



Brussels, 1 December 2017  
(OR. en)

15043/17

FIN 801

#### COVER NOTE

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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 Electronic Components and Systems for European Leadership Joint Undertaking for the financial year 2016 together with the Joint Undertaking's reply

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Delegations will find attached the European Court of Auditors' report on the annual accounts of the Electronic Components and Systems for European Leadership 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*.

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Encl.: Report on the annual accounts of the Electronic Components and Systems for European Leadership Joint Undertaking for the financial year 2016 together with the Joint Undertaking's reply.<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/>.



EUROPEAN  
COURT  
OF AUDITORS

Report on the annual accounts of the  
Electronic Components and Systems for European Leadership Joint Undertaking  
for the financial year 2016

together with the Joint Undertaking's reply

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## **INTRODUCTION**

### ***Establishment of the ECSEL Joint Undertaking***

1. The Electronic Components and Systems for European Leadership (ECSEL) Joint Undertaking, located in Brussels, was set up in May 2014<sup>1</sup> for the period up to 31 December 2024. The ECSEL Joint Undertaking replaced and succeeded the ENIAC and ARTEMIS Joint Undertakings, which closed on 26 June 2014. The ECSEL Joint Undertaking started working autonomously on 27 June 2014.
2. The ECSEL Joint Undertaking is a public-private partnership in nano-electronics and embedded computing systems research. The founding members of the Joint Undertaking are the European Union (EU), represented by the Commission, the ECSEL Participating States<sup>2</sup> and industry members represented by the AENEAS, ARTEMISIA and EPoSS Associations of companies and other research organisations active in the fields of embedded and cyber-physical systems, smart system integration and micro- and nano-electronics.

### ***Governance***

3. The governance structure of the ECSEL Joint Undertaking includes the Governing Board, the Executive Director, the Public Authorities Board, and the Private Members Board.
4. The Governing Board is composed of representatives of the members of the Joint Undertaking. It has overall responsibility for the strategic orientation and operations of the ECSEL Joint Undertaking and supervises the implementation of its activities. The Executive Director is responsible for the day-to-day management of the Joint Undertaking.
5. The Public Authorities Board is composed of one representative of the Commission and one for each ECSEL Participating State. It decides on the allocation of public funding to

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<sup>1</sup> Council Regulation (EU) No 561/2014 of 6 May 2014 establishing the ECSEL Joint Undertaking (OJ L 169, 7.6.2014, p. 152).

<sup>2</sup> Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

selected proposals. The Private Members Board is composed of representatives of the private members of the ECSEL Joint Undertaking and draws up its draft strategic research and innovation agenda.

### **Objectives**

6. The main objective of the ECSEL Joint Undertaking is to contribute to the development of a strong and globally competitive electronics components and systems industry in the EU. It also aims to ensure the availability of electronic components and systems for key markets and for addressing societal challenges, and to maintain and grow semiconductor and smart system manufacturing capability in Europe. The Joint Undertaking seeks to align strategies between Member States to attract private investment and contribute to the effectiveness of public support by avoiding unnecessary duplication and fragmentation of effort, facilitating the participation of actors involved in relevant research and innovation.

### **Resources**

7. The maximum EU contribution to the activities of the ECSEL Joint Undertaking is 1 185 million euro, to be paid from Horizon 2020<sup>3</sup>. At least a similar amount should come from the ECSEL Participating States<sup>4</sup>. The contributions from the industry members should be at least 1 657,5 million euro<sup>5</sup>.

8. The administrative costs of the ECSEL Joint Undertaking are to be covered by cash contributions from the members, limited to 15,3 million euro from the EU and 19,7 million euro from the industry members<sup>6</sup>.

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<sup>3</sup> Article 3(1) of Regulation (EU) No 561/2014.

<sup>4</sup> Article 4(1) of Regulation (EU) No 561/2014.

<sup>5</sup> Article 4(2) of Regulation (EU) No 561/2014.

<sup>6</sup> See Article 16(2) of the Statutes of the ECSEL Joint Undertaking (Annex I of Regulation (EU) No 561/2014). In addition, the following contributions to the administrative costs of the ECSEL Joint Undertaking are to be paid over the period 2014-2017 to complete the actions launched under Regulations (EC) No 72/2008 setting up the ENIAC Joint Undertaking (OJ L 30, 4.2.2008, p. 21) and (EC) No 74/2008 on the establishment of the ARTEMIS Joint Undertaking (OJ L 30,

9. In 2016, the payments budget of the ECSEL Joint Undertaking was 244 million euro (2015: 161,5 million euro). At 31 December 2016, the Joint Undertaking employed 29 staff (2015: 28)<sup>7</sup>.

## **OPINION**

10. We have audited:

- (a) the accounts of the Joint Undertaking which comprise the financial statements<sup>8</sup> and the reports on the implementation of the budget<sup>9</sup> for the financial year ended 31 December 2016, and
- (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***

11. 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.

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4.2.2008, p. 52): (a) 2 050 000 euro by the EU; (b) 1 430 000 euro by the AENEAS Association; (c) 975 000 euro by the ARTEMISIA Association.

<sup>7</sup> Further information on the Joint Undertaking's activities is available on its website : [www.ecsel-ju.eu](http://www.ecsel-ju.eu).

<sup>8</sup> 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.

<sup>9</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

***Opinion on the legality and regularity of revenue underlying the accounts***

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

***Qualified opinion on the legality and regularity of payments underlying the accounts***

13. In our opinion, except for the possible effects of the issue described below in paragraphs 14 to 18, payments underlying the accounts for the year ended 31 December 2016 are legal and regular in all material respects.

**Basis for a qualified opinion on the legality and regularity of payments underlying the accounts**

14. The ECSEL Joint Undertaking has taken over the FP7 projects of the ARTEMIS and ENIAC Joint Undertakings. The payments made for these projects by the ECSEL Joint Undertaking in 2016, against certificates of acceptance of costs issued by the national funding authorities (NFAs) of the ECSEL Participating States, amounted to 118 million euro, which represents 54 % of the total operational payments made by the Joint Undertaking in 2016.

15. Administrative agreements concluded by the ARTEMIS and ENIAC Joint Undertakings with the NFAs have continued to apply since those Joint Undertakings were merged to form the ECSEL Joint Undertaking. Under these agreements, the NFAs perform ex-post audits of FP7 project payments on behalf of the Joint Undertaking. The ARTEMIS and ENIAC Joint Undertakings' ex-post audit strategies relied heavily on the NFAs to audit project cost claims<sup>10</sup>.

16. The ECSEL Joint Undertaking has taken steps to assess the implementation of ex-post audits by the NFAs and has obtained written statements from the NFAs declaring that the implementation of their national procedures provides reasonable assurance on the legality and regularity of transactions. However, the significant variation in the methodologies and

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<sup>10</sup> According to the ex-post audit strategies adopted by ARTEMIS and ENIAC, the Joint Undertaking must assess at least once a year whether the information received from the Member States provides sufficient assurance as to the regularity and legality of the executed transactions.

procedures used by the NFAs does not allow the ECSEL Joint Undertaking to calculate a single reliable weighted error rate or a residual error rate.

17. Therefore the Court is not in a position to conclude whether ex-post audits are functioning effectively and whether this key control provides sufficient assurance as to the legality and regularity of the underlying transactions for FP7 projects<sup>11</sup>.

18. This issue concerning the variation in the methodologies and procedures used by the NFAs is no longer relevant for the implementation of Horizon 2020 projects, as the ex-post audits will be undertaken by the ECSEL Joint Undertaking and the Commission<sup>12</sup>.

### ***Responsibilities of management and those in charge of governance***

19. 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.

20. 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.

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<sup>11</sup> See also Chapter 9 of the ECSEL Joint Undertaking 2016 Annual Activity Report.

<sup>12</sup> Article 13 of Council Regulation (EU) No 561/2014.



21. 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***

22. 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.

23. 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.

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

25. 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) at the point they are made.

26. 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 Regulation<sup>13</sup>.

27. The comments which follow do not call the ECA's opinions into question.

## **BUDGETARY AND FINANCIAL MANAGEMENT**

### ***Implementation of the 2016 budget***

28. Taking into account unused payment appropriations from previous years (1,6 million euro), the final 2016 budget available for implementation included commitment appropriations of 169,3 million euro and payment appropriations of 245,6 million euro. The utilisation rates for commitment and payment appropriations were 99 % and 91 % respectively.

### ***Multiannual budget implementation under FP7***

29. By their closure in June 2014, the ARTEMIS and ENIAC Joint Undertakings had made commitments of 623 million euro (ARTEMIS 181 million euro and ENIAC 442 million euro) for operational activities to be funded under FP7. The related payments recorded in the ECSEL Joint Undertaking's accounts amounted to 411 million euro (ARTEMIS 132 million euro and ENIAC 279 million euro) by the end of 2016.

### ***Multiannual budget implementation under Horizon 2020***

30. Out of the 1 185 million euro of Horizon 2020 funds allocated to the ECSEL Joint Undertaking, by the end of 2016 the Joint Undertaking had made commitments of

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<sup>13</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

415 million euro and payments of 156 million euro (13 % of the allocated funds) for the implementation of its first wave of projects.

31. The 28 ECSEL Participating States are required to make financial contributions of at least 1 170 million euro to the operational activities of the ECSEL Joint Undertaking. At the end of 2016, the Participating States taking part in the 2014, 2015 and 2016 calls for proposals – 19, 21, and 24 States respectively – had made commitments amounting to 371 million euro and payments of 56,8 million euro (4,9 % of the total required contributions). Notwithstanding the early stage of implementation of the Horizon 2020 projects, the apparently low level of Participating States' contributions is related to the fact that some Participating States only recognise and report costs at the end of the projects they support.

32. Out of the 1 657,5 million euro of contributions to be made by industry members to the activities of the Joint Undertaking, at the end of 2016, the Joint Undertaking estimated that the members had made in-kind contributions of 202 million euro, compared to the EU's cash contribution of 264 million euro.

## **INTERNAL CONTROLS**

### ***Monitoring of pre-financing for FP7 projects***

33. In 2012, the Joint Undertaking was informed of insolvency proceedings concerning two beneficiaries, but did not attempt to recover the pre-financing payments made to those beneficiaries until 2016. By then, the proceedings were closed and the outstanding pre-financing of 230 000 euro had to be waived.

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

34. The ECSEL Joint Undertaking has adopted rules on the prevention and management of conflicts of interest to mitigate the risks related to its governance structure. However, in 2016 the Joint Undertaking did not apply those rules consistently. The internal register of Declarations of Conflicts of Interest was not managed in line with internal guidelines, nor was it regularly updated.

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 3 October 2017.

*For the Court of Auditors*

Klaus-Heiner LEHNE  
*President*

Follow-up of previous years' comments

Year	The ECA's comment	Status of corrective action (Completed / Ongoing / Outstanding)
	<b>Anti-Fraud Strategy</b>	
<b>2015</b>	<p>The Joint Undertaking Financial Rules state that the Joint Undertaking's budget should be implemented in compliance with effective and efficient internal control standards, including prevention, detection, correction and follow-up of fraud and irregularities<sup>1</sup>.</p> <p>Following the Commission's adoption of an Anti-Fraud Strategy in June 2011, the first common Research Anti-Fraud Strategy was adopted in July 2012, and updated in March 2015 to take account of changes introduced by Horizon 2020<sup>2</sup>. The Research Anti-Fraud Strategy includes an action plan to be implemented by the research Joint Undertakings.</p> <p>Internal control procedures are already in place at the ECSEL Joint Undertaking to provide reasonable assurance on the prevention and detection of fraud and irregularities, (ex-ante checks on payments, conflict of interest policy, ex-post audits at beneficiaries of grants). The anti-fraud implementation plan of the ECSEL JU has been adopted on 11 November 2016 and is currently being implemented.</p>	<b>Ongoing</b>
	<b>Conflicts of interest</b>	
<b>2015</b>	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.	<b>Completed</b>

<sup>1</sup> Article 12 of the ECSEL Joint Undertaking Financial Rules.

<sup>2</sup> For example, the setting-up of a Common Support Centre, with a centralised audit service and harmonised business processes for EU research bodies.

### THE JU'S REPLY

16. The ECSEL JU would like to underline that this issue is related to the legal framework of the Seventh Framework Programme (FP7) and thus not caused by the Joint Undertaking's performance. Like for the exercise 2015, the Joint Undertaking conducted in January 2017 an extensive assessment of the national assurance systems for year 2016, taking into account 1656 End of Project Certificates and 610 Audit Certificates received from the National Funding Authorities (NFAs) for projects funded under FP7. Furthermore, the ECSEL JU has invited, from January 2017, the National Authorities to provide it with an annual declaration of assurance. The ECSEL JU has received 21 declarations which represent 97.97% of funding, and concluded that the audit report and declarations provide a reasonable protection of the financial interests of its members.

33. The bankruptcy of the two beneficiaries is a legacy of the ENIAC JU and happened before its incorporation into the ECSEL JU. In September 2015, the ECSEL Joint Undertaking put in place a procedure to deal with cases of insolvency or bankruptcy of beneficiaries of ENIAC or ARTEMIS Grant Agreements. This procedure details the different steps to be taken and the timeframe to be respected when such insolvency or bankruptcy cases are reported and was communicated to the National Funding Authorities (NFAs). In the nine years of existence of both Artemis and ENIAC, out of around 3000 beneficiaries, only 16 bankruptcy cases have been reported out of which six received no payment, five were sent an End-of-Project Certificate and the remaining five provided evidence through the technical reports, that the project beneficiaries had performed sufficient activities.

34. The minutes of Board meetings record all conflicts of interest declared by a delegate: these are baseline documents used to fill in the register. In the future, when a delegate has declared a conflict of interest, the meeting minutes will also record that the said delegate has abstained from comments and voting on the topic declared as conflictual.