

II

(Acts whose publication is not obligatory)

COMMISSION

AGREEMENT

for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the United States of America

(96/314/Euratom)

THE EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as 'the Community',

and THE GOVERNMENT OF THE UNITED STATES OF AMERICA,

hereinafter referred to as 'the United States of America',

PREAMBLE

WHEREAS the Community and the United States of America concluded an Agreement which entered into force on 27 August 1958 and an Additional Agreement for Cooperation which entered into force on 25 July 1960, as subsequently amended;

WHEREAS the Community and the United States of America recognize the value of their past cooperation in the peaceful uses of nuclear energy and wish to provide for renewed cooperation on the basis of equality, mutual benefit, reciprocity and without prejudice to the respective powers of each Party;

WHEREAS the Community and the United States of America are convinced that by strengthening and expanding their partnership on an equal footing they will contribute to continued international stability as well as to political and economic progress;

WHEREAS the Community, its Member States and the United States of America have attained a comparable advanced level in the use of nuclear energy for electricity production, in the development of their nuclear industries and in the security afforded by their respective laws and regulations concerning health, safety, the peaceful use of nuclear energy and the protection of the environment;

WHEREAS it is necessary to establish the conditions governing transfers of nuclear items between the Community and the United States of America, to ensure continued compliance with the requirement for free movement of such items within the Community and to avoid interference in nuclear programmes in place in the Community and the United States of America as well as in their international trading relations;

WHEREAS all Member States of the Community and the United States of America are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, hereinafter referred to as 'the Non-Proliferation Treaty';

WHEREAS the Community, its Member States and the United States of America are committed to ensuring that the research, development and use of nuclear energy for peaceful purposes are carried out in a manner consistent with the objectives of that Treaty;

WHEREAS nuclear safeguards are applied in the Community pursuant to the Treaty establishing the European Atomic Energy Community;

WHEREAS the Community, its Member States and the United States of America reaffirm their support of the International Atomic Energy Agency, hereinafter referred to as 'the IAEA', and of its safeguards system;

WHEREAS the Community, its Member States and the United States of America are strongly committed to strengthening the international nuclear non-proliferation and related safeguards regimes;

WHEREAS the Community, its Member States and the United States of America are strongly committed to adequate physical protection of nuclear material and are Parties to the International Convention on the Physical Protection of Nuclear Material;

WHEREAS it is desirable to facilitate, as appropriate, trade, exchanges and cooperation activities at an industrial and commercial scale, including peaceful international cooperation with third Parties, in accordance with Article IV of the Non-Proliferation Treaty;

WHEREAS it is also desirable to set up a framework for exchanges of information and for consultations between the Parties on nuclear matters of common interest;

WHEREAS cooperation should extend to nuclear research and development on nuclear safety and to regulatory and operational aspects of radiological protection;

WHEREAS cooperation relating to nuclear fission research and development in such fields as safety, radiological protection, health and the environment, and safeguards may be subject to specific agreements between the Community and the United States of America;

WHEREAS the Community and the United States of America contribute to international cooperation in the field of controlled thermonuclear fusion and, in particular, to the activities of the international thermonuclear experimental reactor (ITER);

WHEREAS it is appropriate that the nuclear cooperation Agreements concluded between, on the one hand, the United States of America and, on the other hand, the Republic of Austria, the Kingdom of Spain, the Portuguese Republic, the Kingdom of Sweden and the Republic of Finland before their accession to the European Community be terminated upon the entry into force of the present Agreement;

WHEREAS likewise the United States of America is prepared to terminate any nuclear cooperation agreement it may have with third States acceding to the Community,

HAVE AGREED AS FOLLOWS:

Article 1

Scope of cooperation

1. The Parties may cooperate in the peaceful uses of nuclear energy in the following areas:

(A) Nuclear fission research and development on such terms as may be agreed between the Parties;

(B) Nuclear safety matters of mutual interest and competence, as set out in Article 2;

(C) Facilitation of exchange and cooperation activities at an industrial or commercial scale between persons and undertakings;

(D) Subject to the provisions of this Agreement, supply between the Parties of non-nuclear material, nuclear

material and equipment and provision of nuclear fuel cycle services, whether for use by or for the benefit of the Parties or third countries;

- (E) Exchange of information on major international questions related to nuclear energy, such as promotion of development in the field of international nuclear safeguards and non-proliferation within areas of mutual interest and competence, including collaboration with the IAEA on safeguards matters and on the interaction between nuclear energy and the environment;
- (F) Controlled thermonuclear fusion including multilateral projects;
- (G) Other areas of mutual interest.

2. The cooperation referred to in this Article, as between the Parties, may also take place between persons and undertakings established in the respective territories of the Parties.

Article 2

Cooperation on nuclear research and development

1. The Parties may cooperate in nuclear research and development including the following activities, in so far as they are covered by the respective nuclear research and development programmes of the Parties:

- (a) nuclear safety, including regulatory and operational aspects of radiological protection;
- (b) development of nuclear energy including, *inter alia*, research into new reactors, decommissioning of nuclear installations, radiological safety research into waste management and disposal and interaction between nuclear energy and the environment;
- (c) nuclear safeguards;
- (d) research on controlled thermonuclear fusion including, *inter alia*, bilateral activities and contributions towards multilateral projects such as the International Thermonuclear Experimental Reactor (ITER).

2. Cooperation pursuant to this Article may include, but is not limited to, training, exchange of personnel, meetings, exchanges of samples, materials and instruments for experimental purposes and a balanced participation in joint studies and projects.

3. Information arising from the implementation of this Article which, in the judgment of the appropriate

authorities of the Parties, should be placed in the public domain may be so disseminated by them in a consolidated or other appropriate form, subject to the Guidelines set out in Annex B.

Article 3

Industrial and commercial cooperation

In conformity with the provisions of Article IV of the Non-Proliferation Treaty, the Parties undertake to facilitate the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. To this end, the Parties will facilitate, as appropriate, commercial relations between persons and undertakings involving nuclear cooperation.

Such cooperation may include, but is not limited to:

- investments,
- joint ventures,
- environmental aspects at industrial or commercial scale,
- trade in nuclear items, non-nuclear material and technical and specialized services as specified in Article 4,
- licensing arrangements between persons and undertakings in the territory of either Party.

Article 4

Nuclear trade

1. The Parties shall facilitate nuclear trade between themselves, in the mutual interests of industry, utilities and consumers and also, where appropriate, trade between third countries and either Party of items obligated to the other Party.

2. Authorizations, including export and import licences as well as authorizations or consents to third parties, relating to trade, industrial operations or nuclear material movements on the territories of the Parties shall not be used to restrict trade. The relevant authority shall act upon applications for such authorizations as soon as possible after submission and without unreasonable expense. Appropriate administrative procedures shall be in place to ensure respect of this provision.

Article 5

Items subject to the Agreement

1. Non-nuclear material, nuclear material and equipment transferred between the Parties or their respective persons or undertakings, whether directly or through a third country, shall become subject to this Agreement upon their entry into the territorial jurisdiction of the receiving Party, provided that the supplying Party has notified the receiving Party in writing of the intended transfer and the receiving Party has acknowledged in writing the receipt of this notification.

2. Non-nuclear material, nuclear material and equipment referred to in this Article shall remain subject to the provisions of this Agreement until it has been determined, in accordance with the procedures set out in the Administrative Arrangement:

- that such items have been re-transferred beyond the jurisdiction of the receiving Party;
- that nuclear material or non-nuclear material are no longer usable for any nuclear activity relevant from the point of view of international safeguards or have become practically irrecoverable;
- or that equipment is no longer usable for nuclear purposes.

Article 6

Safeguards

1. Safeguards required under this Agreement shall be those applied by the Community pursuant to the Euratom Treaty and by the IAEA pursuant to the following safeguards agreements, as relevant, as they may be revised and replaced so long as coverage as required by the Non-Proliferation Treaty is provided for:

- (a) the Agreement between the Community, its non-nuclear weapon Member States and the IAEA, which entered into force on 21 February 1977;
- (b) the Agreement between the Community, the United Kingdom of Great Britain and Northern Ireland and the IAEA, which entered into force on 14 August 1978;
- (c) the Agreement between the Community, France and the IAEA, which entered into force on 12 September 1981;
- (d) the Agreement between the United States of America and the IAEA, which entered into force on 9 December 1980.

2. (A) Nuclear material transferred to the Community pursuant to this Agreement, and special fissionable material used in or produced through the use of any non-nuclear material, nuclear material or equipment, so transferred, shall be subject to the relevant agreements referred to in paragraph 1 of this Article.

(B) Nuclear material transferred to the United States of America pursuant to this Agreement, and special fissionable material used in or produced through the use of any non-nuclear material, nuclear material or equipment, so transferred, shall be subject to the Agreement referred to in paragraph 1 (d) of this.

3. In the event that any of the IAEA safeguards agreements referred to in paragraph 1 (a), (b) or (c) are not being applied,

(a) the Community shall enter into an agreement or agreements with the IAEA for the application of safeguards which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements required by paragraphs 1 (a), (b) and (c) or, if that is not possible,

(b) the Community shall give the United States of America an assurance that safeguards are being applied by the Community which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements required by paragraph 1 (a), (b) and (c). In the fulfilment of obligations arising from these paragraphs, the United States of America hereby recognizes the unique role and importance of the Euratom safeguards system and of its application in the Community pursuant to the Euratom Treaty. In this context, the United States of America further takes note that the IAEA, pursuant to the safeguards agreements concluded with the Community and its Member States as well as in subsequent implementing arrangements, shall take due account, *inter alia*, of the effectiveness of the Community's system of safeguards enabling the IAEA to deploy an inspection effort less than that applied under other safeguards agreements in which there are comparable nuclear facilities producing, processing, using or storing safeguarded nuclear material where a regional safeguards system does not exist.

(c) In the event that conditions arise which do not permit application of such safeguards by the Community, the Parties shall immediately establish safeguards arrangements for the application of safeguards which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements required by paragraphs 1 (a), (b) and (c) of this Article.

4. In the event that the IAEA safeguards Agreement referred to in paragraph 1 (d) of this Article, is not being applied,

- (a) the United States of America shall enter into an agreement or agreements with the IAEA for the application of safeguards which provide for effectiveness and coverage equivalent to that provided by the safeguards agreement required by paragraph 1 (d) of this Article or, if that is not possible,
- (b) the Parties shall immediately establish safeguards arrangements for the application of safeguards which provide for effectiveness and coverage equivalent to that provided by the safeguards Agreement required by paragraph 1 (d) of this Article.

Article 7

Peaceful use

1. Cooperation under this Agreement shall be carried out for peaceful purposes.

2. Non-nuclear material, nuclear material and equipment transferred pursuant to this Agreement and special fissionable material used in or produced through the use of such items shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device or for any military purpose.

Article 8

Nuclear fuel cycle activities

1. The nuclear fuel cycle activities carried out pursuant to this Agreement include:

- (A) Within the territorial jurisdiction of either Party, enrichment up to 20 % in the isotope 235, of uranium transferred pursuant to this Agreement, as well as of uranium used in or produced through the use of equipment so transferred. Enrichment of such uranium to more than 20 % in the isotope 235 and re-enrichment of such uranium already enriched to more than 20 % in the isotope 235 may be carried out according to conditions agreed upon in writing which shall be the subject of consultations between the Parties within 40 days of the receipt of a request from either Party.
- (B) Irradiation within the territorial jurisdiction of either Party of plutonium, uranium-233, high enriched uranium and irradiated nuclear material transferred pursuant to this Agreement or used in or produced

through the use of non-nuclear material, nuclear material or equipment so transferred.

(C) Retransfer to third countries according to procedures set out in the Agreed Minute of:

- (i) low enriched uranium, non-nuclear material, equipment and source material transferred pursuant to this Agreement or of low enriched uranium produced through the use of nuclear material or equipment transferred pursuant to this Agreement, for nuclear fuel cycle activities other than the production of HEU;
- (ii) irradiated nuclear material transferred pursuant to this Agreement or irradiated nuclear material used in or produced through the use of non-nuclear material, nuclear material or equipment transferred pursuant to this Agreement, for storage or disposal not involving reprocessing;
- (iii) other nuclear material transferred pursuant to this Agreement and other special fissionable material produced through the use of non-nuclear material, nuclear material or equipment transferred pursuant to this Agreement, for other fuel cycle activities including those specified in paragraphs 2 and 3 of this Article.

(D) Post-irradiation examination involving chemical dissolution or separation of irradiated nuclear material transferred pursuant to this Agreement or irradiated nuclear material used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred;

(E) Conditioning, storage and final disposal of irradiated materials transferred pursuant to this Agreement or used in or produced through the use of non-nuclear material, nuclear material and equipment transferred pursuant to this Agreement.

2. The following nuclear fuel cycle activities may be carried out pursuant to this Agreement within the territorial jurisdiction of either Party in facilities forming part of the delineated peaceful nuclear programme described in Annex A:

(A) Reprocessing of nuclear material transferred pursuant to this Agreement and nuclear material

used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred;

- (B) Alteration in form or content of plutonium, uranium 233 and high enriched uranium transferred pursuant to this Agreement or used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred.

3. The following nuclear materials:

- (i) plutonium, uranium-233 and high enriched uranium, if not contained in irradiated nuclear fuel, transferred pursuant to this Agreement;
- (ii) plutonium, uranium-233 and high enriched uranium recovered from nuclear material transferred pursuant to this Agreement;
- (iii) plutonium, uranium-233 and high enriched uranium recovered from nuclear material used in equipment transferred pursuant to this Agreement

may be stored in facilities that are at all times subject, as a minimum, to the levels of physical protection that are set out in Annex C to IAEA document INFCIRC 254/REV 1/Part 1 (Guidelines for nuclear transfers) as it may be revised and accepted by the Parties and the Member States of the Community.

Each Party shall record its facilities on a list, made available to the other Party. A Party's list shall be held confidential if that Party so requests. Either Party may make changes to its list by notifying the other Party in writing and receiving a written acknowledgement. Such acknowledgement shall be given no later than 30 days after the receipt of the notification and shall be limited to a statement that the notification has been received.

If there are grounds to believe that the provisions of this sub-Article are not being fully complied with, immediate consultations may be called for.

Following upon such consultations, each Party shall ensure by means of such consultations that necessary corrective measures are taken immediately. Such measures shall be sufficient to restore the levels of physical protection referred to above at the facility in question. If this proves not to be feasible, the nuclear material in question shall be transferred for storage at another appropriate, listed facility.

Article 9

International obligations exchanges

The Parties shall establish expeditious procedures to be applied when nuclear material is to be made subject to this Agreement or removed from the coverage of this Agreement. These procedures shall include provisions on international exchanges of obligations, which will be set out in the Administrative Arrangement, provided for in paragraph 1 of Article 16.

Article 10

Implementation of the Agreement

1. The terms of this Agreement shall be implemented in good faith and with due regard to the legitimate commercial interests, whether international or domestic, of either Party.

2. This Agreement shall be implemented in a manner designed:

- (a) to avoid hampering or delaying the nuclear activities in the territory of either Party;
- (b) to avoid interference in such activities;
- (c) to be consistent with prudent management practices required for the economic and safe conduct of such activities;
- (d) to take full account of the long-term requirements of the nuclear energy programmes in place in the Community and in the United States of America.

3. The provisions of this Agreement shall not be used for the purpose of:

- (a) securing unfair commercial or industrial advantages, or of restricting trade to the disadvantage of persons and undertakings of either Party or hampering their commercial or industrial interests, whether international or domestic;
- (b) interfering with the nuclear policy or programmes of either Party nor for hindering the promotion of the peaceful uses of nuclear energy;
- (c) impeding the free movement of nuclear material, non-nuclear material and equipment within the territory of the Community.

4. In exercising the rights arising from other nuclear cooperation agreements it might have concluded with third parties, each Party to this Agreement will pay due

regard to the legitimate commercial interests of the other Party; in case of difficulty either Party may call for consultations which shall take place within 40 days, in accordance with the provisions of Article 12.

Article 11

Physical protection

1. Nuclear material transferred pursuant to this Agreement and special fissionable material used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred shall be subject to adequate measures of physical protection.

2. Such physical protection measures shall be at levels which shall satisfy the criteria set out in Annex C to IAEA document INFCIRC 254/REV 1/Part 1 (Guidelines for nuclear transfers) as it may be revised and accepted by the Parties and the Member States of the Community. As a supplement to this document, the Member States of the Community, the Commission of the European Communities (as appropriate), and the United States of America will refer, when applying these measures, to the recommendations of IAEA document INFCIRC 225/REV 3 on the Physical Protection of Nuclear Material, as it may be revised and accepted by the Parties and the Member States of the Community.

3. International transport of nuclear material subject to this Agreement shall be subject to the provisions of the International Convention on the Physical Protection of Nuclear Material (INFCIRC 274/REV 1), as it may be revised and accepted by the Parties and the Member States of the Community.

Article 12

Consultation and arbitration

1. The Parties shall consult at the request of either of them to promote cooperation under this Agreement and to ensure its effective implementation. A Joint Committee shall be established for these purposes. This Committee will also consult on nuclear questions of mutual interest and any other significant matters relating to the cooperation envisaged by this Agreement. A Joint Technical Working Group reporting to the Joint Committee will be set up to ensure the fulfilment of the requirements of the Administrative Arrangement referred to in Article 16.

2. The Parties shall consult, at the request of either of them, on any question arising out of the interpretation or application of this Agreement.

3. Any dispute arising out of the interpretation or application of this Agreement shall be settled by negotiation, mediation, conciliation or other similar procedure or, if both Parties agree, by submission to an arbitral tribunal which shall be composed of three arbitrators appointed in accordance with the provisions of this paragraph. Each Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, a national of a country other than the United States of America or a Member State of the Community, who shall be the Chairman. If, within 30 days of the request for arbitration, a Party has not designated an arbitrator, the other Party may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within 30 days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected, provided that the third arbitrator so appointed shall not be a national of the United States of America or of a Member State of the Community. All decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on the Parties.

Article 13

Suspension and termination

A. Circumstances

1. If either Party or a Member State of the Community at any time following the entry into force of this Agreement:

(a) materially acts in violation of the fundamental provisions of Articles 4, 5, 6, 7, 10 or 11 of the Agreement or contravenes a decision of the arbitral tribunal referred to in Article 12 of this Agreement, or

(b) takes action of any kind which results in a material violation of its obligations under this Agreement, including prevention of nuclear trade envisaged under this Agreement,

the other Party shall have the right to cease further cooperation under this Agreement or to suspend or terminate, in whole or in part, this Agreement. Furthermore, if a Party suspends its consent to the activities, referred to in Article 8.2, for reasons other than those set out in paragraph 8(A) of the Agreed Minute, including situations which are not of the same or greater degree of seriousness as those set out in paragraph 8(A) under (a) or (b) of the Agreed Minute, the other Party shall have the same right.

2. If either Party or a Member State of the Community at any time following entry into force of this Agreement terminates or abrogates a safeguards agreement with the Agency and the safeguards agreement so terminated or abrogated has not been replaced by an equivalent safeguards agreement when appropriate and relevant, the other Party shall have the right to require the return in whole or in part of non-nuclear material, nuclear material or equipment transferred pursuant to this Agreement and special fissionable material produced through the use of such items.

3. If the Community or a non-nuclear weapon Member State of the Community detonates a nuclear explosive device, the Government of the United States of America shall have the right specified in paragraph 2 of this Article.

4. If a nuclear-weapon Member State of the Community detonates a nuclear explosive device using any item subject to this Agreement, the United States of America shall have the right specified in paragraph 2 of this Article.

5. If the United States of America detonates a nuclear explosive device using any item subject to this Agreement, the Community shall have the right specified in paragraph 2 of this Article.

B. Implementation

6. Before either Party decides to take action pursuant to paragraphs 1 to 5 above, the Parties shall hold consultations for the purpose of taking corrective measures and shall carefully consider the effects of such action, taking into account the need to make such other appropriate arrangements as may be required and, in particular, to ensure security and continuity of supply and adequate time for replacement and further to honour commitments to third countries and their industrial entities.

7. Before taking action under this Article, the Parties shall consider whether the facts triggering such steps were caused deliberately.

8. Action under this Article shall only be taken if the other Party fails to take corrective measures within an appropriate period of time following consultations.

9. If either Party exercises its right, pursuant to paragraphs 2 to 5 of this Article, to require the return of any items, it shall, prior to the removal from the territory

or from the control of the other Party, compensate promptly that Party for the fair market value thereof and for the costs incurred as a consequence of such removal. If the return of nuclear items is to be required, the Parties shall determine jointly the relevant quantity of nuclear items, taking account of the circumstances involved. The Parties shall further satisfy themselves that full safety, radiological and physical protection measures, in accordance with their existing obligations, are taken in relation to the return of the items, that no unreasonable risks are incurred and that the return of items takes place in a manner consistent with all the relevant laws and regulations of the Parties.

Article 14

Duration and amendment

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for its entry into force have been completed.

2. This Agreement shall remain in force for a period of thirty years and shall continue in force thereafter for additional periods of five years each. Either Party may, by giving six months' written notice to the other Party, terminate this Agreement at the end of the initial thirty-year period or at the end of any subsequent five-year period.

3. Notwithstanding the termination or suspension of this Agreement, the rights and obligations pursuant to Articles 6, 7, 8.1 (C) and 11 and to paragraphs 2, 3, 4, 5, 8, 9, 10, 11 and 12 of the Agreed Minute shall continue in effect.

4. If a Party gives to the other Party the written notice provided for in paragraph 2, or if a Party suspends or terminates this Agreement pursuant to Article 13.1, the Parties shall hold consultations as soon as possible but not later than one month afterwards, for the purpose of deciding jointly whether, in addition to those referred to in paragraph 3 of this Article, further rights and obligations arising out of this Agreement, and in particular out of Article 8.1 (A), 8.1 (B), 8.1 (D), 8.2 and 8.3 and the Agreed Minute relating thereto, shall continue in effect.

5. If the Parties are unable to reach a joint decision pursuant to paragraph 4,

(a) quantities of nuclear material equivalent to the inventory described in Article 20.1, and items of equipment described in Article 20.2, shall continue to

be subject to the provisions of Articles 8.1 (A), 8.1 (B), 8.1 (D), 8.2, 8.3 and Article 13 and their Agreed Minute but only to the extent covered by the Agreements referred to in Article 19.

(b) The question whether further rights and obligations, in addition to those referred to in paragraph 3 and subparagraph (a) of this paragraph of this Article, shall continue in effect in relation to nuclear material and equipment not covered by subparagraph (a), and to all non-nuclear material, shall be submitted to an arbitral tribunal composed pursuant to Article 12.3. The tribunal shall make its decision on the basis of the application of the rules and principles of international law, and in particular the Vienna Convention on the Law of Treaties.

(c) If the arbitral tribunal decides that rights and obligations other than those referred to in paragraph 3 of this Article shall not continue in effect with respect to non-nuclear material, nuclear material and equipment subject to arbitration pursuant to subparagraph (b), either Party shall have the right to require, subject to the procedures provided for in Article 13.9, the return of such non-nuclear material, nuclear material and equipment in the territory of the other Party on the day of termination of this Agreement.

(d) Until the Parties reach a joint decision or the arbitral tribunal renders its decision, this Agreement will remain in force notwithstanding the written notice pursuant to paragraph 2.

6. The Parties may consult, at the request of either, on possible amendments to this Agreement, particularly to take account of international developments in the field of nuclear safeguards. This Agreement may be amended if the Parties so agree. Any amendment shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for its entry into force have been completed.

Article 15

Multiple obligations

1. The Parties shall endeavour to avoid any difficulties arising out of the overlapping of obligations on nuclear material as a result of the application of several agreements concerning international trade.

2. The Parties shall promote multilateral consultations with a view to achieving mutually satisfactory solutions at international level.

Article 16

Administrative Arrangement

1. The appropriate authorities of the Parties shall establish an Administrative Arrangement in order to provide for the effective implementation of the provisions of this Agreement.

2. The principles of fungibility, equivalence and proportionality shall apply to nuclear material subject to the Agreement and the detailed provisions thereof will be set out in the Administrative Arrangement.

3. An Administrative Arrangement established pursuant to this Article may be amended by written agreement between the appropriate authorities of the Parties.

Article 17

Intellectual property

1. The Parties shall apply international rules they have both formally accepted governing the treatment of intellectual property and technology transfers to intellectual property created or transferred and technology transferred pursuant to this Agreement.

2. Annex B shall apply to intellectual property created or transferred and technology transferred pursuant to this Agreement.

3. The Parties shall ensure that individual agreements they enter into pursuant to Annex B are consistent with this Agreement and with any additional rules concerning treatment of sensitive or confidential information in the nuclear field that may be agreed by the Parties.

Article 18

Status of Annexes

The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement includes its Annexes.

Article 19

Termination of existing Agreements

1. The Agreements between the European Atomic Energy Community and the Government of the United States of America that entered into force on 27 August

1958 shall be terminated upon the entry into force of this Agreement. The Additional Agreement for Cooperation between the United States of America and the European Atomic Energy Community (Euratom) that entered into force on 25 July 1960, as subsequently amended, shall expire as provided for in Article VI of that Agreement or shall be terminated upon entry into force of this Agreement, whichever is the earlier.

2. The bilateral nuclear cooperation agreements that the United States of America has concluded with the Republic of Austria, on 11 July 1969, the Kingdom of Spain, on 20 March 1974, the Portuguese Republic, on 16 May 1974, the Kingdom of Sweden, on 19 December 1983, and the Republic of Finland, on 2 May 1985, shall be terminated upon the entry into force of this Agreement. The rights and obligations with respect to nuclear supply arising out of such agreements shall be replaced by those of this Agreement.

3. The rights and obligations with respect to nuclear supply arising out of a nuclear cooperation agreement between the United States of America and any third State that accedes to the Community after the entry into force of this Agreement shall be replaced by those of this Agreement upon accession by that State to the Community. The rights and obligations with respect to other areas of nuclear cooperation shall be the subject of negotiations between the Community, the United States of America and the third State concerned, in accordance with the provisions of Article 106 of the Euratom Treaty.

Article 20

Initial inventories

1. The provisions of this Agreement shall apply to the inventory of nuclear material formerly subject to the agreements referred to in Article 19 from the date upon which such agreements terminate.

2. The provisions of this Agreement shall apply to equipment and non-nuclear material transferred pursuant to the agreements referred to in Article 19 only to the extent covered by those agreements.

3. The inventories of nuclear material, equipment and non-nuclear material subject to the agreements referred to in Article 19 shall be approved by the appropriate authorities of the Parties.

Article 21

Definitions

For the purposes of this Agreement:

1. 'Parties' means the Government of the United States of America and the European Atomic Energy Community.
2. (a) 'Community' means both:
 - (i) the legal person created by the Treaty establishing the European Atomic Energy Community (Euratom), Party to this Agreement;
 - (ii) the territories to which the Euratom Treaty applies;
- (b) 'within the Community' means within the territories to which the Euratom Treaty applies;
- (c) 'beyond the Community' has the corresponding meaning.
3. 'Appropriate authority' means, in the case of the United States of America, the Department of State; in the case of the Community, the European Commission, or such other authority as the Party concerned may at any time notify to the other Party.
4. 'Equipment' means any reactor as a complete unit, other than one designed or used primarily for the formation of plutonium or uranium-233 or any other item so designated jointly by the appropriate authorities of the Parties.
5. 'Non-nuclear material' means heavy water, or any other material suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, as may be jointly designated by the appropriate authorities of the Parties.
6. 'Nuclear material' means (1) source material and (2) special fissionable material. 'Source material' means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors of the IAEA shall from time to time determine; and such other materials as the Board of Governors of the Agency may determine or as may be agreed by the appropriate authorities of both Parties. 'Special fissionable material' means plutonium, uranium-233, uranium enriched in the isotope 233 or 235, any substance containing one or more of the foregoing, and such other substances as the Board of Governors of the Agency may determine or as may be agreed by the appropriate authorities of both Parties. 'Special fissionable material' does not include 'source material'. Any determination by the Board of Governors of the Agency under Article XX of that Agency's Statute or

otherwise that amends the list of material considered to be 'source material' or 'special fissionable material' shall only have effect under this Agreement when both Parties to this Agreement have informed each other in writing that they accept such amendment.

7. 'High enriched uranium' means uranium enriched to more than 20 % in the isotope 235 (and/or uranium 233); 'low enriched uranium' means uranium enriched to 20 % or less in the isotope 235 (and/or uranium 233);

8. The following definitions relate to Article 17 and Annex B:

— 'Cooperative activity' means any joint activity carried on under this Agreement, and includes joint research;

— 'Information' means scientific or technical data, results or methods of research and development stemming from the joint research and any other information deemed necessary to be provided or exchanged under this Agreement or research pursuant thereto;

— 'Joint research' means research undertaken jointly by the Parties directly or on their behalf by a person, legal entity, research institute or other designated by a Party or research undertaken jointly by participants;

— 'Participant' means a person, legal entity, research institute or other body participating in joint research but not on behalf of one of the Parties.

9. 'Persons and undertakings' means any natural person who, and any undertaking or institution, whatever its public or private legal status, which pursues all or any of its activities within the Community or in the territory of the United States of America within the scope of this Agreement.

10. 'Alteration in form or content' means conversion of plutonium, high enriched uranium of uranium-233 or fabrication of fuel containing plutonium, high enriched uranium or uranium 233; it does not include post irradiation examination involving chemical dissolution or separation, disassembly or reassembly of fuel assemblies, irradiation, reprocessing or enrichment.

11. 'Storage facility' means any facility (or any part of a facility so designated by inclusion in one of the lists referred to in Article 8.3) the primary purpose and function of which is the separate storage of sensitive nuclear material as described in paragraphs (i), (ii) and (iii) of Article 8.3 under adequate conditions of control, safety and safeguards as well as of physical protection as described in Article 11.2.

In witness whereof the undersigned, being duly authorized thereto by the European Atomic Energy Community and the Government of the United States of America respectively, have signed this Agreement.