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2014/0215 (NLE)

Proposal for a

**COUNCIL DECISION**

**amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

In its conclusions of 12 July 2010 on the Commission's Communication "ITER status and possible way forward", the Council requested the European Commission to examine and address the way in which the Commission, the Member States and the Joint Undertaking for ITER and the Development of Fusion Energy "Fusion for Energy" (F4E) should implement their responsibilities and tasks on ITER.

A detailed list of actions was identified in the Commission's Staff Working Paper "Towards a robust management and governance of the ITER project" issued on 9 November 2010, which at the international level were directed mainly to the ITER Organization (IO) and at the European level mainly to F4E.

With the accession of Croatia to the European Union on 1 July 2013, the Statutes of F4E shall be amended to grant Croatia voting rights in the Governing Board of F4E. Taking the opportunity of this amendment and in line with the Commission's Staff Working paper of 2010, the Commission proposes the adoption of additional modifications to improve the management and the governance of F4E.

These proposals have been extensively discussed with the Members of F4E's Governing Board and following these exchanges, the Governing Board adopted unanimously the proposed amendments at its meeting on 9-10 December 2013. Pursuant to the amendment procedure laid down in Article 21 of the F4E Statutes, once the Governing Board has approved the proposed amendments, the Commission can submit the proposal to modify the Statutes to the Council for its adoption.

Therefore, in accordance with Article 50 of the Euratom Treaty and Article 21 of the F4E Statutes, the Commission is hereby making a proposal to the Council for the approval of these amendments.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The members of the Governing Board of F4E are the main interested parties in F4E. All Member States, Switzerland and Euratom are represented and their consultation and agreement are required on any proposal to amend the Statutes of F4E, in line with Article 6(4) of the F4E Statutes.

For this reason, in June 2013, the Commission presented a draft proposal to amend the F4E Statutes to the Governing Board. The Governing Board decided then to set up an ad-hoc group, chaired by the Chair of the Governing Board, with the mandate to seek consensus among the members on proposals to amend the Statutes.

The first meeting of this ad hoc group took place on 21 October 2013 and following this meeting a proposal was drafted and submitted to the Governing Board of 9-10 December 2013. At that meeting, the Governing Board adopted unanimously the proposed amendments and now the Commission can submit the proposal to the Council for approval.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### ***1. Redefinition of the role of the Executive Committee, creation of a Procurement and Contracts Committee and a Bureau.***

The tasks currently entrusted to the Executive Committee would be divided between two Committees, an "Administration and Management Committee" and a "Procurement and Contracts Committee". The proposed separation of these tasks allows for a more appropriate alignment between the composition of these two committees, the former being composed of representatives of Members and the latter of experts acting in a personal capacity.

The Administration and Management Committee would, *inter alia*, prepare opinions and recommendations to the Governing Board on the budget, resource estimates plan, annual accounts, the project plan, the work programme, etc.

The Procurement and Contracts Committee would give recommendations to the F4E Director on the award of contracts and would have only an advisory role unlike the current Executive Committee which has an approval role. This amendment is fully consistent with the prerogatives granted to the Director of F4E in his capacity of Authorising Officer. The Internal Audit Service of the Commission has pointed out that the Director is responsible for awarding the contracts and should not delegate this responsibility to a Committee where members are appointed *ad personam* by the Governing Board.

The "Bureau", a committee not defined in the initial Council Decision establishing F4E, was set up by a decision of the Governing Board in 2011, as a subsidiary body, to assist the Governing Board in the preparation of its decisions. It is now proposed to specifically introduce this committee in the F4E Statutes as the Governing Board considers that it has proven to be a useful instrument that allows it to work more efficiently.

#### ***2. Strengthening the rights of Euratom as regards the 'reservation on legality'.***

Pursuant to Article 6(6) of the current F4E Statutes Euratom has 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. In this case the decision is suspended and the matter is referred to the Commission for a review of its legality. However, the Governing Board can adopt a decision despite a Commission opinion contesting its legality. Strengthening the rights of the Commission as regards the provision on the 'reservation on legality' would ensure consistency of the decisions of the Governing Board with the Community law in line with Article 17 of the Treaty of the European Union which states that the Commission "shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them".

With this amendment the Governing Board cannot adopt a decision as long as the Commission has lodged an opinion calling into question its legality.

#### ***3. Privileged partnership with designated organisations in the field of scientific and technological fusion research.***

This amendment aims at establishing a stable relationship with the European Fusion Laboratories (EFL).

This relationship is important for the efficient and effective operation of the European fusion programme, for F4E in the discharge of its responsibilities and for the European Fusion Laboratories to optimise their capacity and participation. For the Fusion laboratories, it would provide a stable framework for a multi-annual plan of activities, while for F4E it would

provide stable and reliable R&D support, based on the knowledge and know-how developed by the European Fusion programme in the last 30 years of activity and those to be developed in the future.

The benefit to the European fusion programme would be a better use of resources ensuring among others that bottlenecks and duplications of effort are mitigated and national funding is optimally combined with the community funding flowing through F4E.

#### ***4. Adaptation deriving from the new framework financial regulation.***

The new framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council has been recently adopted by the Commission. This new regulation contains provisions that need to be included in the constituent act (the Council Decision) or in the basic act (the Statutes) establishing these bodies which also concerns F4E. The amendments are purely technical and do not affect the substance of the proposal approved by the Governing Board. In this regard it is important to note that according to Article 208(3) the Commission's internal auditor shall exercise the powers of internal auditor of F4E. Consequently the paragraph 2 of Article 5 of the Council Decision, which mentions that the Joint Undertaking shall establish its own internal audit service, needs to be deleted. Accordingly, point 3 of Annex 3 of the Statutes has been amended to indicate that the Joint Undertaking shall establish an audit capability.

#### ***5. Amendment needed to align the Statutes to the new basic act for the financing of F4E activities approved by the Council in December 2013.***

The Council Decision on the financing of F4E activities for 2014-2020 entails an amendment to the F4E Statutes. As it stands now, Article 12(a) of the F4E Statutes provides for the Euratom contribution to be made available through the Community research and training programmes, adopted pursuant to Article 7 of the Treaty. This provision needs to be amended to take into account that the financing of F4E for 2014-2020 will not be made available through the Euratom Framework Programme but through this new Council Decision based on article 47 of the Treaty.

In addition, a new Article 5aa is inserted in the Council Decision establishing Fusion for Energy to reinforce the protection by the Joint Undertaking of the financial interests of its Members.

#### ***6. Voting rights for Croatia.***

By decision of the Governing Board during its meeting of 10-11 June 2013, it is proposed to grant Croatia two votes in the Governing Board.

#### **4. BUDGETARY IMPLICATION**

This proposal for a Council Decision has no budgetary implication. The financing of the activities of F4E for the period 2014-2020 has been set up by Council Decision 2013/791/Euratom of 13 December 2013.

Proposal for a

## COUNCIL DECISION

### **amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision 2007/198/Euratom<sup>1</sup> established the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "Joint Undertaking") to provide the contribution of the European Atomic Energy Community (hereinafter "Euratom") to the ITER International Fusion Energy Organisation and the Broader Approach Activities with Japan as well as to prepare and coordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities.
- (2) Decision 2007/198/Euratom has been amended by Council Decision 2013/791/Euratom<sup>2</sup> to allow the financing of the activities carried out by the Joint Undertaking during the period 2014-2020.
- (3) In its conclusions of 12 July 2010 on the Commission's Communication "ITER status and possible way forward"<sup>3</sup>, the Council requested the Commission to examine and address the way in which the Commission, the Member States and the Joint Undertaking should implement their responsibilities and tasks on ITER.
- (4) A detailed list of actions was identified in the Commission's Staff Working Paper "Towards a robust management and governance of the ITER project"<sup>4</sup> issued on 9 November 2010, to be undertaken either at the international level, mainly by the ITER Organization, or at the European level, mainly by the Joint Undertaking.
- (5) Following the accession of Croatia to the Union on 1 July 2013, there is a need to amend the Statutes of the Joint Undertaking to grant Croatia voting rights in the Governing Board of the Joint Undertaking. It is necessary to make further amendments to those Statutes in order to improve the management and the governance of the Joint Undertaking. To take into account amendments to the Treaty establishing

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<sup>1</sup> Council Decision 2007/198/Euratom of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it (OJ L 90, 30.3.2007, p. 58).

<sup>2</sup> Council Decision 2013/791/Euratom 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 (OJ L 349, 21.12.2013 p 100).

<sup>3</sup> COM(2010) 226 final of 4 May 2010.

<sup>4</sup> SEC(2010) 1386 final of 9 November 2010.

the European Atomic Energy Community by the Treaty of Lisbon, it is also necessary to update the reference to the provisions on the Court of Justice of the European Union.

- (6) The Governing Board of the Joint Undertaking approved the amendments proposed by the Commission to Decision 2007/198/Euratom, in accordance with the Statutes of the Joint Undertaking.
- (7) An Administration and Management Committee should be established to prepare opinions and recommendations for the adoption of key documents by the Governing Board. This Committee should also provide advice or recommendations on specific administrative and financial issues upon request of the Director or the Governing Board. The Governing Board should have the power to delegate tasks to this Committee. Any Member of the Joint Undertaking should have the right to nominate a representative to serve on this Committee.
- (8) A Procurement and Contracts Committee should be established to give recommendations to the Director of the Joint Undertaking on the award of contracts, grants and related matters. Members of this Committee should be nominated in a personal capacity by the Governing Board.
- (9) A Bureau should be established to assist the Governing Board in the preparation of its decisions. The Governing Board should have the power to delegate tasks to the Bureau. The members of the Bureau should be the Chair of the Governing Board, the Chairs of the Governing Board Committees, a representative of Euratom and a representative of the ITER Host State (France). The Governing Board should be entitled to appoint additional persons to the Bureau.
- (10) In accordance with Article 17 of the Treaty on European Union, the Commission is to ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. Therefore, the rights of the Commission should be strengthened to ensure consistency of the decisions of the Governing Board with Union law.
- (11) It is desirable to establish a network of designated organisations in the field of scientific and technological fusion research to provide stable and long-term research and development support to the Joint Undertaking, based on the knowledge and know-how developed by the European Fusion programme and those to be developed in the future.
- (12) It is necessary to take into account the relevant provisions of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>5</sup> and Commission Delegated Regulation (EU) No 1268/2012<sup>6</sup>, in particular the role of the Commission's internal auditor as internal auditor of the Joint Undertaking.
- (13) Decision 2007/198/Euratom as amended by Decision 2013/791/Euratom ensures the financing of the Joint Undertaking activities for 2014-2020. Article 12 a) of the Statutes of the Joint Undertaking provides for the Euratom contribution to be made available through the Community research and training programmes, adopted pursuant to Article 7 of the Treaty. That provision should be amended to take into account that

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<sup>5</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

<sup>6</sup> 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 Union (OJ L 362, 31.12.2012, p. 1).

the financing for 2014-2020 will no longer be made available through the Euratom Framework Programme.

(14) It is also appropriate to update Decision 2007/198/Euratom as regards the provisions on protection of the financial interests of the Members.

(15) Decision 2007/198/Euratom should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

#### *Article 1*

Decision 2007/198/Euratom is amended as follows:

(1) Article 5 is amended as follows:

(a) in paragraph 1 the following sentence is added:

"The Joint Undertaking may award grants and prizes in accordance with the rules of its financial regulation.";

(b) paragraph 2 is deleted;

(2) the following Article 5aa is inserted:

"Article 5aa

Protection of the financial interests of the Members

The Joint Undertaking shall ensure that the financial interests of its Members are adequately protected by carrying out or commissioning appropriate internal and external controls.";

(3) paragraph 3 of Article 9 is replaced by the following:

"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 263 and 265 of the Treaty on the Functioning of the European Union";

(4) the Annex is amended in accordance with the Annex to this Decision.

#### *Article 2* *Application*

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*