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COUNCIL DECISION

of 27 March 2007

establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it

(2007/198/Euratom)

(OJ L 90, 30.3.2007, p. 58)

Amended by:

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Council Decision 2013/791/Euratom of 13 December 2013

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COUNCIL DECISION

of 27 March 2007

establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it

(2007/198/Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the third and fourth subparagraph of Article 47 and Article 48 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Community, through strong, continuous and coordinated Community support from the European Atomic Energy Community (Euratom) research and training programmes, together with the development of knowledge and human resources in the national fusion laboratories, working together notably in the framework of the European Fusion Development Agreement (EFDA), has created a single and fully integrated fusion research programme that has taken a leading international role in the development of fusion as a potentially limitless, safe, sustainable, environmentally responsible and economically competitive source of energy.
- (2) The establishment of the Joint European Torus (JET) fusion research project in 1978 ⁽¹⁾, which has met or exceeded all of its design objectives including demonstrating the release of significant amounts of fusion energy in a controlled manner and going on to hold world records for both fusion power and energy, has demonstrated the added value of pooling resources and expertise at Community level in the form of a Joint Undertaking.
- (3) The Community has played a key role in the development of a next step international fusion project, the ITER, starting in 1988 with Conceptual Design Activities ⁽²⁾, continuing in 1992 with Engineering Design Activities ⁽³⁾ which were extended by three years in 1998 ⁽⁴⁾ and followed by a second agreement in 1994 ⁽⁵⁾ which, in 2001, produced a detailed, complete and fully integrated engineering design for a research facility aimed at demonstrating the feasibility of fusion as an energy source from which the Community could derive significant benefit, in particular in the context of ensuring the security and diversity of its long-term energy supply.

⁽¹⁾ Council Decision 78/471/Euratom of 30 May 1978 on the establishment of the Joint European Torus (JET), Joint Undertaking (OJ L 151, 7.6.1978, p. 10). Decision as last amended by Decision 98/585/Euratom (OJ L 282, 20.10.1998, p. 65).

⁽²⁾ Commission Decision 88/229/Euratom (OJ L 102, 21.4.1988, p. 31).

⁽³⁾ Commission Decision 92/439/Euratom (OJ L 244, 26.8.1992, p. 13).

⁽⁴⁾ Council Decision 98/704/Euratom (OJ L 335, 10.12.1998, p. 61).

⁽⁵⁾ Commission Decision 94/267/Euratom (OJ L 114, 5.5.1994, p. 25).

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- (4) The seven parties to the ITER negotiations (Euratom, People's Republic of China, India, Japan, Republic of Korea, Russia and the United States), representing over one half of the world's population, have concluded the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project⁽¹⁾ (the ITER Agreement) which establishes the ITER International Fusion Energy Organisation (the ITER Organisation) with headquarters in St Paul-lès-Durance (Bouches-du-Rhône) (France). The ITER Organisation has full responsibility for constructing, operating, exploiting and de-activating the ITER facilities.

- (5) The ITER Agreement requires all parties to provide contributions to the ITER Organisation through appropriate legal entities referred to as 'Domestic Agencies'. To enable ITER construction to commence without delay and given that Euratom, as host party, will have special responsibilities as a member of the ITER Organisation including bearing the largest share of the contributions and the responsibility for the preparation of the site, the Domestic Agency of Euratom should be established as soon as possible.

- (6) Euratom and Japan have concluded a bilateral Agreement for the Joint Implementation of the Broader Approach Activities (the 'Broader Approach Agreement with Japan') setting out complementary joint fusion research activities as part of a 'Broader Approach' to the rapid realisation of fusion energy agreed during negotiations on the ITER Agreement. The Broader Approach Agreement with Japan foresees that such Broader Approach Activities should be carried out by Euratom through the Domestic Agency of Euratom as the implementing Agency.

- (7) To achieve maximum synergy and economies of scale, the Domestic Agency of Euratom, in the context of the 'fast track' approach to fusion examined by a group of independent experts at the request of the research ministers during the Belgian Presidency, should also implement a long-term programme of activities to prepare the construction of demonstration fusion reactors and related facilities to reinforce European industrial competitiveness in this respect.

- (8) In its Conclusions of 26-27 November 2003, the European Council, by unanimous decision, authorised the Commission to put forward France as the ITER host State and Cadarache as the ITER site and decided that the Domestic Agency for Euratom should be located in Spain.

⁽¹⁾ OJ L 358, 16.12.2006, p. 62.

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- (9) The fundamental importance of the ITER Project and Broader Approach Activities for harnessing fusion as a potentially limitless, safe, sustainable, environmentally responsible and economically competitive source of energy makes it necessary to establish the Domestic Agency of Euratom in the form of a Joint Undertaking as provided for in Chapter 5 of the Euratom Treaty.
- (10) The Joint Undertaking, which should be responsible for public research activities of European and international interest, and discharge commitments pursuant to international agreements, should be considered as an international body within the meaning of Article 151(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾, and as an international organisation within the meaning of the second indent of Article 23(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products ⁽²⁾, Article 22 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽³⁾, and Article 15 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽⁴⁾.
- (11) This Decision establishes, for the duration foreseen for the Joint Undertaking, a financial reference amount which illustrates the will of the legislative authority and which will not affect the powers of the budgetary authority as defined in the Treaty.
- (12) The Joint Undertaking should have, subject to prior consultation with the Commission, its own financial regulation based on the principles of Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽⁵⁾ (the Framework Financial Regulation) taking into account its specific operating needs arising, in particular, from its international obligations.
- (13) To strengthen international research cooperation, the Joint Undertaking should be open to the participation of countries that have concluded cooperation agreements with Euratom in the field of nuclear fusion that associate their respective programmes with the Euratom programmes.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92).

⁽²⁾ OJ L 76, 23.3.1992, p. 1. Directive as last amended by Directive 2004/106/EC (OJ L 359, 4.12.2004, p. 30).

⁽³⁾ OJ L 134, 30.4.2004, p. 1. Directive as last amended by Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).

⁽⁴⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Directive 2006/97/EC.

⁽⁵⁾ OJ L 357, 31.12.2002, p. 72.

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- (14) The proposal for the Council Decision for the seventh framework programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011), and the specific programme implementing that framework programme (FP7) put ITER at the heart of the European strategy for fusion and make provision for the Euratom contribution, through the Joint Undertaking to the ITER Organisation, Broader Approach Activities and other related activities with a view to preparing for demonstration fusion reactors.
- (15) The need to ensure stable employment conditions and equal treatment of staff, taking into account the experience gained from the JET Joint Undertaking, in order to attract specialised scientific and technical staff of the highest calibre, requires the application of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, laid down by Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾ (the Staff Regulations) to all the staff recruited by the Joint Undertaking.
- (16) Taking into account that the Joint Undertaking is not designed to fulfill an economic purpose and is responsible for managing Euratom participation in an international research project of public interest, it is necessary for the performance of its tasks that the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 ⁽²⁾ apply to the Joint Undertaking, its Director and staff.
- (17) In view of the particular nature of the activities of the Joint Undertaking and its importance for the development of fusion research and in order to promote a sound and economic management of the public funding to be provided to the Joint Undertaking, all the advantages provided for in Annex III to the Treaty should be conferred on the Joint Undertaking.
- (18) As a body possessing legal personality, the Joint Undertaking should be accountable for its actions. As regards the resolution of disputes in contractual matters, it should be possible that the contracts concluded by the Joint Undertaking provide that the Court of Justice have jurisdiction.
- (19) Taking into account the rights and obligations of the Community under Title II, Chapter 2 of the Treaty concerning the dissemination of information, the Joint Undertaking should make appropriate arrangements in that regard with the Commission.
- (20) A host agreement should be concluded between the Joint Undertaking and Spain concerning office accommodation, privileges and immunities and other support to be provided by Spain to the Joint Undertaking.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1895/2006 (OJ L 397, 30.12.2006, p. 6).

⁽²⁾ OJ 152, 13.7.1967, p. 13. Protocol as amended by the Treaty of Amsterdam and the Treaty of Nice.

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- (21) This Decision takes into account the outcome of the enquiry conducted by the Commission and, in particular, the positive opinion of the Consultative Committee for the Euratom Specific Research and Training Programme in the Field of Nuclear Energy (Fusion) on the proposals,

HAS ADOPTED THIS DECISION:

*Article 1***Establishment of a Joint Undertaking**

1. A European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy) (the Joint Undertaking) is hereby established for a period of 35 years starting on 19 April 2007.
2. The tasks of the Joint Undertaking shall be as follows:
 - (a) to provide the contribution of the European Atomic Energy Community (Euratom) to the ITER International Fusion Energy Organisation;
 - (b) to provide the contribution of Euratom to Broader Approach Activities with Japan for the rapid realisation 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 (IFMIF).
3. The Joint Undertaking shall have its seat in Barcelona in Spain.
4. The Joint Undertaking shall be considered as an international body within the meaning of Article 151(1)(b) of Council Directive 2006/112/EC, and as an international organisation within the meaning of the second indent of Article 23(1) of Directive 92/12/EEC, of Article 22 point (c) of Directive 2004/17/EC and of Article 15 point (c) of Directive 2004/18/EC.

*Article 2***Members**

The Joint Undertaking shall have the following Members:

- (a) Euratom, represented by the Commission;
- (b) the Member States of Euratom;
- (c) third countries which have concluded a cooperation agreements with Euratom in the field of controlled nuclear fusion that associate their respective research programmes with the Euratom programmes and which have expressed their wish to become Members of the Joint Undertaking.

*Article 3***Statutes**

The Statutes of the Joint Undertaking, as set out in the Annex, are hereby adopted.

▼ B*Article 4***Financing**

1. The resources required for the Joint Undertaking to carry out its tasks shall be determined as follows:

- (a) as regards the tasks referred to in Article 1(2)(a), in accordance with the ITER Agreement;
- (b) as regards the tasks referred to in Article 1(2)(b), in accordance with the Broader Approach Agreement with Japan;

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- (c) as regards the tasks referred to in Article 1(2)(c), in accordance with research and training programmes adopted pursuant to Article 7 of the Treaty or through any other decision adopted by the Council.

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2. The resources of the Joint Undertaking shall consist of a contribution from Euratom, contributions from the ITER host State, the annual membership contributions and voluntary contributions from Members of the Joint Undertaking other than Euratom, and additional resources.

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The contributions from third countries which have concluded a cooperation agreement with Euratom in the field of nuclear energy research, including controlled nuclear fusion, that associate their respective research programmes with the Euratom programmes, shall be determined in the respective cooperation agreement with Euratom.

3. The Euratom contribution to the Joint Undertaking for the 2014-2020 period is set at EUR 2 915 015 000 (in current values).

▼ B*Article 5***Financial Regulation**

1. The Joint Undertaking shall have a distinct financial regulation based on the principles of the Framework Financial Regulation. The financial regulation of the Joint Undertaking (the financial regulation) may depart from the Framework Financial Regulation where the specific operating needs of the Joint Undertaking so require and subject to prior consultation with the Commission.

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2. The Joint Undertaking shall establish its own internal audit service.
3. Discharge for the implementation of the budget of the Joint Undertaking shall be given by the European Parliament on the recommendation of the Council.

▼M1*Article 5a***Protection of the Union's Financial Interests**

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Decision are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, where irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive penalties.
2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks and inspections, over all grant beneficiaries, contractors, subcontractors and other third parties who have received Euratom funds under this Decision.
3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁽¹⁾ and Council Regulation (Euratom, EC) No 2185/96⁽²⁾ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with an agreement or decision or a contract funded under this Decision.

Without prejudice to paragraph 2 and the first subparagraph of this paragraph, cooperation agreements with third countries and international organisations, contracts, agreements and decisions resulting from the application of this Decision shall expressly empower the Commission, the Court of Auditors and OLAF to conduct audits, on-the-spot checks and inspections.

*Article 5b***Mid-term review**

The Commission shall submit to the European Parliament and to the Council, by 31 December 2017, at the latest, a progress report on the implementation of this Decision on the basis of information provided by the Joint Undertaking. That report shall set out the results of the use of the Euratom contribution referred to in Article 4(3) as regards commitments and expenditure.

⁽¹⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁽²⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

▼B*Article 6***Staff**

The Staff Regulations, as well as the rules adopted jointly by the institutions of the European Community for the purposes of the application of those Staff Regulations, shall apply to the staff of the Joint Undertaking.

*Article 7***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Joint Undertaking, its Director and staff.

*Article 8***Advantages**

The Member States shall confer all the advantages provided for in Annex III to the Treaty on the Joint Undertaking within the scope of its official activities, for as long as the Joint Undertaking exists.

*Article 9***Liability and jurisdiction of the Court of Justice**

1. The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the contract in question.

The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Joint Undertaking.

2. In the case of non-contractual liability, the Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its servants in the performance of their duties.

The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for such damage.

3. The Court of Justice shall have jurisdiction in actions brought against the Joint Undertaking, including decisions of its Governing Board, under the conditions provided for in Articles 146 and 148 of the Treaty.

4. Any payment by the Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the Joint Undertaking and shall be covered by the resources of the Joint Undertaking.

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Article 10

Dissemination of information

The Joint Undertaking shall agree with the Commission appropriate provisions which will allow the Community to exercise its rights and obligations under Title II, Chapter 2 of the Treaty.

Article 11

Host agreement

A host agreement shall be concluded between the Joint Undertaking and Spain within three months from the establishment of the Joint Undertaking.

Article 12

Application

This Decision shall apply from the 20th day following its publication in the *Official Journal of the European Union*.

This Decision is addressed to the Member States.

▼B*ANNEX***STATUTES OF THE EUROPEAN JOINT UNDERTAKING FOR ITER
AND THE DEVELOPMENT OF FUSION ENERGY
(FUSION FOR ENERGY)***Article 1***Name, seat, members**

1. The name of the Joint Undertaking shall be ‘The European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy)’ (the Joint Undertaking).
2. The seat of the Joint Undertaking shall be in Barcelona in Spain.
3. The Joint Undertaking shall have the following Members:
 - (a) the European Atomic Energy Community (Euratom) represented by the Commission;
 - (b) the Member States of Euratom;
 - (c) third countries which have concluded a cooperation agreement with Euratom in the field of controlled nuclear fusion that associates their respective research programmes with the Euratom programmes and which have expressed their wish to become Members of the Joint Undertaking.

*Article 2***Objectives**

The objectives of the Joint Undertaking shall be:

- 1) to provide the contribution of Euratom to the ITER International Fusion Energy Organisation (the ITER Organisation), in accordance with the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project (the ITER Agreement);
- 2) to provide the contribution of Euratom to broader approach activities with Japan for the rapid realisation of fusion energy (Broader Approach Activities), in accordance with the bilateral Agreement for the Joint Implementation of Broader Approach Activities (the Broader Approach Agreement with Japan);
- 3) 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).

*Article 3***Activities**

1. As the Euratom Domestic Agency for ITER, the Joint Undertaking shall discharge the obligations of Euratom to the ITER Organisation as defined in, and for the duration of, the ITER Agreement. In particular, it shall:

- (a) oversee preparation of the ITER project site;

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- (b) provide components, equipment, materials and other resources to the ITER Organisation;
- (c) manage procurement arrangements vis-à-vis the ITER Organisation and, in particular, associated quality assurance procedures;
- (d) prepare and coordinate Euratom's participation in the scientific and technical exploitation of the ITER Project;
- (e) coordinate scientific and technological research and development activities in support of Euratom's contribution to the ITER Organisation;
- (f) provide Euratom's financial contribution to the ITER Organisation;
- (g) arrange to make human resources available for the ITER Organisation;
- (h) interface with the ITER Organisation and carry out any other activities in furtherance of the ITER Agreement.

2. As the Implementing Agency in the context of the Broader Approach Agreement with Japan, the Joint Undertaking shall discharge Euratom obligations for the implementation of Broader Approach Activities. In particular, it shall:

- (a) provide components, equipment, materials and other resources for Broader Approach Activities;
- (b) prepare and coordinate Euratom's participation in the implementation of Broader Approach Activities;
- (c) coordinate scientific and technological research and development activities;
- (d) provide the Euratom financial contribution to Broader Approach Activities;
- (e) arrange to make human resources available for Broader Approach Activities;
- (f) carry out any other activities necessary for meeting Euratom's obligations in furtherance of the Broader Approach Agreement with Japan.

3. In preparation for the construction of a demonstration fusion reactor and related facilities, including the IFMIF, the Joint Undertaking shall prepare and coordinate a programme of research, development and design activities other than ITER and Broader Approach Activities.

4. The Joint Undertaking shall carry out any other activities in furtherance of the overall objectives set out in Article 2, including activities to raise public awareness of the Joint Undertaking and its mission.

▼B*Article 4***Legal personality**

The Joint Undertaking shall have legal personality. In the territory of each of its Members, it shall enjoy the most extensive legal capacity granted to legal persons under their respective laws. It may, in particular, conclude contracts, obtain licences, acquire or dispose of movable and immovable property, take out loans and be a party to legal proceedings.

*Article 5***Bodies**

1. The bodies of the Joint Undertaking shall be the Governing Board and the Director.
2. The Governing Board shall be assisted by the Executive Committee in accordance with Article 7.
3. The Governing Board and the Director shall seek advice from the Scientific Programme Board(s) in accordance with Article 9.

*Article 6***Governing Board**

1. The Governing Board shall be responsible for the supervision of the Joint Undertaking in the pursuit of its objectives set out in Article 2 and ensure close collaboration between the Joint Undertaking and its Members in the implementation of its activities.
2. Each Member of the Joint Undertaking shall be represented in the Governing Board by two members, one of whom shall have scientific and/or technical expertise in the areas related to the activities of the Joint Undertaking.
3. The Governing Board shall make recommendations and take decisions on any questions, matters or issues within the scope of and in accordance with these Statutes. The Governing Board shall in particular:
 - (a) approve proposals for amendments to these Statutes in accordance with Article 21;
 - (b) decide all matters referred to it by the Executive Committee;
 - (c) appoint the Chairman and members of the Executive Committee;
 - (d) adopt the project plan, work programmes, resource estimates plan, the staff establishment plan and the staff policy plan;
 - (e) adopt the annual budget, approve the annual accounts, including the specific parts related to the administrative and staff costs, and discharge the Director in respect of the implementation of the budget, in accordance with the financial regulation;
 - (f) exercise the powers referred to in Article 10(3) in respect of the Director;
 - (g) approve the basic organisational structure of the Joint Undertaking;

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- (h) adopt the financial regulation and its implementing rules in accordance with Article 13(1);
- (i) adopt the implementing provisions referred to in the second subparagraph of Article 10(2) and in Article 10(4) in respect of the staff;
- (j) adopt implementing rules for making human resources available for the ITER Organisation and for Broader Approach Activities;
- (k) adopt and apply measures and guidelines to combat fraud, irregularities and manage potential conflicts of interest;
- (l) approve the host agreement between the Joint Undertaking and Spain (the Host State) provided for in Article 18;
- (m) decide on any acquisition, sale and mortgaging of land and other titles to real property, as well as on the giving of any sureties or guarantees, taking out of shares in other undertakings or institutions, and granting or taking of loans;
- (n) approve the conclusion of agreements or arrangements regarding cooperation with third countries and with institutions, undertakings or persons of third countries or with international organisations;
- (o) approve the annual activity reports on the progress of the Joint Undertaking with respect to its work programmes and its resources;
- (p) adopt rules on industrial policy, intellectual property rights and the dissemination of information in agreement with the Commission;
- (q) establish the Scientific Programme Board(s) and appoint their members;
- (r) exercise such other powers and perform such other functions, including the establishment of subsidiary bodies, as may be necessary for the exercise of its functions in furtherance of its objectives.

4. The voting rights of the Members of the Joint Undertaking shall be as set out in Annex I. The votes of each Member shall be indivisible.

5. Decisions by the Governing Board under paragraph 3(a) shall require unanimity.

Decisions by the Governing Board under paragraph 3(b) to (m) shall require a two-thirds majority of the total votes.

Unless otherwise stated, all other Governing Board decisions shall require a simple majority of the total votes.

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6. Euratom shall have the right to make a reservation to a decision by the Governing Board, when it considers that that decision may be contrary to Community law, including notably its international commitments arising from the ITER International Agreement. Euratom shall give due legal justification to such reservation.

In this case the decision shall be suspended and the matter referred to the Commission for a review of its legality, together with the view of the Governing Board.

The Commission may take a decision on the legality of the decision of the Governing Board within one month of the matter being referred to the Commission, failing which the decision of the Governing Board shall be deemed to have been upheld.

The Governing Board shall re-examine its decision in the light of the Commission's views and take a final decision.

7. The Governing Board shall elect its Chairman from among its members upon a proposal by Euratom, by a two-thirds majority of the total votes. He shall serve for a term of two years and may be re-elected once.

8. The Governing Board shall meet when convened by the Chairman, at least two times per year. The Governing Board may also be convened at the request of a simple majority of its members, or at the request of the Director or of Euratom. The meetings shall normally take place at the seat of the Joint Undertaking.

9. Unless otherwise decided in particular cases, the Director of the Joint Undertaking and the Chairman of the Executive Committee shall participate in the meetings of the Governing Board.

10. The Governing Board shall adopt its rules of procedure and shall approve the rules of procedure of the Executive Committee by a two-thirds majority of the total votes.

*Article 7***Executive Committee**

1. The Executive Committee shall assist the Governing Board in the preparation of its decisions and shall carry out any other tasks which the Governing Board may delegate to it.

2. The Executive Committee shall be composed of 13 members appointed by the Governing Board from among persons of recognised standing and professional experience in scientific, technical and financial matters relevant to the functions set out in this Article. One Member of the Executive Committee shall be Euratom.

3. The Executive Committee shall in particular:

- (a) approve the award of contracts in accordance with the financial regulation;
- (b) comment on and make recommendations to the Governing Board on the proposal for the project plan, work programmes, resource estimates plan, annual budget and accounts drawn up by the Director;
- (c) submit to the Governing Board, upon request by Euratom or a majority of members, decisions on the awarding of contracts or any other decisions entrusted to it.

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4. Each Executive Committee member shall have one vote.
5. Unless otherwise stated, decisions by the Executive Committee shall require a majority of nine votes in favour.
6. The term of office for members of the Executive Committee shall be two years renewable once. Every two years at least half of the members shall be replaced.
7. On expiry of their term of office members shall remain in office until their appointment is renewed or they are replaced. If a member resigns, he shall remain in office until he is replaced.
8. The Chairman of the Executive Committee shall be appointed by the Governing Board for a period of two years, renewable once.
9. The Executive Committee shall meet when convened by the Chairman, at least six times per year. The Executive Committee may also be convened at the request of at least three members, or at the request of the Director or of Euratom. The meetings shall normally take place at the seat of the Joint Undertaking.
10. The Chairman of the Executive Committee shall participate in the meetings of the Governing Board, unless the Governing Board decides otherwise.
11. Subject to the prior approval of the Governing Board, the Executive Committee shall adopt its rules of procedure.

*Article 8***The Director**

1. The Director shall be the chief executive officer responsible for the day-to-day management of the Joint Undertaking and shall be its legal representative.
2. The Director shall be appointed by the Governing Board, on the basis of a list of candidates proposed by the Commission following a call for expressions of interest published in the *Official Journal of the European Union* and in other periodicals or on Internet sites. The Director shall be appointed for a period of five years. After an evaluation of the Director's performance during this period by Euratom, and upon its proposal, the Governing Board may extend the term of office once for a further period of not more than five years.
3. The Director shall be subject to the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities, laid down by Regulation (EEC, Euratom, ECSC) No 259/68 (the Staff Regulations) as well as the rules adopted jointly by the institutions of the European Community for the purposes of the application of those Staff Regulations save as otherwise provided in these Statutes.
4. The Director shall implement the work programmes and direct the execution of the activities set out in Article 3. He shall supply the Governing Board, the Executive Committee, the Scientific Programme Board(s) and any subsidiary bodies with all information necessary for the performance of their functions.

In particular, the Director shall:

- (a) organise, direct and supervise the staff and exercise in respect of the staff the powers devolved on the appointing authority;
- (b) define the basic organisational structure of the Joint Undertaking and submit it to the Governing Board for approval;

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- (c) draw up and regularly update the project plan, the work programmes of the Joint Undertaking and the staff policy plan;
- (d) draw up, in accordance with the ITER Agreement and with the Broader Approach Agreement with Japan, implementing rules for making human resources available for the ITER Organisation and for Broader Approach Activities;
- (e) draw up, in accordance with the financial Regulation, the resource estimates plan and annual draft budget including the staff establishment plan of the Joint Undertaking;
- (f) implement the budget, keep the inventory and draw up the annual accounts in accordance with the financial regulation;
- (g) ensure the application of sound financial management and internal controls;
- (h) draw up the rules on intellectual property rights and industrial policy, and on the dissemination of information;
- (i) draw up the annual activity report on the progress of the implementation of the activities of the Joint Undertaking set out in the work programmes and resource estimates plan;
- (j) draw up such other reports as may be requested by the Governing Board or Executive Committee;
- (k) assist the Governing Board, the Executive Committee and any subsidiary bodies by providing their secretariat;
- (l) participate in the meetings of the Governing Board, unless the Governing Board decides otherwise, and participate in the meetings of the Executive Committee;
- (m) ensure that scientific and technical expertise is made available to the Joint Undertaking for the development of its activities;
- (n) carry out other activities and, as may be necessary and make other proposals to the Governing Board in furtherance of the objectives of the Joint Undertaking.

*Article 9***Scientific Programme Board(s)**

1. The Governing Board shall appoint the members of Scientific Programme Board(s). The Chairman of the Programme Board(s) shall be elected from among its members.
2. The Scientific Programme Board(s) shall advise the Governing Board and the Director, as necessary, on the adoption and implementation of the project plan and work programmes.

*Article 10***Staff**

1. The staff of the Joint Undertaking shall assist the Director in the performance of his duties and shall in general be nationals of the Members of the Joint Undertaking.

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2. The Staff Regulations as well as the rules adopted jointly by the institutions of the European Community for the purposes of the application of those Staff Regulations shall apply to the staff of the Joint Undertaking.

The Governing Board, in agreement with the Commission, shall adopt the necessary implementing provisions, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.

3. The Joint Undertaking shall exercise, with regard to its staff, the powers which are devolved on the appointing authority.

4. The Governing Board may adopt provisions to allow national experts from Members of the Joint Undertaking to be seconded to the Joint Undertaking.

*Article 11***Work programmes and resource estimates plan**

The Director shall prepare each year the submission of the project plan to the Governing Board, the resource estimates plan and the detailed annual work programmes and budget. One work programme shall be prepared for each of the groups of activities of the Joint Undertaking as set out in Article 3.

*Article 12***Resources**

1. The resources of the Joint Undertaking shall consist of a contribution from Euratom, annual membership contributions and voluntary contributions from the Members other than Euratom, contributions from the ITER host State and from additional resources:

- (a) the Euratom contribution shall be made available through the Community research and training programmes adopted pursuant to Article 7 of the Treaty;
- (b) annual membership contributions shall take the form of financial contributions and shall be made available in accordance with Annex II;
- (c) voluntary contributions may be made in cash or in kind and shall not count towards annual membership contributions.
- (d) contributions from the ITER host State;
- (e) additional resources may be received under terms approved by the Governing Board.

2. The resources of the Joint Undertaking shall be solely used in furtherance of its objectives as defined in Article 2. The value of contributions in kind shall be determined by the Joint Undertaking. Without prejudice to Article 19, no payment by way of division of any excess of resources over expenditure shall be made to the Members of the Joint Undertaking.



Article 13

Financial regulation

1. The financial regulation and its implementing rules shall be adopted by the Governing Board.
2. The financial regulation lays down the rules for the establishment and implementation of the budget of the Joint Undertaking.
3. The financial regulation shall be in accordance with the general principles set out in Annex III.

Article 14

Annual activity report

The annual activity report shall record the implementation of the work programmes by the Joint Undertaking. It shall in particular outline the activities conducted by the Joint Undertaking and evaluate the results with respect to the objectives and the timetable set, the risks associated with the activities carried out, the use of resources and the general operation of the Joint Undertaking. The annual activity report shall be prepared by the Director, approved by the Governing Board and sent to the Members, the Commission, the European Parliament and the Council of the European Union.

Article 15

Annual accounts and supervision

1. Within two months after the end of each financial year the provisional accounts of the Joint Undertaking shall be submitted to the Commission and the Court of Auditors of the European Communities ('the Court of Auditors').

The Court of Auditors shall, by 15 June after the end of each financial year, make its observations on the provisional accounts of the Joint Undertaking.

Within six months after the end of each financial year, the Director shall submit the final accounts of the Joint Undertaking to the Commission, the Council, the European Parliament and the Court of Auditors.

The European Parliament, on the recommendation of the Council acting by a qualified majority, shall, before 30 April of year n+2, give a discharge to the Director in respect of the implementation of the budget of the Joint Undertaking for year n.

2. The European Anti-Fraud Office (OLAF) set up by Commission Decision 1999/352/EC, ECSC, Euratom ⁽¹⁾ shall enjoy the same powers in respect of the Joint Undertaking and its staff as it enjoys in respect of Commission departments. As soon as the Joint Undertaking is established, it shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF ⁽²⁾. The Governing Board shall approve that accession and adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

⁽¹⁾ OJ L 136, 31.5.1999, p. 20.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

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3. All decisions adopted and contracts concluded by the Joint Undertaking, shall provide explicitly that OLAF and the Court of Auditors may carry out on-the-spot inspections of the documents of all contractors and sub-contractors which have received Community funds, including at the premises of the final beneficiaries.

*Article 16***Accession**

1. Upon accession to Euratom, any new Member State of the European Union shall become a Member of the Joint Undertaking.

2. Any third country which concludes a cooperation agreement with Euratom in the field of controlled nuclear fusion that associates its respective research programmes with the Euratom programmes and expresses its wish to become a Member of the Joint Undertaking shall become a Member.

*Article 17***Duration**

The Joint Undertaking shall be established for a period of 35 years starting on 19 April 2007.

*Article 18***Support from the host State**

A host agreement shall be concluded between the Joint Undertaking and the host State concerning, in particular, the site and support to be provided.

*Article 19***Winding up**

1. At the end of the period provided for in Article 17, or following a decision by the Council, the Joint Undertaking shall be wound up.

2. For the purpose of conducting the proceedings in winding up the Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the instructions issued by the Governing Board.

3. When the Joint Undertaking is being wound up, it shall return to the Host State any physical support item made available by the host State in accordance with the host agreement provided for in Article 18.

4. When any physical support item has been dealt with as provided for in Paragraph 3, any further assets shall be used to cover the liabilities of the Joint Undertaking and the costs relating to its winding up. Any surplus or deficit shall be distributed among or met by the Members existing at the time of the winding up in proportion to their actual total contributions to the Joint Undertaking.

*Article 20***Ownership and assignment of rights**

1. The Joint Undertaking shall own all resources, tangible and intangible, and financial assets created by it or acquired by it unless otherwise agreed between the Commission and the Joint Undertaking.

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2. Members and their national fusion organisations shall offer free of charge to the Joint Undertaking any title, rights and obligations arising under contracts concluded and orders placed by or with the support of Euratom in relation to the activities of the Joint Undertaking prior to its establishment.
3. The Joint Undertaking may take over any contract and order referred to in paragraph 2.

*Article 21***Amendments**

1. Any Member of the Joint Undertaking may make a proposal to the Governing Board for the amendment of these Statutes.
However, proposals for changes in the voting system and rights, and for determining the voting rights of new Members shall be made by Euratom.
2. Upon approval by the Governing Board the proposal shall be submitted to the Commission.
3. The Commission will make a proposal to the Council for the approval of such amendments in accordance with Article 50 of the Treaty.

*Article 22***Settlement of disputes**

1. Without prejudice to Article 154 of the Treaty, any dispute either between Members of the Joint Undertaking or between one or more Members and the Joint Undertaking concerning the interpretation or application of these Statutes, which is not settled by the good offices of the Governing Board, may, at the request of any party to the dispute, be submitted to an arbitration tribunal.
2. The arbitration tribunal shall be established in each individual case. The tribunal shall be composed of three members nominated jointly by the parties to the dispute. The members of the arbitration tribunal shall elect the chairman from amongst themselves.
3. If the parties in the dispute fail to nominate the members of the arbitration tribunal within two months of the request for submission of a dispute to an arbitration tribunal, or if within one month of the nomination of the members these members do not elect a chairman, such member or members or the chairman shall be nominated by the President of the Court of Justice of the European Communities at the request of one of the parties to the dispute.
4. The arbitration tribunal shall reach its decision by a majority of votes. Such decision shall be binding and final.



ANNEX I TO THE STATUTES OF THE JOINT UNDERTAKING

GOVERNING BOARD VOTING RIGHTS

The voting rights of the Members of the Governing Board shall be distributed as follows:

Euratom	5
Austria	2
Belgium	2
Bulgaria	1
Cyprus	1
Czech Republic	2
Denmark	2
Estonia	1
Finland	2
France	5
Greece	2
Germany	5
Hungary	2
Ireland	2
Italy	5
Latvia	2
Lithuania	2
Luxembourg	1
Malta	1
Poland	3
Portugal	2
Romania	2
Slovakia	2
Slovenia	2
Sweden	2
Switzerland	2
Spain	3
The Netherlands	2
United Kingdom	5

▼B*ANNEX II TO THE STATUTES OF THE JOINT UNDERTAKING***ANNUAL MEMBERSHIP CONTRIBUTIONS**

1. Members other than Euratom shall make annual membership contributions to the Joint Undertaking.
2. The total amount of annual membership contributions for year n shall be calculated on the basis of the annual resources required for the administration of the Joint Undertaking in that year, as adopted by the Governing Board.
3. The total amount of annual membership contributions shall not exceed 10 % of the annual resources required for the administration of the Joint Undertaking, as set out in point 2.
4. The annual membership contribution of each Member, unless otherwise decided by the Governing Board by unanimity, shall be composed of:
 - (a) a minimum contribution of 0,1 % of the total amount of annual membership contributions set out in point 2;
 - (b) an additional contribution calculated in proportion to the Euratom financial participation⁽¹⁾ (expressed in EUR) in the Member's expenditure in the framework of the Community Fusion research programme in the year n-2 without including its voluntary contribution to the Euratom obligations included in the Broader Approach Agreement with Japan.

⁽¹⁾ Excluding Euratom financial participation for JET Operation.

▼B*ANNEX III TO THE STATUTES OF THE JOINT UNDERTAKING***FINANCIAL REGULATION: GENERAL PRINCIPLES**

1. The financial Regulation shall follow the budgetary principles of:
 - (a) unity and budget accuracy;
 - (b) annuality;
 - (c) equilibrium;
 - (d) unit of account;
 - (e) universality;
 - (f) specification;
 - (g) sound financial management;
 - (h) transparency.
2. The Joint Undertaking shall have internal control standards and mechanisms in place, including rules for financial circuits and procedures for financial operations.
3. The Joint Undertaking shall establish an internal audit unit.
4. Notwithstanding the principle of equilibrium referred to in point 1(c), the Joint Undertaking shall have the possibility to take out loans in accordance with Article 4 of these Statutes, following approval of the Governing Board and under the conditions set out in the financial Regulation.
5. The financial Regulation shall, in particular, set out:
 - (a) the financial year, which shall begin on the first day of January and end on the last day of December;
 - (b) rules and procedures for the multi-annual project plan and resource estimates plan, their presentation and structure, including budgetary provisions and estimates for a period of five years;
 - (c) rules and procedures for the annual work programmes and resource estimates plan and their presentation and structure, including budgetary provisions and estimates for a period of two years;
 - (d) rules and procedures for the preparation and adoption of the annual budget, and its implementation, including procedures for commitments and payments;
 - (e) the principles for the collection of recovery and for the interest yielded by the resources contributed by the members;
 - (f) rules and procedures for the internal financial control, including delegated powers, in particular concerning the ceilings, below which the Director can award contracts with or without the approval of the Executive Committee;

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- (g) rules and procedures for the method of calculating and transferring payments of the contributions by the Members of the Joint Undertaking;
 - (h) rules and procedures for the management of resources, including procedures for purchasing, selling and determining the value of tangible and intangible assets;
 - (i) rules and procedures for the keeping and presentation of accounts and inventory records and the drawing up and presentation of the annual balance sheet;
 - (j) rules and procedures for the management of conflicts of interest and the reporting of suspected irregularities and fraud.
6. The Joint Undertaking shall keep accrual-based accounts in accordance with international accounting standards and international financial reporting standards. Income and expenditures shall be managed and accounted for separately in the annual accounts, which shall include budgetary implementation of commitments and payments together with administrative expenses. The Joint Undertaking shall have no separate accounts by membership origin, but shall account for annual membership contributions received and activities undertaken.
7. The establishment plan of the Joint Undertaking shall be drawn up in agreement with the Commission and in accordance with Article 46 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾.
8. The estimates of revenue and expenditure, together with the operating accounts and the balance sheets of the Joint Undertaking for each financial year, shall be placed before the Commission, the Council and the European Parliament.
9. The Joint Undertaking shall adopt provisions and rules forming a procurement system, integrated and compatible with the ITER Organisation's procurement system and taking into account the Joint Undertaking's specific operational needs stemming, inter alia, from international commitments, thereby allowing the Joint Undertaking to accomplish efficiently and timely the scheduled procurement activities.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1995/2006.