint Undertaking for the year ended 31 December 2016 present fairly, in all material respects, the financial position of the Joint Undertaking at 31 December 2016, the results of its operations, its cash flows, and the changes in net assets for the year then ended, in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer. These are based on internationally-accepted accounting standards for the public sector.

Opinion on the legality and regularity of revenue underlying the accounts

16. In our opinion, revenue underlying the accounts for the year ended 31 December 2016 is legal and regular in all material respects.

Opinion on the legality and regularity of payments underlying the accounts

17. In our opinion, payments underlying the accounts for the year ended 31 December 2016 are legal and regular in all material respects.

Responsibilities of management and those in charge of governance

18. In accordance with Articles 310 to 325 of the TFEU and the Joint Undertaking's Financial Regulation, management is responsible for the preparation and presentation of the accounts on the basis of internationally-accepted accounting standards for the public sector and for the legality and regularity of the transactions underlying them. This responsibility includes the design, implementation and maintenance of internal control relevant to the preparation and presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them. The Joint Undertaking's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the accounts.

19. In preparing the accounts, management is responsible for assessing the Joint Undertaking's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.

20. Those charged with governance are responsible for overseeing the entity's financial reporting process.

Auditor's responsibilities for the audit of the accounts and underlying transactions

21. Our objectives are to obtain reasonable assurance about whether the accounts of the Joint Undertaking are free from material misstatement and the transactions underlying them are legal and regular and, on the basis of our audit, to provide the European Parliament and the Council or other respective discharge authorities with a statement of assurance as to the reliability of the accounts and the legality and regularity of the transactions underlying them. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit will always detect a material misstatement or non-compliance when it exists. These can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these accounts.

22. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and the regularity of the transactions underlying them. The procedures selected depend on the auditor's judgment, including an assessment of the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirements of the legal framework of the European Union, whether due to fraud or error. In making those risk assessments, internal control relevant to the preparation and fair presentation of the accounts and legality and regularity of underlying transactions is considered in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. An audit also includes evaluating the appropriateness of accounting policies used, the reasonableness of accounting estimates made by the management and the overall presentation of the accounts.

23. For revenue, we verify the subsidy received from the Commission and assess the Joint Undertaking's procedures for collecting fees and other income.

24. For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. This examination covers all categories of payments (including those made for the purchase of assets) other than advances at the point they are made. Advance payments are examined when the recipient of funds provides justification for their proper use and the Joint Undertaking accepts the justification by clearing the advance payment, whether in the same year or later.

25. In preparing this report and Opinion, we considered the audit work of the independent external auditor performed on the Joint Undertaking's accounts as stipulated in Article 208(4) of the EU Financial Regulation¹¹.

26. The comments which follow do not call the Court's opinions into question.

BUDGETARY AND FINANCIAL MANAGEMENT

Implementation of the 2016 budget

27. Taking into account unused payment appropriations from previous years (17,2 million euro), the final 2016 budget available for FP7 and Horizon 2020 programme implementation included commitment appropriations of 127,8 million euro and payment appropriations of 115,5 million euro. The lower utilisation rates for commitment and payment appropriations were 77,7 % and 83,9 %, respectively. The under-utilisation of appropriations was mainly due to the fact that fewer grant agreements than expected were signed, following the evaluation of the 2016 call for proposals.

Multiannual budget implementation under FP7

28. Out of the 470 million euro of FP7 funds allocated to the FCH Joint Undertaking, by the end of 2016 the Joint Undertaking had made commitments of 464,4 million euro and

¹¹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

payments of 372 million euro According to the Joint Undertaking's payment plan for ongoing FP7 projects, the outstanding operational payments of 75,3 million euro (17 %) will be used by the end of 2019.

29. Out of the 470 million euro of in-kind and cash contributions to be made by the Industry and Research Grouping members to the operational activities of the FCH Joint Undertaking, by the end of 2016 the Governing board had validated contributions of 299 million euro. Additional in-kind contributions to operational activities of 40,6 million euro had been reported to the FCH Joint Undertaking by the end of 2016.

30. Consequently, at the end of 2016, the total contribution of the Industry and Research Grouping members to the Joint Undertaking amounted to 339,6 million euro, compared to the EU's (Commission's) contribution of 383,7 million euro.

Multiannual budget implementation under Horizon 2020

31. Out of the 665 million euro of Horizon 2020 funds allocated to the FCH Joint Undertaking, by the end of 2016 the Joint Undertaking had made commitments of 288,1 million euro (43 %) and payments of 77,4 million euro for the implementation of its first wave of projects.

32. By the end of 2016 the Industry and Research Grouping members had reported in-kind contributions of 4,9 million euro for operational activities, and the Governing Board had validated cash contributions to the Joint Undertakings administrative costs of 1,2 million euro.

33. Out of the minimum of 285 million euro of in-kind contributions to be made by the other members for additional activities, 188,6 million euro (66 %) had already been reported and certified by the end of 2016.

34. Consequently, by the end of 2016, the total contributions of the Industry and Research Grouping members amounted to 194,7 million euro, compared to the EU's cash contribution of 79,5 million euro. The difference is explained by the other members' high contribution to the additional activities of the Joint Undertaking.

INTERNAL CONTROLS

Internal control framework

35. The Joint Undertaking has set up ex-ante control procedures based on financial and operational desk reviews, and performs ex-post audits of grant cost claims under FP7. These checks are key tools for assessing the legality and regularity of the underlying transactions, including other members' cash and in-kind contributions to the Joint Undertaking. The residual error rate for the ex-post audits reported in the Joint Undertaking's 2016 annual activity report was 1,24 %¹².

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 19 September 2017.

For the Court of Auditors

Klaus-Heiner LEHNE
President

¹² FCH Joint Undertaking Annual Activity Report, p. 54.

Follow-up of previous years' comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
	<i>The Commission's Internal Audit Service (IAS)</i>	
2015	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.	Completed
	<i>Conflicts of interest</i>	
2015	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.	Ongoing

THE JU'S REPLY

The Joint Undertaking has taken note of the Court's report.