



**DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT
UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY
AMENDING THE IMPLEMENTING RULES OF THE FINANCIAL REGULATION**

THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY,

Having regard to the Council Decision (EURATOM) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it,⁶ as amended on 13 December 2013,⁷ (hereinafter "the Constituent instrument") and in particular Article 5 thereof,

Having regard to the Statutes annexed to the Constituent instrument (hereinafter "the Statutes") and in particular Article 6(3)(h), Article 13, and Annex III thereof,

Having regard to the Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013, on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, EURATOM) 966/2012 of the European Parliament and of the Council⁸ (hereinafter "the Framework Financial Regulation"),

Having regard to Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, EURATOM) No 1605/2002⁹ (hereinafter "the General Financial Regulation"),

Having regard to Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union¹⁰ (hereinafter "the Rules of Application"),

Having regard to the Governing Board Decision of 2 December 2015 adopting the Financial Regulation and Implementing Rules of the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Financial Regulation" and "Implementing Rules"),¹¹

Having regard to the recommendation of the Administration and Management Committee of 7 June 2017,¹²

Having regard to the consultation with the Commission and the Commission's positive opinion of [insert date],¹³

⁶ OJ L 90, 30.3.2007, p. 58.

⁷ COUNCIL DECISION of 13 December 2013 amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (2013/791/Euratom), OJ L 349, 21.12.2013, p. 100.

⁸ OJ L 328, 7.12.2013, p.42.

⁹ OJ L 298, 26.10.2012, p.1.

¹⁰ OJ L 362, 31.12.2012, p.1.

¹¹ F4E(15)-GB34.

¹² F4E(17)-AMC05.

¹³ [insert reference]

WHEREAS:

- (1) The Joint Undertaking shall have a distinct financial regulation based on the principles of the Framework Financial Regulation, which may depart from the latter where the specific operating needs of the Joint Undertaking so require and subject to prior consultation with the Commission.
- (2) The Financial Regulation of the Joint Undertaking provides for several derogations allowing a partial departure from provisions laid down in the Framework Financial Regulation and the General Financial Regulation so as to reflect the specific operating needs of the Joint Undertaking stemming, in particular, from the contribution of high technological and experimental components and services under the terms of international agreements.
- (3) More detailed provisions shall be inserted in the Joint Undertaking's Implementing Rules to govern particular aspects of the use of certain derogations.

HAS ADOPTED THIS DECISION:

Article 1

The Implementing Rules are amended as follows:

- (1) The following Article 62a is added:

“Exceptional registration of legal before budgetary commitments
(Article 70(2) of the Financial Regulation)

Additional costs which would be caused by a prior booking of an individual budgetary commitment shall be deemed to be disproportionate for the purposes of Article 70(2) FR if the Authorising Officer, before entering into a legal commitment with third parties, estimates that such additional costs would be at least 10% and a minimum of EUR 25 000 higher than if the individual budgetary commitment is carried out after entering into a legal commitment with third parties. This estimation shall be duly substantiated and recorded without delay after entering into a legal commitment. ”

- (2) The following Article 78a is added under Title V - Procurement:

“Contracts involving certain predefined public authorities without a public procurement procedure
(Article 85b of the Financial Regulation)

The Joint Undertaking may conclude a contract with or via the authorities referred to in Article 85b of the Financial Regulation where a public procurement procedure is not possible or not appropriate. This shall in particular be deemed to be the case in the following situations:

- a) the goods, services or works to be procured are not available to the Joint Undertaking on the market or only available under conditions which are considered to be incompatible with or disproportionate to the specific requirements within which the Joint Undertaking is operating;
- b) the applicable national legislation determines that the supply of the goods, the provision of the services or the performance of the works to be procured is to be carried out by or via an authority referred to in Article 85b of the Financial Regulation.
- c) a procurement from or via a public authority referred to in Article 85b of the Financial Regulation creates efficiencies for the Joint Undertaking.

The justification shall be duly substantiated and recorded.”

- (3) The following Article 78b is added:

**“Use of a negotiated procedure without prior publication
for additional deliveries**

(Article 85e of the Financial Regulation)

Whenever the Joint Undertaking has recourse to a negotiated procedure without prior publication of a contract notice in accordance with Article 134(1)(f)(i) of Delegated Regulation (EU) No 1268/2012, subject to Article 85e of the Financial Regulation, it shall only award a contract with a duration exceeding three years in case it is justified by the specific nature of the subject matter of the contract, notably the time required for the production, testing, acceptance and installation of the supplies, their maintenance or warranty obligations linked to them.”

- (4) The following Article 80a under Title VIII – Grants is added:

**“Grants to designated organisations
in the field of scientific and technological fusion research**
(Article 15a of the Statutes, Article 90c of the Financial Regulation)

- “1. For the purposes of Article 15a of the Statutes, each Member of the Joint Undertaking shall have the right to designate one or more organisations suitable to carry out research and development activities in furtherance of the tasks of the Joint Undertaking. The Members shall communicate any subsequent modification of their designation to the Director.

The Director shall verify that the designated organisations fulfil the following eligibility, exclusion and selection criteria:

- a) they are established in a territory of a Member of Fusion for Energy;
- b) they are not in an exclusion situation referred to in Article 131 (4) of Regulation 966/2012;

- c) they have adequate financial and economic capacity;
- d) they have a proven experience in the field of scientific and technological fusion research.

The Director shall propose to the Governing Board those designated organisations which fulfil the above criteria for inclusion in the list of competent organisations which may carry out research and development activities in furtherance of the tasks of the Joint Undertaking, either individually or in networks. Upon adoption by the Governing Board, the list and any modifications to it shall be published on the website of the Joint Undertaking.

- 2. For the purposes of awarding grants without a call for proposals in accordance with Article 90c of the Financial Regulation, the Joint Undertaking shall address an invitation to submit a proposal to all the organisations on the list. The received proposals shall be evaluated on the basis of the pre-announced award criteria. This evaluation and the award shall comply with Article 133 of Regulation 966/2012 and Articles 204 and 205 of Commission Delegated Regulation 1268/2012 in conjunction with Article 90 (1) of the Financial Regulation.”

Article 2

This Decision amending the Joint Undertaking’s Implementing Rules to the Financial Regulation as set out in Article 1 above shall enter into force the day after a positive Commission opinion is issued, taking effect from 1 August 2017.

Done at Cadarache, on 4 July 2017

For the Governing Board
Joaquín Sánchez
Chair of the Governing Board



For the Secretariat

Romina Benelmans
Secretary of the Governing Board

